

SENATE No. 495

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to crumbling concrete foundations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Anne M. Gobi	Worcester and Hampshire	
Ryan C. Fattman	Worcester and Hampden	1/12/2023
Brian M. Ashe	2nd Hampden	1/30/2023
Angelo J. Puppolo, Jr.	12th Hampden	2/2/2023
Jacob R. Oliveira	Hampden, Hampshire and Worcester	2/7/2023
Paul K. Frost	7th Worcester	2/7/2023
Hannah Kane	11th Worcester	2/7/2023
Kimberly N. Ferguson	1st Worcester	2/7/2023
Peter J. Durant	6th Worcester	2/9/2023
James J. O'Day	14th Worcester	2/14/2023
Meghan Kilcoyne	12th Worcester	2/14/2023
Todd M. Smola	1st Hampden	2/14/2023
Lindsay N. Sabadosa	1st Hampshire	2/14/2023
Donald R. Berthiaume, Jr.	5th Worcester	2/15/2023
Joanne M. Comerford	Hampshire, Franklin and Worcester	2/23/2023
Joseph D. McKenna	18th Worcester	2/23/2023
James B. Eldridge	Middlesex and Worcester	2/23/2023
John J. Cronin	Worcester and Middlesex	2/23/2023

<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/27/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>2/28/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/28/2023</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>3/2/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/6/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>3/7/2023</i>

SENATE No. 495

By Ms. Gobi, a petition (accompanied by bill, Senate, No. 495) of Anne M. Gobi, Ryan C. Fattman, Brian M. Ashe, Angelo J. Puppolo, Jr. and other members of the General Court for legislation relative to crumbling concrete foundations. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 548 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to crumbling concrete foundations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3B of chapter 7 of the General Laws is hereby amended by
2 inserting after the words “twenty-one A” the following words:- , section eighty-eight of chapter
3 6C.

4 SECTION 2. Section 97 of chapter 13 of the General Laws is hereby amended by
5 inserting at the end thereof the following words:-

6 Said board shall require all licensed home inspectors who perform an inspection on a
7 residential home for the purpose of a sale or lease of the home to provide the potential buyer or
8 lessee information regarding the possible presence of pyrite or pyrrhotite in the concrete

9 foundation, prepared by the crumbling concrete relief agency established by section 2 of chapter
10 23B.

11 SECTION 3. Chapter 6C of the General Laws is hereby amended by adding the
12 following section:-

13 Section 78. (a) For the purposes of this section, the following words shall have the
14 following meanings unless the context clearly requires otherwise:

15 “Aggregate”, granular materials such as gravel, sand and crushed rock that are combined
16 for a particular purpose.

17 “Certified geologist”, a professional geologist certified by the American Institute of
18 Professional Geologists.

19 “Concrete aggregate”, natural sand, natural gravel or crushed aggregate products
20 produced from ledge rock.

21 (b) Any person seeking to mine, expand, excavate or otherwise operate a quarry, sand
22 and gravel operation, or any other aggregate source for the purpose of producing concrete
23 aggregate for sale or use in foundations, structural elements or infrastructure, such as roadways
24 and bridges, shall submit to the department and the state geologist an application for a license to
25 conduct such activity.

26 Each license application shall consist of: (i) a description of the geographic location of
27 the aggregate source; (ii) an operations plan, including, but not limited to, mining, processing,
28 storage and quality control methods; (iii) a geological source report, consistent with subsection
29 (c); and (iv) the results of aggregate testing for the presence of pyrite or pyrrhotite, consistent

30 with subsection (d). Each license application shall be accompanied by a fee in an amount to be
31 determined by the department. Fees received by the department under this section shall be used
32 to implement this section; provided, however, that any surplus fee receipts shall be deposited into
33 the Crumbling Concrete Assistance Fund.

34 (c) The geological source report required in subsection (b) shall be prepared by a certified
35 geologist in a form and manner prescribed by the department, in consultation with the state
36 geologist, a representative nominated by the Massachusetts Aggregate and Asphalt Pavement
37 Association, and a representative nominated by the Massachusetts Concrete and Aggregate
38 Producers Association, Inc., and shall include, but not be limited to: (i) a description of the
39 characteristics of the aggregate to be excavated at the subject location; (ii) a description of the
40 products to be produced at such location; (iii) a copy of the results of an inspection of face
41 material and geologic log analysis conducted not more than 60 days prior to the date of the
42 report; and (iv) petrographic analyses of grab or core samples representative of the material
43 being actively mined. A geological source report prepared under this subsection shall be valid for
44 a period of 1 year from the date of preparation.

45 (d) Aggregate testing to identify the presence of pyrite or pyrrhotite required in
46 subsection (b) shall include, but not be limited to, a total sulfur test to measure total sulfur
47 content in a representative sample. Aggregate testing shall be performed by an accredited
48 laboratory in accordance with applicable standards established by American Society of Testing
49 and Materials International standards or alternate standards to be determined by the department
50 in consultation with the state geologist.

51 (e) The Secretary of Transportation or a designee, in consultation with the state geologist,
52 shall review each license application submitted pursuant to this section and notify each applicant
53 whether the license has been approved and any applicable conditions of operation. If the
54 application is denied, the notification shall include the reason for denial. A license granted under
55 this section shall be valid for 1 year from the date of approval. A license shall be approved if the
56 total sulfur content is less than 0.1 per cent by mass. A license shall not be approved if the total
57 sulfur content is not less than 1 per cent by mass. If the total sulfur content is equal to or greater
58 than 0.1 per cent by mass but less than 1 per cent by mass, the license applicant shall be required
59 to perform x-ray diffraction, magnetic susceptibility, or petrographic analyses to determine the
60 presence and relative abundance of pyrrhotite in the sample. A license shall be approved if the
61 results of said additional tests indicate that no pyrrhotite is present in the sample. A license shall
62 not be approved if the results of said tests indicate that pyrrhotite is present in the sample.
63 Aggregate test results demonstrating a total sulfur content of less than 0.1 percent by mass for
64 five consecutive years shall be valid for a period of five years from the date of the most recent
65 testing, provided, however, that annual geological source reports are submitted to the
66 department. The state geologist may require additional testing or information to justify an
67 approval recommendation.

68 (f) A person owning or operating an aggregate source subject to licensure pursuant to this
69 section shall maintain all records relevant to such licensure and operation, including, but not
70 limited to, a record of sale for all aggregate, for not less than 10 years.

71 (g) A person owning or operating a concrete production facility for the purpose of sale or
72 use in foundations, structural elements, or infrastructure, such as roadways and bridges, in

73 receipt of aggregate material from a source licensed pursuant to this section shall maintain a
74 record of the aggregate sources used in individual concrete batches for not less than 10 years.

75 (h) The department, in consultation with the state geologist, shall catalogue and maintain
76 the data collected under this section.

77 (i) Nothing in this section shall prohibit a municipality from requiring permits for quarry
78 operation or excavation or from establishing pyrite and pyrrhotite presence restrictions that are
79 more stringent than those set forth in this section.

80 (j) Nothing in this section shall affect the operations of quarries producing aggregate for
81 purposes other than those described in subsection (b).

82 (k) The department, in consultation with the state geologist, shall promulgate regulations
83 to implement this section.

84 SECTION 4. Section 78 of chapter 6C of the General Laws shall be effective on
85 December 31, 2023; provided, however, that entities licensed to operate a quarry or sand and
86 gravel operation in the commonwealth before the effective date of this act that are affected by
87 said section 88 of said chapter 6C shall meet the requirements of said section 78 of said chapter
88 6C not later than December 31, 2023; provided further, that any work conducted by such an
89 entity prior to December 31, 2023 shall comply with existing regulations.

90 SECTION 5. Section 2 of chapter 23B of the General Laws is hereby amended by
91 inserting at the end thereof the following new paragraph:-

92 (c) There shall also be within the department a crumbling concrete relief agency to
93 provide assistance to owners of residential real property with concrete foundations that have

94 deteriorated due to the presence of pyrite or pyrrhotite. The agency shall be overseen by an
95 executive director who reports to the undersecretary. The executive director shall have the
96 authority to hire staff sufficient to meet the requirements and obligations of the agency. The
97 agency shall, without limitation: (a) provide information to the public regarding structurally
98 sound concrete and the dangers of pyrite and pyrrhotite; (b) publish a list of quarries licensed
99 pursuant to section 88 of chapter 6C and a searchable electronic database of all quarries applying
100 for such licensure, including aggregate and other testing results; and (c) administer the crumbling
101 concrete assistance fund established in section 2RRRRR of chapter 29, including establishing
102 eligibility requirements and implementing a process for impacted homeowners to secure
103 foundation repair and replacement funding from the fund. A decision on a request from an
104 impacted homeowner for such financial assistance shall be provided in writing to the homeowner
105 and shall include the information relied upon and the basis for such decision, including the
106 relevant eligibility and underwriting criteria. An impacted homeowner may request a review of
107 any decision by the agency relating to such homeowner not later than 30 days after the decision.
108 A final determination on such a request for review shall be provided in writing to the homeowner
109 not later than 30 days after receipt of the homeowner's request, unless an extension is agreed to
110 by the homeowner.

111 SECTION 6. Chapter 29 of the General Laws is hereby amended by inserting after
112 section 2QQQQQ the following section:-

113 Section 2RRRRR. (a) There shall be a Crumbling Concrete Assistance Fund. The fund
114 shall be expended to provide financial assistance to owners of residential real property for the
115 repair or replacement of concrete foundations of such property that have deteriorated due to the
116 presence of pyrite or pyrrhotite and to minimize any negative economic impacts on

117 municipalities in which such property are located. The crumbling concrete relief agency
118 established by section 2 of chapter 23B shall administer the fund and shall make expenditures
119 from the fund, without further appropriation. The agency shall seek to maximize available
120 federal reimbursements for money spent from the fund.

121 The fund shall consist of: (i) revenue from appropriations or other money authorized by
122 the general court and specifically designated to be credited to the fund; (ii) interest earned on
123 such revenues; (iii) funds from public and private sources, including but not limited to gifts,
124 grants, donations, and settlements received by the commonwealth that are specifically designated
125 to be credited to the fund; (iv) federal funds paid to the commonwealth under paragraph (b) of
126 this section; (v) monies paid to the commonwealth under paragraph (c) of this section; (vi)
127 monies paid to the commonwealth under paragraph (d) of this section; and (vi) monies paid to
128 the commonwealth under paragraph (f) of section 16 of chapter 21B. Any bond proceeds
129 deposited into the fund shall be kept separate from any and all other funds deposited into the
130 fund. Any balance in the fund at the close of a fiscal year shall be available for expenditure in
131 subsequent fiscal years and shall not be transferred to any other fund or revert to the General
132 Fund.

133 (b) The crumbling concrete relief agency established by section 2 of chapter 23B may
134 apply for, receive and deposit any federal funds, including but not limited to funds made
135 available by the United States Department of Housing and Urban Development Section 108
136 Loan Guarantee program, into the fund established by this section.

137 (c) Amounts issued from the fund to impacted homeowners for the repair or replacement
138 of concrete foundations that have deteriorated due to the presence of pyrrhotite shall be exempt
139 from taxation under chapter 62.

140 (d) Annually not later than June 1, the crumbling concrete relief agency shall report on
141 the activities of the fund from the previous calendar year to the senate and house committees on
142 ways and means and the joint committee on environment, natural resources and agriculture.

143 (e) The crumbling concrete relief agency shall promulgate regulations or issue other
144 guidance for the expenditure of the funds under this section.

145 SECTION 7. Chapter 59 of the General Laws is hereby amended by inserting after
146 section 59A the following section:-

147 Section 59B. (a) Notwithstanding any general or special law to the contrary, an owner of
148 real property in the commonwealth may apply for a residential property tax abatement due to the
149 presence of pyrite or pyrrhotite minerals in the foundation. The presence of pyrite or pyrrhotite
150 shall be established by: (i) not less than 2 core samples from the foundation proving the presence
151 of pyrite or pyrrhotite; or (ii) a certified visual inspection conducted by a professional civil
152 engineer. The owner shall also provide a certified estimate of the cost to repair or replace the
153 foundation. Upon receipt of such documentation, a municipal board of assessors or equivalent
154 entity shall determine a value per square foot of the foundation and percentage of functional
155 obsolescence. If an abatement is sought on multiple properties within a municipality the board of
156 assessors may determine a general value per square foot of foundation and percentage of
157 functional obsolescence to be used for all properties within said municipality. The board of

158 assessors shall use the value and percentage to calculate the reduction in assessment for each
159 affected property. Such reductions shall be effective until the foundation is repaired or replaced.

160 SECTION 8. Chapter 143 of the General Laws is hereby amended by adding the
161 following section:-

162 Section 110. Notwithstanding any general or special law to the contrary, fees for building
163 permits for work associated with crumbling concrete foundations replacement shall be waived.
164 In order to qualify for the waiver of fees, the applicant shall provide written documentation
165 showing that pyrite or pyrrhotite minerals are present in the foundation to be replaced. Nothing
166 in this section shall waive any of the permit application requirements, including, but not limited
167 to, holding public hearings, associated with a permit application. A determination to waive fees
168 is not a guarantee of the issuance of a permit.

169 SECTION 9. Within 2 months of passage of this act, active quarries subject to licensure
170 under the provisions of section 3 of this act shall either submit a complete license application or
171 obtain interim approval from the state geologist to continue operations for a period of not more
172 than six months. Interim operations approvals shall not be renewed.