



House of Representatives

General Assembly

File No. 733

February Session, 2016

Substitute House Bill No. 5180

House of Representatives, April 26, 2016

The Committee on Appropriations reported through REP. WALKER of the 93rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CONCRETE FOUNDATIONS AND SEPTIC TANKS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 20-327b of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2016*):

4 (d) (1) Not later than January 1, 2013, the Commissioner of
5 Consumer Protection shall, by regulations adopted in accordance with
6 the provisions of chapter 54, prescribe the form of the written
7 residential disclosure report required by this section and sections 20-
8 327c to 20-327e, inclusive. The regulations shall provide that the form
9 include information concerning:

10 (A) Municipal assessments, including, but not limited to, sewer or
11 water charges applicable to the property. Such information shall
12 include: (i) Whether such assessment is in effect and the amount of the
13 assessment; (ii) whether there is an assessment on the property that

14 has not been paid, and if so, the amount of the unpaid assessment; and
15 (iii) to the extent of the seller's knowledge, whether there is reason to
16 believe that the municipality may impose an assessment in the future;

17 (B) Leased items on the premises, including, but not limited to,
18 propane fuel tanks, water heaters, major appliances and alarm
19 systems;

20 (C) (i) Whether the real property is located in a municipally
21 designated village district or municipally designated historic district or
22 has been designated on the National Register of Historic Places, and
23 (ii) a statement that information concerning village districts and
24 historic districts may be obtained from the municipality's village or
25 historic district commission, if applicable.

26 (2) Such form of the written residential disclosure report shall
27 contain the following:

28 (A) A certification by the seller in the following form:

29 "To the extent of the seller's knowledge as a property owner, the
30 seller acknowledges that the information contained above is true and
31 accurate for those areas of the property listed. In the event a real estate
32 broker or salesperson is utilized, the seller authorizes the brokers or
33 salespersons to provide the above information to prospective buyers,
34 selling agents or buyers' agents.

T1 (Date) (Seller)
T2 (Date) (Seller)"

35 (B) A certification by the buyer in the following form:

36 "The buyer is urged to carefully inspect the property and, if desired,
37 to have the property inspected by an expert. The buyer understands
38 that there are areas of the property for which the seller has no
39 knowledge and that this disclosure statement does not encompass
40 those areas. The buyer also acknowledges that the buyer has read and
41 received a signed copy of this statement from the seller or seller's

42 agent.

T3 (Date) (Seller)

T4 (Date) (Seller)"

43 (C) A statement concerning the responsibility of real estate brokers
44 in the following form:

45 "This report in no way relieves a real estate broker of the broker's
46 obligation under the provisions of section 20-328-5a of the Regulations
47 of Connecticut State Agencies to disclose any material facts. Failure to
48 do so could result in punitive action taken against the broker, such as
49 fines, suspension or revocation of license."

50 (D) A statement that any representations made by the seller on the
51 written residential disclosure report shall not constitute a warranty to
52 the buyer.

53 (E) A statement that the written residential disclosure report is not a
54 substitute for inspections, tests and other methods of determining the
55 physical condition of property.

56 (F) Information concerning environmental matters such as lead,
57 radon, subsurface sewage disposal, flood hazards and, if the residence
58 is or will be served by well water, as defined in section 21a-150, the
59 results of any water test performed for volatile organic compounds
60 and such other topics as the Commissioner of Consumer Protection
61 may determine would be of interest to a buyer.

62 (G) A statement that information concerning the residence address
63 of a person convicted of a crime may be available from law
64 enforcement agencies or the Department of Emergency Services and
65 Public Protection and that the Department of Emergency Services and
66 Public Protection maintains a site on the Internet listing information
67 about the residence address of persons required to register under
68 section 54-251, 54-252, 54-253 or 54-254, who have so registered.

69 (H) If the property is located in a common interest community,

70 whether the property is subject to any community or association dues
71 or fees.

72 (I) Whether, during the seller's period of ownership, there is or has
73 ever been an underground storage tank located on the property, and, if
74 there is or was, if it has been removed. If such underground storage
75 tank has been removed, such seller shall state when it was removed,
76 who removed it and shall provide any and all written documentation
77 of such removal within the seller's possession and control.

78 (J) A statement that the prospective purchaser should consult with
79 the municipal building official in the municipality in which the
80 property is located to confirm that building permits and certificates of
81 occupancy have been issued for work on the property, where
82 applicable.

83 (K) A statement that the prospective purchaser should have the
84 property inspected by a licensed home inspector, and that such
85 inspection should include an evaluation of any concrete foundation or
86 concrete septic tank on the premises for the presence of oxidizing
87 minerals and damage to such concrete foundation or concrete septic
88 tank caused by oxidizing minerals.

89 (L) A question as to whether the seller is aware of any prior or
90 pending litigation, government agency or administrative action, order
91 or lien on the premises related to the release of any hazardous
92 substance.

93 (M) Whether there are smoke detectors and carbon monoxide
94 detectors located in a dwelling on the premises, the number of such
95 detectors, whether there have been any problems with such detectors
96 and an explanation of any such problems.

97 Sec. 2. (NEW) (*Effective October 1, 2016*) Prior to the issuance of a
98 certificate of occupancy for a new residential or commercial building
99 for which a concrete foundation or concrete septic tank was installed
100 on or after October 1, 2016, the applicant shall (1) provide the building

101 official with written documentation of the name of the individual or
102 entity that supplied the concrete, the name of the individual or entity
103 that installed the concrete and the date or dates on which the concrete
104 was installed, and (2) file the results of an analysis of the contents of
105 the aggregate used in such concrete with the Department of Consumer
106 Protection. Such analysis shall comply with standards adopted by the
107 Department of Consumer Protection, in a form prescribed by the
108 Department of Consumer Protection, and shall include, but not be
109 limited to, an examination for the presence of any oxidizing minerals.
110 On and after October 1, 2016, no certificate of occupancy may be issued
111 for a new residential or commercial building for which a concrete
112 foundation or concrete septic tank was installed unless such
113 documentation has been provided in accordance with this section.
114 Copies of such documentation shall be maintained electronically in the
115 records of the Department of Consumer Protection for not less than
116 fifty years.

117 Sec. 3. (NEW) (*Effective October 1, 2016, and applicable to assessment*
118 *years commencing on or after said date*) (a) Any owner of a residential
119 building who has obtained a written evaluation from a professional
120 engineer licensed pursuant to chapter 391 of the general statutes
121 indicating that the concrete foundation of such residential building has
122 been damaged by oxidizing minerals may provide a copy of such
123 evaluation to the assessor and request a revaluation of the residential
124 building by the assessor. Upon receipt of a copy of such evaluation, the
125 assessor, member of the assessor's staff or person designated by the
126 assessor shall inspect and revalue the residential building accordingly.
127 Such revaluation shall apply for five assessment years,
128 notwithstanding the provisions of section 12-62 of the general statutes.

129 (b) An owner of a residential building that has obtained a
130 revaluation pursuant to this section shall notify the assessor, in
131 writing, if the concrete foundation is repaired or replaced during the
132 five assessment years for which the revaluation is effective. The
133 assessor, member of the assessor's staff or person designated by the
134 assessor shall inspect the residential building and adjust the

135 revaluation accordingly.

136 Sec. 4. (Effective July 1, 2016) The Commissioner of Consumer
137 Protection shall investigate methods available to remediate failing
138 concrete foundations in residential buildings, and failing residential
139 concrete septic tanks, other than removal of such foundations and
140 septic tanks, and report all findings, in accordance with the provisions
141 of section 11-4a of the general statutes, to the joint standing committee
142 of the General Assembly having cognizance of matters relating to
143 planning and zoning not later than July 1, 2017. If no such methods
144 exist, the Commissioner of Consumer Protection shall so indicate.

145 Sec. 5. (Effective July 1, 2016) Not later than July 1, 2017, the
146 Commissioner of Consumer Protection, after consulting with the
147 Attorney General, shall submit a report, in accordance with the
148 provisions of section 11-4a of the general statutes, to the joint standing
149 committee of the General Assembly having cognizance of matters
150 relating to planning and zoning, on the rights and obligations of unit
151 owners and unit owners' associations in condominiums, common
152 interest communities and planned communities with respect to failing
153 concrete foundations and failing concrete septic tanks. Not later than
154 July 1, 2017, the Commissioner of Consumer Protection shall post such
155 report on the Department of Consumer Protection's Internet web site.

156 Sec. 6. (NEW) (Effective from passage) Any documentation provided
157 to or obtained by the Department of Consumer Protection relating to
158 claims of faulty or failing concrete foundations in residential buildings
159 by owners of such residential buildings shall be maintained as
160 confidential by the department for not less than three years.

| | | |
|---|-----------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2016 | 20-327b(d) |
| Sec. 2 | October 1, 2016 | New section |

| | | |
|--------|---|-------------|
| Sec. 3 | <i>October 1, 2016, and applicable to assessment years commencing on or after said date</i> | New section |
| Sec. 4 | <i>July 1, 2016</i> | New section |
| Sec. 5 | <i>July 1, 2016</i> | New section |
| Sec. 6 | <i>from passage</i> | New section |

APP *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 17 \$ | FY 18 \$ |
|-------------------|-------------|-----------|-----------|
| Correction, Dept. | GF - None | See Below | See Below |

Note: GF=General Fund

Municipal Impact:

| Municipalities | Effect | FY 17 \$ | FY 18 \$ |
|------------------------|--------------------------------|-----------|-----------|
| Various Municipalities | Grand List Reduction/Expansion | See Below | See Below |

Explanation

State

The bill results in no fiscal impact to the state as the Department of Consumer Protection has garnered expertise in the area of failing residential property foundations over the past year.

Municipalities

The bill requires municipal assessors to reassess properties with certain foundation problems at the request of the property owner. Subsequently, it freezes the property's assessment for five years, or until the property owner notifies the assessor that the foundation problems have been fixed.

Assessors may, under current law, change the assessment of a property annually. To the extent that this changes current practice, a grand list reduction will occur when a property's assessment is changed to reflect foundation damage. Correspondingly, there is a grand list expansion that will occur when a property is re-assessed after the foundation problems are fixed.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5180

AN ACT CONCERNING CONCRETE FOUNDATIONS AND SEPTIC TANKS.

SUMMARY:

This bill establishes requirements related to concrete foundations and concrete septic tanks. Several of these provisions specifically concern concrete structures damaged by oxidizing minerals (see BACKGROUND). The bill:

1. establishes additional requirements for obtaining a certificate of occupancy for a new residential or commercial structure for which a concrete foundation or septic tank was installed;
2. requires municipalities, at an owner's request, to revalue residential properties with foundation problems caused by oxidizing minerals;
3. requires the Department of Consumer Protection (DCP) to maintain records on failing residential concrete foundations as confidential for at least three years;
4. requires the residential property condition disclosure report to recommend that any home inspection include an inspection of any concrete foundation or septic tank;
5. requires DCP to investigate methods of remediating failing residential concrete foundations and septic tanks; and
6. requires the DCP commissioner to report on the rights and obligations of certain common interest community property owners.

EFFECTIVE DATE: October 1, 2016 and applicable to assessment dates beginning on or after that date, except the provisions requiring reports to the legislature are effective July 1, 2016 and the provision about confidential records is effective upon passage.

§ 1 — RESIDENTIAL PROPERTY CONDITION DISCLOSURE REPORT

The bill requires the DCP commissioner to include in the residential property condition disclosure report a recommendation that any home inspection should include an evaluation of any concrete foundation or septic tank for the presence of oxidizing minerals and damage caused by such minerals. Existing law requires the report to recommend that the prospective purchaser have the property inspected by a licensed home inspector.

Generally, individuals offering a one- to four-family home for sale, exchange, or lease with the option to buy must provide the prospective purchaser with a residential property condition disclosure report. The DCP commissioner prescribes the report's form. Under existing regulations, sellers must disclose known foundation, slab, or settling programs in the report (Conn. Agencies Regs. § 20-327b-1).

§ 2 — REQUIREMENTS FOR OBTAINING A CERTIFICATE OF OCCUPANCY

The bill requires an individual seeking a certificate of occupancy for a new residential or commercial building for which a concrete foundation or septic tank was installed on or after October 1, 2016, to:

1. provide the local building official with documentation showing the (a) name of the concrete supplier and installer and (b) dates of concrete installation and
2. file with DCP, in a form it prescribes, the results of an analysis of the concrete aggregate used in the concrete structure.

Under the bill, DCP must (1) adopt the standards applicable to the aggregate analyses, including requiring an examination for oxidizing

minerals and (2) maintain submitted documentation electronically for at least 50 years. It is unclear whether the bill requires DCP to maintain only the analysis, or also the documentation submitted to the local building official.

The bill specifies that local building officials cannot issue a certificate of occupancy if the applicant fails to provide the required documentation.

§ 3 — REVALUATION OF PROPERTIES WITH FOUNDATION PROBLEMS

The bill requires municipal assessors or their staff or designees to inspect and revalue residential properties with certain foundation problems at the request of the property owner. Residential property owners seeking to have their property revalued must submit to the assessor a copy of a written evaluation, prepared by a state-licensed professional engineer, indicating that the property's foundation has oxidizing mineral damage.

The bill specifies that the revaluation is valid for five assessment years, regardless of the year in which the municipality's next revaluation is scheduled. However, if a property owner repairs or replaces the damaged foundation within the five-year period, he or she must notify the assessor in writing. The assessor or his or her staff or designee must inspect and revalue the property accordingly.

The bill does not specify (1) a deadline by which property owners must submit a revaluation request or (2) the timeframe within which assessors must revalue properties. Presumably, any change to an assessment applies to the next assessment year, as the bill does not include provisions concerning prorated taxes.

Under current law, interim revaluations are mandated in two circumstances: (1) when property damage requires complete demolition or reconstruction and (2) for new construction.

§ 4 — INVESTIGATION OF REMEDIATION METHODS THAT DO NOT REQUIRE REMOVAL OF FAILING STRUCTURE

The bill requires DCP to investigate methods of remediating failing residential concrete foundations and septic tanks and report to the Planning and Development Committee by July 1, 2017. The investigation must focus on identifying remediation methods that do not require the removal of these structures, if such methods exist.

§ 5 — REPORT ON RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND UNITS OWNERS' ASSOCIATIONS

The bill requires the DCP commissioner, after consulting with the attorney general, to report to the Planning and Development Committee on the rights and obligations of condominium, common interest community, and planned communities' unit owners and unit owners' associations with regard to failing concrete foundations and septic tanks. The commissioner must submit the report to the committee, and post it on DCP's website, by July 1, 2017.

§ 6 — CONFIDENTIALITY OF DCP RECORDS ON FAULTY OR FAILING CONCRETE

The bill requires DCP to keep confidential for at least three years documentation it obtains from residential property owners related to claims concerning faulty or failing concrete foundations.

The bill does not exempt these records from disclosure under the Freedom of Information Act (FOIA). Thus, it appears that DCP must disclose records related to concrete foundation claims pursuant to a valid FOIA request, unless an exemption in existing law applies. (For example, under existing law, the DCP commissioner may withhold for up to 18 months investigation records related to a possible violation of the Connecticut Unfair Trade Practices Act.)

BACKGROUND

Oxidizing Minerals

The term "oxidizing minerals" may refer to two different mineral types: (1) minerals whose chemical composition changes as a result of oxidation (e.g., pyrrhotite, an iron sulfide mineral) and (2) minerals that cause other substances to oxidize (e.g., the mineral form of potassium nitrate).

Related Bill

HB 5231 (File 400), reported favorably by the Insurance and Real Estate Committee, eliminates the requirement that the DCP commissioner prescribe the residential property condition disclosure report in regulation. Instead, the legislature must enact the form's content in statute.

Legislative History

The House referred the bill (File 483) to the Appropriations Committee, which reported a substitute that (1) transferred responsibilities from the state building inspector to DCP and (2) extended the reporting deadlines.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 19 Nay 1 (03/18/2016)

Appropriations Committee

Joint Favorable Substitute

Yea 54 Nay 1 (04/18/2016)