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## **OLR Bill Analysis**

### **sHB 6646**

#### ***AN ACT CONCERNING CRUMBLING CONCRETE FOUNDATIONS.***

#### **SUMMARY**

This bill makes the Connecticut Foundation Solutions Indemnity Company (CFSIC) permanent by eliminating the current June 30, 2022, termination date. CFSIC is the captive insurance company created by law to distribute money to homeowners with concrete foundations that are deteriorating due to the presence of pyrrhotite.

The bill allows the Connecticut Housing Finance Authority (CHFA) to make loans to CFSIC so that it may pay claims. It authorizes CHFA to issue up to \$100 million in revenue bonds to fund the loans and secures the bonds with a portion of Healthy Homes surcharge revenue. It also extends the Healthy Homes insurance surcharge sunset date by 12 years, until December 31, 2041. Under current law, the surcharge sunsets on December 31, 2029.

The bill requires the Department of Consumer Protection (DCP) commissioner to adopt regulations establishing standards for aggregate testing.

The bill also:

1. eliminates the five-year cap on reduced assessments for properties made with defective concrete (§ 1);
2. requires Connecticut concrete aggregate quarries to prepare a geological source report (GSR) every four years and submit it to the state geologist (§ 3); and
3. requires CFSIC to study the extent of pyrrhotite-related foundation damage in nonresidential buildings and appropriates \$175,000 from the Healthy Homes fund for it to do

so.

EFFECTIVE DATE: July 1, 2021, except the provisions on assessments (§ 1), DCP regulations (§ 4), and bonding (§ 5) are effective upon passage.

## **§ 5 — CHFA LOANS TO CFSIC**

The bill allows CHFA to make loans to CFSIC for the purposes of funding CFSIC claim payments. Under the bill, any loans must be deposited into the Crumbling Foundations Assistance Fund and repaid by CFSIC from Healthy Homes insurance surcharge revenue that is transferred to the fund (i.e., pledged revenues, see below).

### ***Authorization to Issue Bonds***

The bill authorizes CHFA to issue up to \$100 million in revenue bonds for these purposes. Bond proceeds must be used to make loans to CFSIC, pay the issuing and capitalized interest costs, and fund any necessary reserves, including any special capital reserve fund CHFA establishes. The bill makes all CHFA bonding powers applicable to these new bonds (e.g., establishing special capital reserve funds).

### ***Pledged Revenues***

The bill irrevocably assigns and pledges the “pledged revenues” to secure bond repayment, including interest and redemption premiums. “Pledged revenues” is the portion of Healthy Homes surcharge revenue that is transferred to the Crumbling Foundations Assistance Fund. (However, in section 6, if CHFA makes any loans (and, thus, has issued bonds), the portion of surcharge revenue that is currently transferred to the fund is instead transferred directly to CHFA. It is unclear whether these surcharges would be considered pledged revenue if they are not transferred to the fund.)

The assignment and pledge continue even if the Crumbling Foundations Assistance Fund or CFSIC no longer exist. It secures all bonds described in the bill equally and supersedes any other party’s claim to the pledged revenues, including holders of state general obligation (GO) bonds.

Under the bill, the pledge is effectively a lien against pledged revenues that takes effect when the bill does without any further action by the state. Pledged revenue is immediately subject to the lien when the state receives it, and the lien is valid and binding against all parties with claims against the state.

In bond authorization proceedings, CHFA may pledge the revenues to secure bond repayment and direct the payment of pledged revenues directly to the trustee under the bond indenture. Any pledged revenues not required to repay the bonds under the indenture's terms may be released back to the Crumbling Foundations Assistance Fund.

***Commitments to Bondholders***

The bill makes certain commitments to bondholders concerning the revenue bonds it authorizes CHFA to issue and allows the authority to include the covenant in any bondholder agreement.

Under the bill, the state pledges to collect and apply the pledged revenues in the amounts necessary to pay bond debt service until the bonds and any interest or other costs are fully paid off, unless otherwise authorized under a contract between CHFA and bondholders. The bill also promises that the state will perform, or cause to be performed, every promise, covenant, agreement, or contract with bondholders and will not:

1. limit or alter the duties imposed on the treasurer, state officers, CHFA, or CFSIC as they relate to the application of pledged revenues;
2. alter the provisions applying pledged revenues to the debt service requirements or impose additional fees or levies on CHFA;
3. issue any bonds or other debt secured by the same pledged revenues;
4. create or cause to be created any other lien or charge on the pledged amounts; or

5. impair the rights, exemptions, or remedies of bondholders.

The state may also allow any pledged revenues CHFA pays to the Crumbling Foundations Assistance Fund to instead be paid to the state, its agencies, or any other pledged purpose.

***Debt Service Coverage.*** The bill generally promises that the state will not alter state officers' rights or obligations to impose, maintain, charge, or collect the pledged revenues as necessary to produce sufficient revenues to fulfill the bond proceedings' terms.

But it allows the state to amend the Healthy Homes Surcharge amount as long as it can maintain a specified debt service coverage ratio. Specifically, it may amend the surcharge if doing so would not have reduced pledged revenues for any 12 consecutive months within the preceding 15 months to an amount less than three times the maximum debt service payable on outstanding bonds in the current or any future fiscal year.

***Other Permissible State Debt.*** The act specifies that its commitments to bondholders do not prevent the state from issuing debt (1) secured by a pledge or lien subordinate and junior to the liens and pledges created under the act or (2) secured by a pledge of or lien on amounts derived on or after the date the revenue bonds' pledges or liens are discharged and satisfied.

### ***Agreements and MOUs***

Under the bill, CFSIC, CHFA, the housing and insurance commissioners, and the treasurer are authorized to enter into agreements and MOUs, as they consider appropriate, for the purposes of the loans the bill authorizes. In any agreement or MOU, CFSIC is authorized to grant a security interest, title, and interest in pledged revenues to CHFA and to the trustee of CHFA's bonds, but the bill specifies that any such grant does not establish any right for CFSIC to the pledged revenue or imply the state has waived sovereign immunity.

## **§ 6 — HEALTHY HOMES INSURANCE SURCHARGE**

Existing law imposes an annual \$12 surcharge on the named insured under certain homeowners insurance policies, known as the Healthy Homes surcharge.

Under current law, this revenue, less the administrative collection costs, is deposited into the Healthy Homes Fund, and 85% of the deposit is then transferred to the Crumbling Foundations Assistance Fund within 30 days after the deposit. (The remaining 15% stays in the Healthy Homes Fund.)

Under the bill, the 85% share is instead directly transferred to CHFA, unless it has not made any loans to CFSIC, in which case it is deposited straight into the Crumbling Foundations Assistance Fund. The balance (15%) is then deposited into the Healthy Homes Fund.

The bill specifies that neither the Crumbling Foundations Assistance Fund, nor CFSIC, have any right to the Healthy Homes surcharge remittances except under the bill's provisions, nor any right to cause the remittances to continue.

### **§§ 3 & 4 — GSR REQUIREMENT AND DCP REGULATIONS**

#### **GSR (§ 3)**

Beginning by January 1, 2022, the bill requires the operator of each Connecticut quarry that produces concrete aggregate to quadrennially prepare a geological source report (GSR) and submit it to the state.

The quadrennial GSR must be prepared as the state geologist requires and must include:

1. an operations plan and a description of the operator's mining, processing, storage, and quality control methods;
2. a description of the products the quarry will produce;
3. a description of the characteristics of the aggregate to be excavated, prepared by a qualified geologist;
4. the results of an inspection of face material and geologic log analysis, completed in the prior year by a qualified geologist;

and

5. core sample analyses completed in the prior year by a qualified geologist, unless the state geologist determines the quarry's performance history is satisfactory.

***DCP Regulations on Aggregate Testing***

The bill requires DCP's commissioner, in consultation with the state geologist, to adopt regulations developing standards for testing concrete aggregate produced by quarries. The standards must require (1) a total sulfur content ("total S") test and (2) identification of the presence of pyrrhotite. (If aggregate has a high total S concentration, it is not suitable for structural concrete. Measuring aggregate's total S enables one to develop a conservative estimate of the maximum pyrrhotite concentration (many minerals other than pyrrhotite contain sulfur).)

The regulations must require the performance of a rapid total S test on a 10-pound aggregate sample using one of the following methods:

1. x-ray fluorescence analysis,
2. purge and trap gas chromatography analysis, or
3. analysis by combustion furnace.

The regulations must specify that if the results of the total S test show that the sample's total S is:

1. less than 0.1% (by mass), then the aggregate must be approved for use for four years and the test results must be filed with the state geologist;
2. 1% or more (by mass), then the aggregate may not be used (presumably, the material can be used for purposes other than concrete aggregate); and
3. 0.1% or more, but less than 1% (by mass), then the sample must be further tested, as described below (presumably, this testing is

only required if the producer wants to use the material for concrete aggregate).

**Further Testing.** If further testing is required after the total S test (see above), the regulations must require testing the sample for the presence and relative abundance (concentration) of pyrrhotite using one of the following methods:

1. x-ray diffraction,
2. magnetic susceptibility, or
3. another type of petrographic analysis.

The regulations must specify that if further testing reveals no pyrrhotite in the sample, the aggregate must be approved for use for one year and the test results must be filed with the state geologist. If pyrrhotite is present, further petrographic analysis must be done to determine whether the aggregate is acceptable for use.

#### **§ 1 — REDUCED ASSESSMENT FOR PROPERTIES WITH DEFECTIVE FOUNDATIONS**

By law, municipal assessors or their staff must inspect and reassess residential properties with foundations made from defective concrete at the property owner's request. Under current law, the adjusted assessment must reflect the property's current value and is valid for five assessment years, unless the foundation is repaired or replaced sooner. The bill eliminates the five-year maximum, thus allowing property owners to benefit from a reduced assessment until their foundation is repaired or replaced. As under current law, the reduced assessment's duration supersedes the law requiring revaluation every five years. Thus, the bill appears to prohibit the assessment from being updated during any future revaluation, unless the foundation is repaired or replaced.

#### **§§ 7 & 8 — STUDY OF NONRESIDENTIAL CRUMBLING CONCRETE DAMAGE**

By July 1, 2022, the bill requires CFSIC to submit a report to the

Insurance and Real Estate and Planning and Development committees analyzing the extent of pyrrhotite-related concrete foundation damage in non-residential buildings.

By July 15, 2021, the bill also requires the Department of Housing to remit up to \$175,000 from surcharge remittances transferred to the Healthy Homes fund for FY 22 to CFSIC for research, development, and administrative expenses related to the report described above. However, the bill specifies that this amount must not be used in calculating the total funds allocated or made available to CFSIC for administrative or operational expenses. (By law, CFSIC may not spend more than 10% of its annual allocations on administrative or operational costs (CGS § 38-91vv(c)).)

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/31/2021)