

ATTACHMENT C

August 9, 2023

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 8 and 101 of House Bill No. 4040, “An Act Making Appropriations for the Fiscal Year 2024 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Section 8 requires the Highway Division of the Massachusetts Department of Transportation (MassDOT) to establish a new department and a new licensure process to oversee quarries producing concrete aggregate. The provision also expands concrete testing lab services to residential and private entities. Section 101 provides an effective date of December 31, 2023 and requires MassDOT to promulgate regulations by that same date.

I fully support this proposal as it addresses a challenge faced by many homeowners and communities in the Commonwealth. Concrete contaminated with pyrite and pyrrhotite can weaken construction, drastically reducing the strength and limiting the lifespan of buildings and infrastructure, and resulting in significant financial harm to unassuming homeowners, municipalities, and the Commonwealth. As we work to replenish our housing supply, we must ensure that construction is completed with quality materials.

Establishing an efficient and meaningful licensing program will require time. MassDOT will need more than five months to establish a new department, recruit and retain necessary personnel, promulgate regulations, and develop a new licensure process. Delaying the effective date of this proposal to July 1, 2024 will allow MassDOT to complete these actions in an orderly way and effectively achieve the aims of the new law.

For these reasons, I recommend that the bill be amended by striking out sections 8 and 101 and inserting in place thereof the following 2 sections:-

SECTION 8. Chapter 6C of the General Laws is hereby amended by adding the following section:-

Section 79. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Aggregate”, granular materials such as gravel, sand and crushed rock that may be used individually or are combined for a particular purpose.

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

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

“Licensed professional geologist”, a professional geologist certified by: (i) examination through the National Association of State Boards of Geology; or (ii) a state’s licensing authority that follows the national standards of the National Association of State Boards of Geology’s licensing program or its equivalent.

(b) Any person seeking to mine, expand, excavate or otherwise operate a quarry, sand and gravel operation or any other aggregate source for the purpose of producing concrete aggregate for sale or use in foundations, structural elements or infrastructure, including, but not limited to, roadways and bridges, shall submit to the department and the state geologist an application for a license to conduct such activity.

Each license application shall consist of: (i) a description of the geographic location of the aggregate source; (ii) an operations plan, including, but not limited to, mining, processing, storage and quality control methods; (iii) a geological source report, consistent with subsection (c); and (iv) the results of aggregate testing for the presence of pyrite and pyrrhotite, consistent with subsection (d). Each license application shall be accompanied by a fee as established by the department. Fees received by the department under this section shall be used to implement this section; provided, however, that any surplus fee receipts shall be deposited into the General Fund.

(c) An applicant under this section shall prepare a geological source report as required under subsection (b). Such report shall be prepared by a certified professional geologist, licensed professional geologist or an equivalent acceptable to the state geologist in a form and manner prescribed by the department, developed in consultation with the state geologist, a representative nominated by the Massachusetts Aggregate & Asphalt Pavement Association, Inc. and a representative nominated by the Massachusetts Concrete & Aggregate Producers Association, Inc., and shall include, but shall not be limited to: (i) a description of the characteristics of the aggregate to be excavated at the aggregate source location; (ii) a description of the products to be produced at such location; and (iii) a copy of the results of an inspection of face material and geologic log analysis, which shall be conducted not more than 60 days prior to the date of the report. A geological source report prepared under this subsection shall be valid for a period of 1 year from the date of preparation.

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

(e) The secretary or a designee, in consultation with the state geologist, shall review each license application submitted pursuant to this section and notify each applicant whether the license has been approved and any applicable conditions of operation. If the application is denied, the notification shall include the reason for denial. A license granted under this section shall be valid for 1 year from the date of approval; provided, however, that a license may be renewed after it expires. The department shall state the aggregate testing requirements established under subsection (d) in the license application; provided, however, that the state geologist may request additional testing or information during the review of a license application. The department may modify testing requirements and application criteria at its discretion.

The department may issue a license valid for more than 1 year to an applicant that has submitted geological source reports and been approved for a license for 5 consecutive years; provided, however, that the licensee shall be required to submit annual geologic source reports as a condition for receiving such license.

(f) A person owning or operating an aggregate source, subject to licensure pursuant to this section, shall maintain all records relevant to such licensure and operation, including, but not limited to, a record of sale for all aggregate, for not less than 30 years.

(g) A person owning or operating a concrete production facility for the purpose of producing concrete for sale or use in foundations, structural elements or infrastructure, including, but not limited to, roadways and bridges, and who is in receipt of aggregate material from a source licensed pursuant to this section, shall maintain a record of the aggregate used in individual concrete batches for not less than 30 years.

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

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

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

SECTION 101. Section 79 of chapter 6C of the General Laws, inserted by section 8, shall take effect on July 1, 2024; provided, however, that entities licensed to operate a quarry or sand and gravel operation in the commonwealth before the effective date of this act that are affected by said section 79 of said chapter 6C shall meet the requirements of said section 79 of said

chapter 6C not later than July 1, 2024; and provided further, that any work conducted by such an entity prior to July 1, 2024 shall comply with existing regulations.

Respectfully submitted,

Maura T. Healey
Governor