

BILL ANALYSIS

S.B. 1399
By: Patrick
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that increasing numbers of predatory practices by foundation repair companies have been reported. They argue that currently there is no state regulation in place to directly mitigate these risks.

S.B. 1399 will provide for greater accountability in the foundation repair industry; serve to ensure that appropriate industry experience is in place before a company can represent itself as a licensed foundation repair contractor; and serve to better assure that appropriate safety practices are utilized for Texas workers handling these repairs.

S.B. 1399 defines the licenses established under the bill to include foundation repair contracting companies, as well as foundation repair masters, journeymen, estimators, and foremen. S.B. 1399 exempts commercial foundation repair companies, homebuilders, and laborers from regulation. This bill makes changes to the Foundation Repair Contractors Advisory Board to conform to the Texas Department of Licensing and Regulation structure.

S.B. 1399 amends current law relating to the regulation of foundation repair contractors and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Sections 1003.101, 1003.102, and 1003.163, Occupations Code) and SECTION 3 of this bill.

ANALYSIS

SECTION 1. Amends Subtitle A, Title 6, Occupations Code, by adding Chapter 1003, as follows:

CHAPTER 1003. FOUNDATION REPAIR CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1003.001. SHORT TITLE. Provides that this chapter may be cited as the Foundation Repair Contractors Act.

Sec. 1003.002. DEFINITIONS. Defines, for purposes of this chapter, "advisory board," "commission," "department," "executive director," "foundation," "foundation repair," "foundation repair contracting company," "laborer," "manager," and "mobile structure."

Sec. 1003.003. EXEMPTIONS. (a) Provides that this chapter does not apply to:

- (1) an individual homeowner who, without paid help, repairs the foundation of the individual's residence;

(2) an individual licensed as an engineer under Chapter 1001 (Engineers) who engages in foundation repair in connection with the business in which the individual is employed but who does not engage in that work for the public;

(3) an individual or entity that engages in foundation repair for a mobile structure;

(4) an individual or entity that performs foundation repair only on nonresidential properties; or

(5) an individual or entity that, for compensation:

(A) sells, constructs, or remodels a single-family house or duplex;

(B) supervises or manages the construction or remodeling of a single-family house or duplex; or

(C) contracts for the supervision or management of the construction or remodeling of a single-family house or duplex.

(b) Provides that a laborer is not required to hold a license under this chapter if the laborer is engaged in foundation repair under the supervision of a license holder under this chapter.

Sec. 1003.004. APPLICATION OF MUNICIPAL ORDINANCES. Provides that foundation repair by an individual or entity, including an individual or entity that is exempt under this chapter, is subject to a permit, inspection, or approval requirement established by a municipal ordinance.

[Reserves Sections 1003.005-1003.050 for expansion.]

SUBCHAPTER B. FOUNDATION REPAIR CONTRACTORS ADVISORY BOARD

Sec. 1003.051. ADVISORY BOARD MEMBERSHIP. Provides that the Foundation Repair Contractors Advisory Board (advisory board) consists of seven members appointed by the presiding officer of the Texas Commission of Licensing and regulation (TCLR), with TCLR's approval.

Sec. 1003.052. MEMBERS. (a) Requires each advisory board member, other than the public member, to be experienced in the design, installation, construction, maintenance, service, repair, or modification of a foundation.

(b) Requires that the members be appointed as follows:

(1) one member who is an official of a municipality;

(2) one member who is an engineer licensed under Chapter 1001;

(3) four members who are licensed foundation repair master license holders, of whom two must be members of a statewide foundation repair organization; and

(4) one member who represents the public and is not affiliated with any foundation repair contracting company.

Sec. 1003.053. ADVISORY BOARD DUTIES. Requires the advisory board to provide advice and recommendations to Texas Department of Licensing and Regulation (TDLR) and TCLR on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, fees, rules, and continuing education requirements.

Sec. 1003.054. TERMS; VACANCY. (a) Requires advisory board members to serve staggered six-year terms. Provides that the terms of two or three appointed members expire on February 1 of each odd-numbered year.

(b) Requires the presiding officer of TCLR, if a vacancy occurs during an appointed member's term, with TCLR's approval, to fill the vacancy for the remainder of the unexpired term with an individual having the same qualifications as the predecessor.

Sec. 1003.055. PRESIDING OFFICER. Requires the presiding officer of TCLR, with TCLR's approval, to designate one member of the advisory board to serve as presiding officer of the board for a two-year term.

Sec. 1003.056. COMPENSATION; REIMBURSEMENT. Provides that an advisory board member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as an advisory board member, as provided by the General Appropriations Act and the budget of TDLR.

Sec. 1003.057. MEETINGS. (a) Requires the advisory board to meet at least annually and authorizes the advisory board to meet at other times at the call of the presiding officer of TCLR or the executive director of TDLR (executive director).

(b) Requires the advisory board to meet in this state at a place designated by the executive director.

[Reserves Sections 1003.058-1003.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1003.101. RULES. (a) Requires TCLR to adopt rules as necessary to implement this chapter.

Sec. 1003.102. INSURANCE REQUIREMENTS. (a) Requires TCLR by rule to establish minimum liability insurance requirements for a foundation repair contracting company under this chapter.

Sec. 1003.103. CONTRACTS FOR ENFORCEMENT. Authorizes TDLR to contract with another state agency or political subdivision of the state to enforce this chapter and rules adopted under this chapter.

Sec. 1003.104. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer this chapter.

Sec. 1003.105. DIRECTORY OF LICENSE HOLDERS. (a) Requires TDLR to maintain a directory of license holders and make the directory available to the public.

[Reserves Sections 1003.106-1003.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1003.151. LICENSE REQUIRED. (a) Prohibits an individual or entity from engaging in foundation repair unless the individual or entity holds the appropriate license under this chapter.

(b) Provides that an individual or entity that holds a license issued under this chapter is not required to hold a license issued by a municipality to engage in foundation repair in the municipality.

Sec. 1003.152. LICENSE CLASSIFICATIONS. Requires TDLR to issue contracting company, master, journeyman, estimator, and foreman licenses.

Sec. 1003.153. CONTRACTING COMPANY LICENSE. (a) Provides that a contracting company license entitles the license holder to engage in business as a foundation repair contracting company.

(b) Requires a foundation repair contracting company to employ at least one full-time license holder who holds a master license.

(c) Prohibits a foundation repair contracting company that does not employ a license holder as required by Subsection (b) at the time the services are performed from collecting a fee or otherwise enforcing the contract.

(d) Requires a foundation repair contracting company to maintain at all times insurance as required by TCLR rule.

Sec. 1003.154. MASTER LICENSE. (a) Provides that a master license entitles the license holder to engage in foundation repair.

(b) Requires an applicant for a master license under this chapter to:

(1) be at least 21 years of age;

(2) have at least 60 months of documented, practical work experience working in foundation repair under the supervision of a master license holder during the preceding seven years or substantially equivalent experience;

(3) have a high school diploma or its equivalent; and

(4) pass an examination administered by TDLR.

Sec. 1003.155. JOURNEYMAN LICENSE. (a) Provides that a journeyman license entitles the license holder to engage in the design and sale of foundation repair and of the lifting, lowering, and adjusting of buildings under the supervision of a master license holder.

(b) Requires an applicant for a journeyman license under this chapter to:

(1) be at least 21 years of age;

(2) have at least 24 months of documented, practical work experience working in foundation repair under the supervision of a master license holder during the preceding five years or substantially equivalent experience;

(3) have a high school diploma or its equivalent; and

(4) pass an examination administered by TDLR.

Sec. 1003.156. ESTIMATOR LICENSE. (a) Provides that an estimator license entitles the license holder to engage in providing estimates or designs for foundation repair under the supervision of a master or journeyman license holder.

(b) Requires an applicant for an estimator license under this chapter to:

(1) be at least 21 years of age;

(2) have a high school diploma or its equivalent; and

(3) pass an examination administered by TDLR.

Sec. 1003.157. FOREMAN LICENSE. (a) Provides that a foreman license entitles the license holder to supervise laborers and to engage in foundation repair under the supervision of a master or journeyman license holder.

(b) Requires an applicant for a foreman license under this chapter to be at least 18 years of age.

Sec. 1003.158. PRACTICAL EXPERIENCE. Provides that, for purposes of determining an applicant's practical experience under this subchapter, a four-year degree in engineering is equivalent to two years of practical experience if the degree is from an institution of higher education.

Sec. 1003.159. APPLICATION. (a) Requires an applicant for a license to submit an application on the form prescribed by TDLR.

(b) Requires that the application specify the class of license for which the applicant is applying and include the required fees.

(c) Requires that the application for a master, journeyman, estimator, or foreman license include a statement containing evidence satisfactory to TDLR of the applicant's required practical experience. Requires that an application for a contracting company license include proof of insurance as required by TDLR rule.

(d) Authorizes TDLR to conduct a criminal background check on an applicant.

Sec. 1003.160. EXAMINATIONS. (a) Requires TDLR to prescribe a separate examination for each class of license under this chapter, except that an examination is not required for a foreman or contracting company license.

(b) Requires TDLR to prescribe the method and content of an examination administered under this chapter.

(c) Provides that the examination:

(1) is required to be offered on a monthly basis or more frequently as determined by the executive director;

(2) is required to be offered at locations throughout the state as determined by the executive director; and

(3) is authorized to be offered online as determined by the executive director.

Sec. 1003.161. ISSUANCE AND TERM OF LICENSE. (a) Requires TDLR to issue a license to an applicant who:

(1) submits a verified application on a form prescribed by TDLR;

(2) provides evidence of insurance coverage required by TDLR rule, if applicable;

(3) passes an examination, if applicable;

(4) pays the required fees; and

(5) meets the requirements of this chapter and rules adopted under this chapter.

(b) Provides that a license issued under this chapter expires at the end of the license period set by TDLR.

Sec. 1003.162. RENEWAL OF LICENSE. Requires the license holder, to renew a license, to:

- (1) submit a renewal application in the form prescribed by the executive director;
- (2) pay the required fee;
- (3) show evidence of insurance required by TCLR rule, if applicable; and
- (4) show evidence of having completed the continuing education requirements established by TCLR, as applicable.

Sec. 1003.163. DISPLAY OF LICENSE. Requires TCLR, with the advice of the advisory board, to adopt rules relating to the use, display, and advertisement of a license.

Sec. 1003.164. NOTICE TO MUNICIPALITIES. (a) Requires an individual who obtains a license under this chapter to provide a notice to the municipal authority that enforces foundation repair regulations in each municipality in which the individual engages in foundation repair.

(b) Requires that the notice be in the form required by the municipality and inform the municipality that the individual has obtained a license under this chapter.

(c) Authorizes a municipality to charge a fee to an individual who provides the notice required by this section. Requires the municipality to set the fee in an amount reasonable and necessary to administer this section.

Sec. 1003.165. PROHIBITED PRACTICES. (a) Prohibits a license holder from performing or offering or attempting to perform an act, service, or function that is:

(1) defined as the practice of engineering under Chapter 1001, unless the individual holds a license under that chapter;

(2) defined as the practice of architecture under Chapter 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), unless the individual holds a license under that chapter;

(3) regulated under Chapter 113 (Liquefied Petroleum Gas), Natural Resources Code, unless the individual holds a license or is exempt by rule under that chapter; or

(4) defined as plumbing under Chapter 1301 (Plumbers), unless the individual holds a license under that chapter.

(b) Prohibits a license holder from:

(1) failing to provide services for which payment has been made or failing to honor the terms of a contract in the absence of a good faith dispute;

(2) intentionally or knowingly misrepresenting a necessary service, service to be provided, or service that has been provided; or

(3) making a fraudulent promise to induce an individual to contract for a service.

(c) Prohibits a laborer from supervising any individual who is performing work related to foundation repair.

[Reserves Sections 1003.166-1003.200 for expansion.]

SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

Sec. 1003.201. DISCIPLINARY ACTION. Authorizes TCLR or the executive director to impose an administrative penalty or take disciplinary action under Chapter 51 (Texas Department of Licensing and Regulation) or this chapter if a license holder violates this chapter, a rule adopted under this chapter, or an order of TCLR or the executive director.

Sec. 1003.202. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly engages in foundation repair without holding a license required by this chapter.

(b) Provides that an offense under this section is a Class C misdemeanor.

[Reserves Sections 1003.203-1003.250 for expansion.]

SUBCHAPTER F. INITIAL LICENSES

Sec. 1003.251. WAIVER OF EXAMINATION REQUIREMENT. (a) Requires TDLR to waive the examination requirement of Section 1003.154(b) for a master license for an applicant who has been an owner or manager of a foundation repair contracting company for at least 60 months before September 1, 2012.

(b) Requires TDLR to waive the examination requirement of Section 1003.155(b) for a journeyman license for an applicant who has worked for a foundation repair contracting company as a salesperson, estimator, foreman, or manager for at least 24 months before September 1, 2012.

Sec. 1003.252. INITIAL LICENSING. (a) Requires TDLR to issue a master license to a qualified applicant who:

- (1) submits an application not later than September 1, 2012;
- (2) is at least 21 years of age;
- (3) has been an owner or manager of a foundation repair contracting company for at least 60 months; and
- (4) has a high school diploma or its equivalent.

(b) Requires TDLR to issue a journeyman license to a qualified applicant who:

- (1) submits an application not later than September 1, 2012;
- (2) is at least 21 years of age;
- (3) has worked for a foundation repair contracting company as a salesperson, estimator, foreman, or manager for at least 24 months; and
- (4) has a high school diploma or its equivalent.

Sec. 1003.253. RENEWAL OF LICENSE. Requires a license holder, to qualify to renew an initial license issued under this subchapter, to comply with the requirements of Section 1003.162.

Sec. 1003.254. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires October 1, 2012.

SECTION 2. (a) Requires TCLR, notwithstanding the requirement of Section 1003.052(b)(3), Occupations Code, as added by this Act, to appoint persons who meet the practical experience

requirement for an initial master license to serve as initial members of the advisory board as soon as practicable after the effective date of this Act.

(b) Requires TCLR to determine with respect to the members of the advisory board appointed under Chapter 1003, Occupations Code, as added by this Act, which terms of two members expire February 1, 2013, which terms of two members expire February 1, 2015, and which terms of three members expire February 1, 2017.

(c) Makes application of Section 1003.153, Occupations Code, as added by this Act, prospective to September 1, 2012.

SECTION 3. (a) Requires TCLR to adopt rules to implement Chapter 1003, Occupations Code, as added by this Act, not later than February 1, 2012.

(b) Provides that a person is not required to obtain a license to engage in foundation repair under Chapter 1003, Occupations Code, as added by this Act, before September 1, 2012.

SECTION 4. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 1003.151, 1003.201, and 1003.202, Occupations Code, as added by this Act: September 1, 2012.

EFFECTIVE DATE

Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 1003.151, 1003.201, and 1003.202, Occupations Code, as added by this Act: September 1, 2012.