

By: Legler

H.B. No. 2530

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of foundation repair contractors;  
providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 6, Occupations Code, is  
amended by adding Chapter 1003 to read as follows:

CHAPTER 1003. FOUNDATION REPAIR CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1003.001. SHORT TITLE. This chapter may be cited as  
the Foundation Repair Contractors Act.

Sec. 1003.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Foundation Repair  
Contractors Advisory Board.

(2) "Chief administrator" means an individual  
performing duties under Section 1003.106.

(3) "Commission" means the Texas Commission of  
Licensing and Regulation.

(4) "Department" means the Texas Department of  
Licensing and Regulation.

(5) "Executive director" means the executive director  
of the department.

(6) "Foundation" means that portion of a structure  
that serves the function of:

(A) supporting an overlying structure;

1                   (B) providing a base for an overlying structure;  
2 or

3                   (C) transmitting loads from an overlying  
4 structure to the underlying soils.

5                   (7) "Foundation repair contracting" means performing  
6 or offering to perform the design, installation, or construction  
7 functions in connection with the repair or maintenance of a  
8 foundation.

9                   (8) "Foundation repair contractor" means an  
10 individual or business engaged in foundation repair contracting for  
11 the public.

12                   (9) "Manager" means an individual who oversees  
13 activities related to foundation repair contracting, including  
14 foundation installation, foundation lifting, customer service,  
15 sales, foundation design, or general business administration.

16                   (10) "Mobile structure" means a structure that has  
17 wheels attached for the purpose of moving the structure from one  
18 location to another.

19                   Sec. 1003.003. EXEMPTIONS. (a) This chapter does not apply  
20 to:

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

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

27                   (3) an individual who engages in foundation repair

1 contracting for a mobile structure.

2 (b) An individual is not required to hold a license under  
3 this chapter if the individual is engaged in foundation repair  
4 under the supervision of a license holder under this chapter.

5 Sec. 1003.004. APPLICATION OF MUNICIPAL ORDINANCES.  
6 Foundation repair contracting by an individual who is exempt under  
7 this chapter remains subject to a permit, inspection, or approval  
8 requirement established by a municipal ordinance.

9 [Sections 1003.005-1003.050 reserved for expansion]

10 SUBCHAPTER B. FOUNDATION REPAIR CONTRACTORS ADVISORY BOARD

11 Sec. 1003.051. ADVISORY BOARD MEMBERSHIP. The Foundation  
12 Repair Contractors Advisory Board consists of:

- 13 (1) the executive director;  
14 (2) the chief administrator; and  
15 (3) seven members appointed by the presiding officer  
16 of the commission, with the commission's approval.

17 Sec. 1003.052. APPOINTED MEMBERS. (a) Each appointed  
18 advisory board member, other than the public member, must be  
19 experienced in the design, installation, construction,  
20 maintenance, service, repair, or modification of a foundation.

21 (b) The appointed members shall be appointed as follows:

- 22 (1) one member who is an official of a municipality;  
23 (2) one member who is an engineer licensed by this  
24 state;  
25 (3) four members who are full-time licensed foundation  
26 repair contractors, of whom two must be members of a statewide  
27 foundation repair organization; and

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

3           Sec. 1003.053. EX OFFICIO MEMBERS. The executive director  
4 and the chief administrator shall serve as ex officio members. The  
5 executive director and the chief administrator are nonvoting  
6 members of the advisory board.

7           Sec. 1003.054. ADVISORY BOARD DUTIES. The advisory board  
8 shall provide advice and recommendations to the department and  
9 commission on technical matters relevant to the administration and  
10 enforcement of this chapter, including examination content,  
11 licensing standards, applicable fees, rules, and continuing  
12 education requirements.

13           Sec. 1003.055. TERMS; VACANCY. (a) Appointed advisory  
14 board members shall serve staggered six-year terms. The terms of  
15 two or three appointed members expire on February 1 of each  
16 odd-numbered year.

17           (b) If a vacancy occurs during an appointed member's term,  
18 the presiding officer of the commission, with the commission's  
19 approval, shall fill the vacancy for the remainder of the unexpired  
20 term with an individual having the same qualifications as the  
21 predecessor.

22           Sec. 1003.056. PRESIDING OFFICER. The presiding officer of  
23 the commission, with the commission's approval, shall designate one  
24 member of the advisory board to serve as presiding officer of the  
25 board for a two-year term.

26           Sec. 1003.057. COMPENSATION; REIMBURSEMENT. An advisory  
27 board member serves without compensation but is entitled to

1 reimbursement for actual and necessary expenses incurred in  
2 performing functions as an advisory board member, as provided by  
3 the General Appropriations Act.

4 Sec. 1003.058. MEETINGS. (a) The advisory board shall meet  
5 at least once every six months and may meet at other times at the  
6 call of the presiding officer of the board.

7 (b) The advisory board shall meet in this state at a place  
8 designated by the board.

9 [Sections 1003.059-1003.100 reserved for expansion]

10 SUBCHAPTER C. POWERS AND DUTIES

11 Sec. 1003.101. GENERAL DUTIES. The commission shall  
12 maintain a record of the commission's proceedings under this  
13 chapter.

14 Sec. 1003.102. RULES. (a) The commission shall adopt rules  
15 as necessary to implement this chapter.

16 (b) The rules must establish standards for the practice of  
17 foundation repair at least as stringent as the standards provided  
18 by:

19 (1) the Foundation Repair Association; or

20 (2) the Texas Section of the American Society of Civil  
21 Engineers Guidelines for the Evaluation and Repair of Residential  
22 Foundations, Version 2, adopted May 1, 2009.

23 Sec. 1003.103. INSURANCE REQUIREMENTS. (a) The commission  
24 shall establish insurance requirements for a license holder under  
25 this chapter.

26 (b) The commission may waive the insurance requirements for  
27 a license holder who does not engage in foundation repair

1 contracting for the public.

2 Sec. 1003.104. CONTRACTS FOR ENFORCEMENT. The department  
3 may contract with another state agency or political subdivision of  
4 the state to enforce this chapter and rules adopted under this  
5 chapter.

6 Sec. 1003.105. PERSONNEL. The department may employ  
7 personnel necessary to administer this chapter.

8 Sec. 1003.106. CHIEF ADMINISTRATOR. (a) The chief  
9 administrator is responsible for the administration of this chapter  
10 under the direction of the department. The chief administrator  
11 shall perform duties as prescribed by the department.

12 (b) The chief administrator is a full-time employee of the  
13 department.

14 Sec. 1003.107. DIRECTORY OF LICENSE HOLDERS. (a) The  
15 department shall maintain a directory of license holders and make  
16 the directory available to the public.

17 (b) The department may sell the directory for a reasonable  
18 fee set by the commission.

19 [Sections 1003.108-1003.150 reserved for expansion]

20 SUBCHAPTER D. LICENSE REQUIREMENTS

21 Sec. 1003.151. LICENSE REQUIRED. (a) An individual may not  
22 engage in foundation repair contracting unless the individual holds  
23 a license under this chapter.

24 (b) An individual who holds a license issued under this  
25 chapter is not required to hold a license issued by a municipality  
26 to engage in foundation repair contracting in the municipality.

27 Sec. 1003.152. LICENSE CLASSIFICATIONS. The department

1 shall issue master, journeyman, tradesman apprentice, and  
2 apprentice foundation repair contractor licenses.

3 Sec. 1003.153. MASTER LICENSE. (a) A master license  
4 entitles the license holder to engage in foundation repair  
5 contracting.

6 (b) An applicant for a master license under this chapter  
7 must:

8 (1) be at least 21 years of age;

9 (2) have at least 60 months of documented, practical  
10 experience working in foundation repair contracting under the  
11 supervision of a master license holder during the preceding seven  
12 years;

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

14 (4) pass an examination administered by the  
15 department.

16 Sec. 1003.154. JOURNEYMAN LICENSE. (a) A journeyman  
17 license entitles the license holder to engage in the design and sale  
18 of foundation repair and of lifting, lowering, and adjusting  
19 buildings under the supervision of a master license holder.

20 (b) An applicant for a journeyman license under this chapter  
21 must:

22 (1) be at least 21 years of age;

23 (2) have at least 24 months of documented, practical  
24 experience working in foundation repair contracting under the  
25 supervision of a master license holder during the preceding five  
26 years;

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

1           (4) pass an examination administered by the  
2 department.

3           Sec. 1003.155. TRADESMAN APPRENTICE LICENSE. (a) A  
4 tradesman apprentice license entitles the license holder to engage  
5 in providing an estimate or design for a foundation repair or for  
6 the lifting, lowering, or adjusting of a building if the estimate or  
7 design is reviewed and approved in writing by a master license  
8 holder not later than the 10th business day after the date the  
9 estimate or design is presented to a member of the public.

10           (b) An applicant for a tradesman apprentice license under  
11 this chapter must:

12                   (1) be at least 21 years of age;  
13                   (2) have a high school diploma or its equivalent; and  
14                   (3) pass an examination administered by the  
15 department.

16           Sec. 1003.156. APPRENTICE LICENSE. (a) An apprentice  
17 license entitles the license holder to engage in the repair of a  
18 foundation under the supervision of a master license holder.

19           (b) An applicant for an apprentice license under this  
20 chapter must be at least 18 years of age.

21           Sec. 1003.157. PRACTICAL EXPERIENCE. For purposes of  
22 determining an applicant's practical experience under this  
23 subchapter, a four-year degree in engineering is equivalent to two  
24 years of practical experience if:

25                   (1) the degree is from an institution of higher  
26 education; and

27                   (2) the institution's program is approved by the Texas



1 Board of Professional Engineers for the purpose of licensing  
2 engineers.

3 Sec. 1003.158. APPLICATION. (a) An applicant for a license  
4 must submit an application on the form prescribed by the  
5 department.

6 (b) The application must specify the class of license for  
7 which the applicant is applying.

8 (c) The application must be accompanied by:

9 (1) a statement containing evidence satisfactory to  
10 the department of the applicant's required practical experience;

11 (2) the examination fee; and

12 (3) proof of insurance as required by this chapter or  
13 commission rule.

14 (d) The department may conduct a criminal background check  
15 on an applicant.

16 Sec. 1003.159. EXAMINATIONS. (a) The department shall  
17 prescribe a separate examination for each class of license, except  
18 that an examination is not required for an apprentice license.

19 (b) The department shall prescribe the method and content of  
20 an examination administered under this chapter and shall contract  
21 with a statewide association of foundation repair contractors for  
22 the examination.

23 (c) The examination:

24 (1) must be offered on a monthly basis or more  
25 frequently as determined by the executive director;

26 (2) must be offered at locations throughout the state  
27 as determined by the executive director; and

1           (3) may be offered online as determined by the  
2 executive director.

3           Sec. 1003.160. ISSUANCE AND TERM OF LICENSE. (a) The  
4 department shall issue a foundation repair contractor license to an  
5 applicant who:

6           (1) provides evidence of insurance coverage required  
7 by the commission;

8           (2) passes the applicable examination;

9           (3) passes a criminal background check;

10          (4) pays the required fees; and

11          (5) meets the requirements of this chapter.

12          (b) Not later than the 30th day after the date an applicant  
13 fulfills the license requirements, the department shall issue a  
14 license to the applicant.

15          (c) A license issued under this chapter expires at the end  
16 of the license period set by the commission.

17          Sec. 1003.161. RENEWAL OF LICENSE. To renew a license, the  
18 license holder must:

19          (1) submit a renewal application in the form  
20 prescribed by the executive director;

21          (2) pay the required fee;

22          (3) show evidence of insurance required under this  
23 chapter or commission rule; and

24          (4) show evidence of having completed the continuing  
25 education requirements established by the commission.

26          Sec. 1003.162. FORM OF LICENSE. The executive director  
27 shall prescribe the design of an original license and a renewal

1 license.

2 Sec. 1003.163. DISPLAY OF LICENSE. The commission, with  
3 the advice of the advisory board, shall adopt rules relating to the  
4 use, display, and advertisement of a license.

5 Sec. 1003.164. NOTICE TO MUNICIPALITIES. (a) An  
6 individual who obtains a license under this chapter shall provide a  
7 notice to the municipal authority that enforces foundation repair  
8 contracting regulations in each municipality in which the  
9 individual engages in foundation repair contracting.

10 (b) The notice must be in the form required by the  
11 municipality and inform the municipality that the individual has  
12 obtained a license under this chapter.

13 (c) A municipality may charge a fee to an individual who  
14 provides the notice required by this section. The municipality  
15 shall set the fee in an amount reasonable and necessary to  
16 administer this section.

17 Sec. 1003.165. REQUIREMENTS FOR FOUNDATION REPAIR  
18 CONTRACTING COMPANY. (a) A foundation repair contracting company  
19 shall employ at least one full-time license holder who holds a  
20 master license.

21 (b) A foundation repair contracting company that does not  
22 employ a license holder as required by Subsection (a) at the time a  
23 contract for foundation repair contracting services is signed and  
24 at the time the services are performed may not collect a fee or  
25 otherwise enforce the contract.

26 Sec. 1003.166. PROHIBITED PRACTICES BY LICENSE HOLDER. (a)  
27 A license holder may not perform or offer or attempt 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, unless the individual holds a license under that chapter;

(3) regulated under Chapter 113, 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, unless the individual holds a license under that chapter.

(b) A license holder may not:

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

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

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

[Sections 1003.167-1003.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

Sec. 1003.201. DISCIPLINARY ACTION. The commission may impose an administrative penalty or take disciplinary action under Chapter 51 if a license holder violates this chapter or a rule adopted under this chapter.

1       Sec. 1003.202. CRIMINAL PENALTY. (a) A person commits an  
2 offense if the person knowingly engages in foundation repair  
3 contracting without holding a license under this chapter.

4       (b) An offense under this section is a Class C misdemeanor.

5       [Sections 1003.203-1003.250 reserved for expansion]

6               SUBCHAPTER F. INITIAL LICENSES

7       Sec. 1003.251. INITIAL LICENSING. (a) The department  
8 shall waive the requirements of Section 1003.153(b) for a master  
9 license for an applicant who has been an owner or manager of a  
10 foundation repair contracting company continuously for at least 10  
11 years before March 1, 2012.

12       (b) The department shall waive the requirements of Section  
13 1003.154(b) for a journeyman license for an applicant who has  
14 worked continuously for a foundation repair contractor as a  
15 salesman, estimator, or manager for at least four years before  
16 March 1, 2012.

17       Sec. 1003.252. RENEWAL OF LICENSE. To qualify to renew an  
18 initial license issued under this subchapter, the license holder  
19 must comply with the requirements of Section 1003.161.

20       Sec. 1003.253. EXPIRATION OF SUBCHAPTER. This subchapter  
21 expires June 1, 2013.

22       SECTION 2. (a) The Texas Commission of Licensing and  
23 Regulation shall appoint the members of the Foundation Repair  
24 Contractors Advisory Board as soon as practicable after the  
25 effective date of this Act.

26       (b) The members of the Foundation Repair Contractors  
27 Advisory Board appointed under Chapter 1003, Occupations Code, as

1 added by this Act, shall draw lots to determine which terms of two  
2 members expire February 1, 2013, which terms of two members expire  
3 February 1, 2015, and which terms of three members expire February  
4 1, 2017.

5 (c) The changes in law made by Section 1003.165, Occupations  
6 Code, as added by this Act, apply only to a contract for foundation  
7 repair entered into or renewed on or after March 1, 2012. A  
8 contract for foundation repair entered into or renewed before March  
9 1, 2012, is governed by the law as it existed on the date the  
10 contract was entered into, and the former law is continued in effect  
11 for that purpose.

12 SECTION 3. (a) The Texas Commission of Licensing and  
13 Regulation shall adopt rules to implement Chapter 1003, Occupations  
14 Code, as added by this Act, not later than January 1, 2012.

15 (b) A person is not required to obtain a license to engage in  
16 foundation repair contracting under Chapter 1003, Occupations  
17 Code, as added by this Act, before March 1, 2012.

18 SECTION 4. (a) Except as provided by Subsection (b) of  
19 this section, this Act takes effect September 1, 2011.

20 (b) Sections 1003.151 and 1003.202, Occupations Code, as  
21 added by this Act, take effect March 1, 2012.