

1-1 By: Patrick S.B. No. 1399
1-2 (In the Senate - Filed March 9, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1399 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of foundation repair contractors;
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 6, Occupations Code, is
1-14 amended by adding Chapter 1003 to read as follows:

1-15 CHAPTER 1003. FOUNDATION REPAIR CONTRACTORS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 1003.001. SHORT TITLE. This chapter may be cited as
1-18 the Foundation Repair Contractors Act.

1-19 Sec. 1003.002. DEFINITIONS. In this chapter:

1-20 (1) "Advisory board" means the Foundation Repair
1-21 Contractors Advisory Board.

1-22 (2) "Commission" means the Texas Commission of
1-23 Licensing and Regulation.

1-24 (3) "Department" means the Texas Department of
1-25 Licensing and Regulation.

1-26 (4) "Executive director" means the executive director
1-27 of the department.

1-28 (5) "Foundation" means that portion of a structure
1-29 that serves the function of:

1-30 (A) supporting an overlying structure;

1-31 (B) providing a base for an overlying structure;

1-32 or

1-33 (C) transmitting loads from an overlying
1-34 structure to the underlying soils.

1-35 (6) "Foundation repair" means the performance of or an
1-36 offer to perform the design, installation, or construction
1-37 functions in connection with the repair or maintenance of a
1-38 foundation.

1-39 (7) "Foundation repair contracting company" means an
1-40 individual or business engaged in foundation repair contracting for
1-41 the public.

1-42 (8) "Laborer" means an individual who, under the
1-43 supervision of a person licensed under this chapter, performs
1-44 manual labor, including digging holes, pouring foundations,
1-45 tunneling, and installing underpinning.

1-46 (9) "Manager" means an individual who oversees
1-47 activities related to foundation repair, including foundation
1-48 installation, foundation lifting, customer service, and sales.

1-49 (10) "Mobile structure" means a structure that has
1-50 wheels attached for the purpose of moving the structure from one
1-51 location to another.

1-52 Sec. 1003.003. EXEMPTIONS. (a) This chapter does not
1-53 apply to:

1-54 (1) an individual homeowner who, without paid help,
1-55 repairs the foundation of the individual's residence;

1-56 (2) an individual licensed as an engineer under
1-57 Chapter 1001 who engages in foundation repair in connection with
1-58 the business in which the individual is employed but who does not
1-59 engage in that work for the public;

1-60 (3) an individual or entity that engages in foundation
1-61 repair for a mobile structure;

1-62 (4) an individual or entity that performs foundation
1-63 repair only on nonresidential properties; or

2-1 (5) an individual or entity that, for compensation:
2-2 (A) sells, constructs, or remodels a
2-3 single-family house or duplex;
2-4 (B) supervises or manages the construction or
2-5 remodeling of a single-family house or duplex; or
2-6 (C) contracts for the supervision or management
2-7 of the construction or remodeling of a single-family house or
2-8 duplex.

2-9 (b) A laborer is not required to hold a license under this
2-10 chapter if the laborer is engaged in foundation repair under the
2-11 supervision of a license holder under this chapter.

2-12 Sec. 1003.004. APPLICATION OF MUNICIPAL ORDINANCES.
2-13 Foundation repair by an individual or entity, including an
2-14 individual or entity that is exempt under this chapter, is subject
2-15 to a permit, inspection, or approval requirement established by a
2-16 municipal ordinance.

2-17 [Sections 1003.005-1003.050 reserved for expansion]

2-18 SUBCHAPTER B. FOUNDATION REPAIR CONTRACTORS ADVISORY BOARD

2-19 Sec. 1003.051. ADVISORY BOARD MEMBERSHIP. The Foundation
2-20 Repair Contractors Advisory Board consists of seven members
2-21 appointed by the presiding officer of the commission, with the
2-22 commission's approval.

2-23 Sec. 1003.052. MEMBERS. (a) Each advisory board member,
2-24 other than the public member, must be experienced in the design,
2-25 installation, construction, maintenance, service, repair, or
2-26 modification of a foundation.

2-27 (b) The members shall be appointed as follows:

2-28 (1) one member who is an official of a municipality;
2-29 (2) one member who is an engineer licensed under
2-30 Chapter 1001;

2-31 (3) four members who are licensed foundation repair
2-32 master license holders, of whom two must be members of a statewide
2-33 foundation repair organization; and

2-34 (4) one member who represents the public and is not
2-35 affiliated with any foundation repair contracting company.

2-36 Sec. 1003.053. ADVISORY BOARD DUTIES. The advisory board
2-37 shall provide advice and recommendations to the department and
2-38 commission on technical matters relevant to the administration and
2-39 enforcement of this chapter, including examination content,
2-40 licensing standards, fees, rules, and continuing education
2-41 requirements.

2-42 Sec. 1003.054. TERMS; VACANCY. (a) Advisory board members
2-43 shall serve staggered six-year terms. The terms of two or three
2-44 members expire on February 1 of each odd-numbered year.

2-45 (b) If a vacancy occurs during a member's term, the
2-46 presiding officer of the commission, with the commission's
2-47 approval, shall fill the vacancy for the remainder of the unexpired
2-48 term with an individual having the same qualifications as the
2-49 predecessor.

2-50 Sec. 1003.055. PRESIDING OFFICER. The presiding officer of
2-51 the commission, with the commission's approval, shall designate one
2-52 member of the advisory board to serve as presiding officer of the
2-53 board for a two-year term.

2-54 Sec. 1003.056. COMPENSATION; REIMBURSEMENT. An advisory
2-55 board member serves without compensation but is entitled to
2-56 reimbursement for actual and necessary expenses incurred in
2-57 performing functions as an advisory board member, as provided by
2-58 the General Appropriations Act and the budget of the department.

2-59 Sec. 1003.057. MEETINGS. (a) The advisory board shall
2-60 meet at least annually and may meet at other times at the call of the
2-61 presiding officer of the commission or the executive director.

2-62 (b) The advisory board shall meet in this state at a place
2-63 designated by the executive director.

2-64 [Sections 1003.058-1003.100 reserved for expansion]

2-65 SUBCHAPTER C. POWERS AND DUTIES

2-66 Sec. 1003.101. RULES. The commission shall adopt rules as
2-67 necessary to implement this chapter.

2-68 Sec. 1003.102. INSURANCE REQUIREMENTS. The commission by
2-69 rule shall establish minimum liability insurance requirements for a

3-1 foundation repair contracting company under this chapter.
3-2 Sec. 1003.103. CONTRACTS FOR ENFORCEMENT. The department
3-3 may contract with another state agency or political subdivision of
3-4 the state to enforce this chapter and rules adopted under this
3-5 chapter.
3-6 Sec. 1003.104. PERSONNEL. The department may employ
3-7 personnel necessary to administer this chapter.
3-8 Sec. 1003.105. DIRECTORY OF LICENSE HOLDERS. The
3-9 department shall maintain a directory of license holders and make
3-10 the directory available to the public.
3-11 [Sections 1003.106-1003.150 reserved for expansion]
3-12 SUBCHAPTER D. LICENSE REQUIREMENTS
3-13 Sec. 1003.151. LICENSE REQUIRED. (a) An individual or
3-14 entity may not engage in foundation repair unless the individual or
3-15 entity holds the appropriate license under this chapter.
3-16 (b) An individual or entity that holds a license issued
3-17 under this chapter is not required to hold a license issued by a
3-18 municipality to engage in foundation repair in the municipality.
3-19 Sec. 1003.152. LICENSE CLASSIFICATIONS. The department
3-20 shall issue contracting company, master, journeyman, estimator,
3-21 and foreman licenses.
3-22 Sec. 1003.153. CONTRACTING COMPANY LICENSE. (a) A
3-23 contracting company license entitles the license holder to engage
3-24 in business as a foundation repair contracting company.
3-25 (b) A foundation repair contracting company shall employ at
3-26 least one full-time license holder who holds a master license.
3-27 (c) A foundation repair contracting company that does not
3-28 employ a license holder as required by Subsection (b) at the time
3-29 the services are performed may not collect a fee or otherwise
3-30 enforce the contract.
3-31 (d) A foundation repair contracting company shall maintain
3-32 at all times insurance as required by commission rule.
3-33 Sec. 1003.154. MASTER LICENSE. (a) A master license
3-34 entitles the license holder to engage in foundation repair.
3-35 (b) An applicant for a master license under this chapter
3-36 must:
3-37 (1) be at least 21 years of age;
3-38 (2) have at least 60 months of documented, practical
3-39 work experience in foundation repair under the supervision of a
3-40 master license holder during the preceding seven years or
3-41 substantially equivalent experience;
3-42 (3) have a high school diploma or its equivalent; and
3-43 (4) pass an examination administered by the
3-44 department.
3-45 Sec. 1003.155. JOURNEYMAN LICENSE. (a) A journeyman
3-46 license entitles the license holder to engage in the design and sale
3-47 of foundation repair and the lifting, lowering, and adjusting of
3-48 buildings under the supervision of a master license holder.
3-49 (b) An applicant for a journeyman license under this chapter
3-50 must:
3-51 (1) be at least 21 years of age;
3-52 (2) have at least 24 months of documented, practical
3-53 work experience in foundation repair under the supervision of a
3-54 master license holder during the preceding five years or
3-55 substantially equivalent experience;
3-56 (3) have a high school diploma or its equivalent; and
3-57 (4) pass an examination administered by the
3-58 department.
3-59 Sec. 1003.156. ESTIMATOR LICENSE. (a) An estimator
3-60 license entitles the license holder to engage in providing
3-61 estimates or designs for foundation repair under the supervision of
3-62 a master or journeyman license holder.
3-63 (b) An applicant for an estimator license under this chapter
3-64 must:
3-65 (1) be at least 21 years of age;
3-66 (2) have a high school diploma or its equivalent; and
3-67 (3) pass an examination administered by the
3-68 department.
3-69 Sec. 1003.157. FOREMAN LICENSE. (a) A foreman license

4-1 entitles the license holder to supervise laborers and to engage in
 4-2 foundation repair under the supervision of a master or journeyman
 4-3 license holder.

4-4 (b) An applicant for a foreman license under this chapter
 4-5 must be at least 18 years of age.

4-6 Sec. 1003.158. PRACTICAL EXPERIENCE. For purposes of
 4-7 determining an applicant's practical experience under this
 4-8 subchapter, a four-year degree in engineering is equivalent to two
 4-9 years of practical experience if the degree is from an institution
 4-10 of higher education.

4-11 Sec. 1003.159. APPLICATION. (a) An applicant for a
 4-12 license must submit an application on the form prescribed by the
 4-13 department.

4-14 (b) The application must specify the class of license for
 4-15 which the applicant is applying and include the required fees.

4-16 (c) The application for a master, journeyman, estimator, or
 4-17 foreman license must include a statement containing evidence
 4-18 satisfactory to the department of the applicant's required
 4-19 practical experience. An application for a contracting company
 4-20 license must include proof of insurance as required by commission
 4-21 rule.

4-22 (d) The department may conduct a criminal background check
 4-23 on an applicant.

4-24 Sec. 1003.160. EXAMINATIONS. (a) The department shall
 4-25 prescribe a separate examination for each class of license under
 4-26 this chapter, except that an examination is not required for a
 4-27 foreman or contracting company license.

4-28 (b) The department shall prescribe the method and content of
 4-29 an examination administered under this chapter.

4-30 (c) The examination:

4-31 (1) must be offered on a monthly basis or more
 4-32 frequently as determined by the executive director;

4-33 (2) must be offered at locations throughout the state
 4-34 as determined by the executive director; and

4-35 (3) may be offered online as determined by the
 4-36 executive director.

4-37 Sec. 1003.161. ISSUANCE AND TERM OF LICENSE. (a) The
 4-38 department shall issue a license to an applicant who:

4-39 (1) submits a verified application on a form
 4-40 prescribed by the department;

4-41 (2) provides evidence of insurance coverage required
 4-42 by commission rule, if applicable;

4-43 (3) passes an examination, if applicable;

4-44 (4) pays the required fees; and

4-45 (5) meets the requirements of this chapter and rules
 4-46 adopted under this chapter.

4-47 (b) A license issued under this chapter expires at the end
 4-48 of the license period set by the commission.

4-49 Sec. 1003.162. RENEWAL OF LICENSE. To renew a license, the
 4-50 license holder must:

4-51 (1) submit a renewal application in the form
 4-52 prescribed by the executive director;

4-53 (2) pay the required fee;

4-54 (3) show evidence of insurance required by commission
 4-55 rule, if applicable; and

4-56 (4) show evidence of having completed the continuing
 4-57 education requirements established by the commission, as
 4-58 applicable.

4-59 Sec. 1003.163. DISPLAY OF LICENSE. The commission, with
 4-60 the advice of the advisory board, shall adopt rules relating to the
 4-61 use, display, and advertisement of a license.

4-62 Sec. 1003.164. NOTICE TO MUNICIPALITIES. (a) An
 4-63 individual who obtains a license under this chapter shall provide a
 4-64 notice to the municipal authority that enforces foundation repair
 4-65 regulations in each municipality in which the individual engages in
 4-66 foundation repair.

4-67 (b) The notice must be in the form required by the
 4-68 municipality and inform the municipality that the individual has
 4-69 obtained a license under this chapter.

5-1 (c) A municipality may charge a fee to an individual who
5-2 provides the notice required by this section. The municipality
5-3 shall set the fee in an amount reasonable and necessary to
5-4 administer this section.

5-5 Sec. 1003.165. PROHIBITED PRACTICES. (a) A license holder
5-6 may not perform or offer or attempt to perform an act, service, or
5-7 function that is:

5-8 (1) defined as the practice of engineering under
5-9 Chapter 1001, unless the individual holds a license under that
5-10 chapter;

5-11 (2) defined as the practice of architecture under
5-12 Chapter 1051, unless the individual holds a license under that
5-13 chapter;

5-14 (3) regulated under Chapter 113, Natural Resources
5-15 Code, unless the individual holds a license or is exempt by rule
5-16 under that chapter; or

5-17 (4) defined as plumbing under Chapter 1301, unless the
5-18 individual holds a license under that chapter.

5-19 (b) A license holder may not:

5-20 (1) fail to provide services for which payment has
5-21 been made or fail to honor the terms of a contract in the absence of
5-22 a good faith dispute;

5-23 (2) intentionally or knowingly misrepresent a
5-24 necessary service, service to be provided, or service that has been
5-25 provided; or

5-26 (3) make a fraudulent promise to induce an individual
5-27 to contract for a service.

5-28 (c) A laborer may not supervise any individual who is
5-29 performing work related to foundation repair.

5-30 [Sections 1003.166-1003.200 reserved for expansion]

5-31 SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

5-32 Sec. 1003.201. DISCIPLINARY ACTION. The commission or
5-33 executive director may impose an administrative penalty or take
5-34 disciplinary action under Chapter 51 or this chapter if a license
5-35 holder violates this chapter, a rule adopted under this chapter, or
5-36 an order of the commission or the executive director.

5-37 Sec. 1003.202. CRIMINAL PENALTY. (a) A person commits an
5-38 offense if the person knowingly engages in foundation repair
5-39 without holding a license required by this chapter.

5-40 (b) An offense under this section is a Class C misdemeanor.

5-41 [Sections 1003.203-1003.250 reserved for expansion]

5-42 SUBCHAPTER F. INITIAL LICENSES

5-43 Sec. 1003.251. WAIVER OF EXAMINATION REQUIREMENT. (a) The
5-44 department shall waive the examination requirement of Section
5-45 1003.154(b) for a master license for an applicant who has been an
5-46 owner or manager of a foundation repair contracting company for at
5-47 least 60 months before September 1, 2012.

5-48 (b) The department shall waive the examination requirement
5-49 of Section 1003.155(b) for a journeyman license for an applicant
5-50 who has worked for a foundation repair contracting company as a
5-51 salesperson, estimator, foreman, or manager for at least 24 months
5-52 before September 1, 2012.

5-53 Sec. 1003.252. INITIAL LICENSING. (a) The department
5-54 shall issue a master license to a qualified applicant who:

5-55 (1) submits an application not later than September 1,
5-56 2012;

5-57 (2) is at least 21 years of age;

5-58 (3) has been an owner or manager of a foundation repair
5-59 contracting company for at least 60 months; and

5-60 (4) has a high school diploma or its equivalent.

5-61 (b) The department shall issue a journeyman license to a
5-62 qualified applicant who:

5-63 (1) submits an application not later than September 1,
5-64 2012;

5-65 (2) is at least 21 years of age;

5-66 (3) has worked for a foundation repair contracting
5-67 company as a salesperson, estimator, foreman, or manager for at
5-68 least 24 months; and

5-69 (4) has a high school diploma or its equivalent.

6-1 Sec. 1003.253. RENEWAL OF LICENSE. To qualify to renew an
6-2 initial license issued under this subchapter, the license holder
6-3 must comply with the requirements of Section 1003.162.

6-4 Sec. 1003.254. EXPIRATION OF SUBCHAPTER. This subchapter
6-5 expires October 1, 2012.

6-6 SECTION 2. (a) Notwithstanding the requirement of
6-7 Subdivision (3), Subsection (b), Section 1003.052, Occupations
6-8 Code, as added by this Act, the Texas Commission of Licensing and
6-9 Regulation shall appoint persons who meet the practical experience
6-10 requirement for an initial master license to serve as initial
6-11 members of the Foundation Repair Contractors Advisory Board as soon
6-12 as practicable after the effective date of this Act.

6-13 (b) The Texas Commission of Licensing and Regulation shall
6-14 determine with respect to the members of the Foundation Repair
6-15 Contractors Advisory Board appointed under Chapter 1003,
6-16 Occupations Code, as added by this Act, which terms of two members
6-17 expire February 1, 2013, which terms of two members expire February
6-18 1, 2015, and which terms of three members expire February 1, 2017.

6-19 (c) The changes in law made by Section 1003.153, Occupations
6-20 Code, as added by this Act, apply only to a contract for foundation
6-21 repair entered into or renewed on or after September 1, 2012. A
6-22 contract for foundation repair entered into or renewed before
6-23 September 1, 2012, is governed by the law as it existed on the date
6-24 the contract was entered into, and the former law is continued in
6-25 effect for that purpose.

6-26 SECTION 3. (a) The Texas Commission of Licensing and
6-27 Regulation shall adopt rules to implement Chapter 1003, Occupations
6-28 Code, as added by this Act, not later than February 1, 2012.

6-29 (b) A person is not required to obtain a license to engage in
6-30 foundation repair under Chapter 1003, Occupations Code, as added by
6-31 this Act, before September 1, 2012.

6-32 SECTION 4. (a) Except as provided by Subsection (b) of
6-33 this section, this Act takes effect September 1, 2011.

6-34 (b) Sections 1003.151, 1003.201, and 1003.202, Occupations
6-35 Code, as added by this Act, take effect September 1, 2012.

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