

By: Orr

H.B. No. 613

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

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

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

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

(A) supporting an overlying structure;

(B) providing a base for an overlying structure;

or

1 (C) transmitting loads from an overlying
2 structure to the underlying soils.

3 (6) "Foundation repair" means the performance of or an
4 offer to perform the design, installation, or construction
5 functions in connection with the repair or maintenance of a
6 foundation.

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

10 (8) "Laborer" means an individual who, under the
11 supervision of a person licensed under this chapter, performs
12 manual labor, including digging holes, pouring foundations,
13 tunneling, and installing underpinning.

14 (9) "Manager" means an individual who oversees
15 activities related to foundation repair, including foundation
16 installation, foundation lifting, customer service, and sales.

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

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

22 (1) an individual who, without paid help, repairs the
23 foundation of a home that the individual owns and in which the
24 individual resides;

25 (2) an individual licensed as an engineer under
26 Chapter 1001 who engages in foundation repair in connection with
27 the business in which the individual is employed but who does not

1 engage in that work for the public;

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

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

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

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

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

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

14 (b) For purposes of Subsection (a), remodeling of a
15 single-family house or duplex is exempt to the extent it does not
16 include foundation repair.

17 (c) A laborer is not required to hold a license under this
18 chapter if the laborer is engaged in foundation repair under the
19 supervision of a license holder under this chapter.

20 Sec. 1003.004. APPLICATION OF MUNICIPAL ORDINANCES.
21 Foundation repair by an individual or entity, including an
22 individual or entity that is exempt under this chapter, is subject
23 to a permit, inspection, or approval requirement established by a
24 municipal ordinance.

25 [Sections 1003.005-1003.050 reserved for expansion]

26 SUBCHAPTER B. FOUNDATION REPAIR CONTRACTORS ADVISORY BOARD

27 Sec. 1003.051. ADVISORY BOARD MEMBERSHIP. The Foundation

1 Repair Contractors Advisory Board consists of seven members
2 appointed by the presiding officer of the commission, with the
3 commission's approval.

4 Sec. 1003.052. MEMBERS. (a) Each advisory board member,
5 other than the public member, must be experienced in the design,
6 installation, construction, maintenance, service, repair, or
7 modification of a foundation.

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

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

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

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

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

17 Sec. 1003.053. ADVISORY BOARD DUTIES. The advisory board
18 shall provide advice and recommendations to the department and
19 commission on technical matters relevant to the administration and
20 enforcement of this chapter, including examination content,
21 licensing standards, fees, rules, and continuing education
22 requirements.

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

26 (b) If a vacancy occurs during a member's term, the
27 presiding officer of the commission, with the commission's

1 approval, shall fill the vacancy for the remainder of the unexpired
2 term with an individual having the same qualifications as the
3 predecessor.

4 Sec. 1003.055. PRESIDING OFFICER. The presiding officer of
5 the commission, with the commission's approval, shall designate one
6 member of the advisory board to serve as presiding officer of the
7 advisory board for a two-year term.

8 Sec. 1003.056. COMPENSATION; REIMBURSEMENT. An advisory
9 board member serves without compensation but is entitled to
10 reimbursement for actual and necessary expenses incurred in
11 performing functions as an advisory board member, as provided by
12 the General Appropriations Act and the budget of the department.

13 Sec. 1003.057. MEETINGS. (a) The advisory board shall meet
14 at least annually and may meet at other times at the call of the
15 presiding officer of the commission or the executive director.

16 (b) The advisory board shall meet in this state at a place
17 designated by the executive director.

18 [Sections 1003.058-1003.100 reserved for expansion]

19 SUBCHAPTER C. POWERS AND DUTIES

20 Sec. 1003.101. RULES. The commission shall adopt rules as
21 necessary to implement this chapter.

22 Sec. 1003.102. INSURANCE REQUIREMENTS. The commission by
23 rule shall establish reasonable minimum liability insurance
24 requirements for a contracting company license holder under this
25 chapter.

26 Sec. 1003.103. CONTRACTS FOR ENFORCEMENT. The department
27 may contract with another state agency or political subdivision of

1 this state to enforce this chapter and rules adopted under this
2 chapter.

3 Sec. 1003.104. PERSONNEL. The department may employ
4 personnel necessary to administer this chapter.

5 Sec. 1003.105. DIRECTORY OF LICENSE HOLDERS. The
6 department shall maintain a directory of license holders and make
7 the directory available to the public.

8 [Sections 1003.106-1003.150 reserved for expansion]

9 SUBCHAPTER D. LICENSE REQUIREMENTS

10 Sec. 1003.151. LICENSE REQUIRED. (a) An individual or
11 entity may not engage in foundation repair unless the individual or
12 entity holds the appropriate license under this chapter.

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

16 Sec. 1003.152. LICENSE CLASSIFICATIONS. The department
17 shall issue contracting company, master, and journeyman licenses.

18 Sec. 1003.153. CONTRACTING COMPANY LICENSE. (a) A
19 contracting company license entitles the license holder to engage
20 in business as a foundation repair contracting company.

21 (b) A contracting company license holder shall employ at
22 least one full-time master license holder.

23 (c) A contracting company license holder that does not
24 employ a master license holder as required by Subsection (b) at the
25 time the services are performed may not collect a fee or otherwise
26 enforce the contract.

27 (d) A contracting company license holder shall maintain at

1 all times insurance as required by commission rule.

2 Sec. 1003.154. MASTER LICENSE. (a) A master license
3 entitles the license holder to engage in foundation repair.

4 (b) An applicant for a master license under this chapter
5 must:

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

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

11 (3) pass an examination administered by the
12 department.

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

17 (b) An applicant for a journeyman license under this chapter
18 must:

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

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

24 (3) pass an examination administered by the
25 department.

26 Sec. 1003.156. PRACTICAL EXPERIENCE. For purposes of
27 determining an applicant's practical experience under this

1 subchapter, a four-year degree in engineering is equivalent to two
2 years of practical experience if the degree is from an institution
3 of higher education.

4 Sec. 1003.157. APPLICATION. (a) An applicant for a license
5 must submit an application on the form prescribed by the
6 department.

7 (b) The application must specify the class of license for
8 which the applicant is applying and include the required fees.

9 (c) The application for a master or journeyman license must
10 include a statement containing evidence satisfactory to the
11 department of the applicant's required practical experience. An
12 application for a contracting company license must include proof of
13 insurance as required by commission rule.

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

16 Sec. 1003.158. EXAMINATIONS. (a) The department shall
17 prescribe a separate examination for each class of license under
18 this chapter, except that an examination is not required for a
19 contracting company license.

20 (b) The department shall prescribe the method and content of
21 an examination administered under this chapter.

22 (c) The examination:

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

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

27 (3) may be offered online as determined by the

1 executive director.

2 Sec. 1003.159. ISSUANCE AND TERM OF LICENSE. (a) The
3 department shall issue a license to an applicant who:

4 (1) submits a verified application on a form
5 prescribed by the department;

6 (2) provides evidence of insurance coverage required
7 by commission rule, if applicable;

8 (3) passes an examination, if applicable;

9 (4) pays the required fees; and

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

12 (b) A license issued under this chapter expires at the end
13 of the license period set by the commission.

14 Sec. 1003.160. RENEWAL OF LICENSE. To renew a license, the
15 license holder must:

16 (1) submit a renewal application in the form
17 prescribed by the executive director;

18 (2) pay the required fee;

19 (3) show evidence of insurance required by commission
20 rule, if applicable; and

21 (4) show evidence of having completed the continuing
22 education requirements established by the commission, as
23 applicable.

24 Sec. 1003.161. DISPLAY OF LICENSE. The commission, with
25 the advice of the advisory board, shall adopt rules relating to the
26 use, display, and advertisement of a license.

27 Sec. 1003.162. NOTICE TO MUNICIPALITIES. (a) An

1 individual or entity that obtains a license under this chapter
2 shall provide a notice to the municipal authority that enforces
3 foundation repair regulations in each municipality in which the
4 individual or entity engages in foundation repair.

5 (b) The notice must be in the form required by the
6 municipality and inform the municipality that the individual or
7 entity has obtained a license under this chapter.

8 Sec. 1003.163. PROHIBITED PRACTICES. (a) A license holder
9 may not perform or offer or attempt to perform an act, service, or
10 function that is:

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

14 (2) defined as the practice of architecture under
15 Chapter 1051, unless the individual holds a license under that
16 chapter;

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

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

22 (b) A license holder may not:

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

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

1 provided; or

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

4 [Sections 1003.164-1003.200 reserved for expansion]

5 SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

6 Sec. 1003.201. DISCIPLINARY ACTION. The commission or
7 executive director may impose an administrative penalty or take
8 disciplinary action under Chapter 51 or this chapter if a license
9 holder violates this chapter, a rule adopted under this chapter, or
10 an order of the commission or the executive director.

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

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

15 [Sections 1003.203-1003.250 reserved for expansion]

16 SUBCHAPTER F. INITIAL LICENSES

17 Sec. 1003.251. WAIVER OF EXAMINATION REQUIREMENT. (a) The
18 department shall waive the examination requirement of Section
19 1003.154(b) for a master license for an applicant who has been an
20 owner or manager of a foundation repair contracting company for at
21 least 60 months before September 1, 2014.

22 (b) The department shall waive the examination requirement
23 of Section 1003.155(b) for a journeyman license for an applicant
24 who has worked for a foundation repair contracting company as a
25 salesperson, estimator, foreman, or manager for at least 24 months
26 before September 1, 2014.

27 Sec. 1003.252. INITIAL LICENSING. (a) The department

1 shall issue a master license to a qualified applicant who:

2 (1) submits an application not later than September 1,
3 2014;

4 (2) is at least 21 years of age; and

5 (3) has been an owner or manager of a foundation repair
6 contracting company for at least 60 months.

7 (b) The department shall issue a journeyman license to a
8 qualified applicant who:

9 (1) submits an application not later than September 1,
10 2014;

11 (2) is at least 21 years of age; and

12 (3) has worked for a foundation repair contracting
13 company as a salesperson, estimator, foreman, or manager for at
14 least 24 months.

15 Sec. 1003.253. RENEWAL OF LICENSE. To qualify to renew an
16 initial license issued under this subchapter, the license holder
17 must comply with the requirements of Section 1003.160.

18 Sec. 1003.254. EXPIRATION OF SUBCHAPTER. This subchapter
19 expires October 1, 2014.

20 SECTION 2. (a) Notwithstanding the requirement of Section
21 1003.052(b)(3), Occupations Code, as added by this Act, the Texas
22 Commission of Licensing and Regulation shall appoint persons who
23 meet the practical experience requirement for an initial master
24 license to serve as initial members of the Foundation Repair
25 Contractors Advisory Board as soon as practicable after the
26 effective date of this Act.

27 (b) The Texas Commission of Licensing and Regulation shall

1 determine with respect to the members of the Foundation Repair
2 Contractors Advisory Board appointed under Chapter 1003,
3 Occupations Code, as added by this Act, which terms of two members
4 expire February 1, 2015, which terms of two members expire February
5 1, 2017, and which terms of three members expire February 1, 2019.

6 (c) The changes in law made by Section 1003.153, Occupations
7 Code, as added by this Act, apply only to a contract for foundation
8 repair entered into or renewed on or after September 1, 2014. A
9 contract for foundation repair entered into or renewed before
10 September 1, 2014, is governed by the law as it existed on the date
11 the contract was entered into, and the former law is continued in
12 effect for that purpose.

13 SECTION 3. (a) The Texas Commission of Licensing and
14 Regulation shall adopt rules to implement Chapter 1003, Occupations
15 Code, as added by this Act, not later than February 1, 2014.

16 (b) Not later than March 1, 2014, the Texas Commission of
17 Licensing and Regulation shall begin accepting applications for and
18 issuing licenses under Chapter 1003, Occupations Code, as added by
19 this Act.

20 (c) A person is not required to obtain a license to engage in
21 foundation repair under Chapter 1003, Occupations Code, as added by
22 this Act, before September 1, 2014.

23 SECTION 4. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect September 1, 2013.

25 (b) Sections 1003.151, 1003.201, and 1003.202, Occupations
26 Code, as added by this Act, take effect September 1, 2014.