

- SUBJECT:** Licensing foundation repair contractors
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 5 ayes — Smith, Kuempel, Gooden, Miles, Price
4 absent — Geren, Guillen, Gutierrez, S. Thompson
- WITNESSES:** For — Janet Ahmad, Homeowners for Better Building; Jim Dutton and Paul Wolf, Foundation Repair Association; John Fleming, Texas Mortgage Bankers Association (*Registered, but did not testify*: Kristi Ashley; Steve Bruno, Foundation Repair Association; Braxton Curry; Daniel Gonzalez, Texas Association of Realtors; Joe McCullough, Foundation Repair Association; Chelsey Thomas, Texas Association of Realtors; Brandon Vos)
Against — Susan Bryan, SA Structural Repair Solutions; Mike DeShazer, Brown Foundation Repair; Daniel Jagers; Michael Orchard, CI Support Services; Vikrant Reddy, Texas Public Policy Foundation (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)
On — William Kuntz, Texas Department of Licensing and Regulation; David Mintz, Texas Apartment Association
- DIGEST:** CSHB 613 would institute a licensing program for foundation repair contractors.
The bill would create the following four foundation repair license classifications:
1. Foundation repair company license, allowing the holder to engage in the business of foundation repair. An applicant would have to be an individual master license holder who was the sole proprietor of an insured company, or an insured business entity employing at least one master license holder and whose principal proprietors had passed criminal history background checks.
 2. Master license, allowing the holder to engage in foundation repair

contracting. An applicant would have to be age 21 or older. He or she would be required to have completed at least 60 months of practical experience under the supervision of a master license holder during the past 10 years or to have equivalent experience.

3. Journeyman license, allowing the holder to repair foundations under the supervision of a master license holder. An applicant would have to be age 21 or older. He or she would be required to have completed at least 24 months of practical experience under the supervision of a master license holder during the past 10 years or to have equivalent experience.
4. Estimator license, allowing the holder to provide estimates or preparation for repair work under the supervision of a master or journeyman license holder. An applicant would have to be at least 18 years old.

Applicants for master, journeyman, and estimator licenses would have to pass an examination and a criminal background check. These licenses would be valid for one year, and the Texas Commission of Licensing and Regulation could impose application fees. To renew a license, a license holder would have to submit a renewal application, pay a fee, and show evidence of having completed continuing education requirements established by the bill.

Certain applicants could substitute formal education, related training in the course of military service, or engineering or construction work related to foundation repair while employed by a governmental entity. Out-of-state experience could count for some of the practical experience requirements required of other candidates, as determined by the Texas Department of Licensing and Regulation (TDLR).

Licensing requirements would not apply to:

- owners performing foundation repair on their own homes;
- engineers;
- certain maintenance people of residential or commercial properties;
- remodelers or contractors of single-family homes or duplexes, unless the remodeling consisted only of foundation repair work; home builders repairing foundations as part of the original construction process; or

- a person performing work on mobile home or the foundation of a nonresidential structure.

License holders not otherwise qualified would be forbidden from holding themselves out as engineers, architects, plumbers, or as someone licensed to work on structures in the liquefied petroleum gas industry. A license holder could not:

- fail to provide services already paid for;
- fail to honor terms of a contract;
- make fraudulent promises or knowingly misrepresent necessary services; or
- work on a foundation without any necessary permits from a local political subdivision.

The commission would:

- adopt rules to obtain and renew licenses;
- set minimum insurance requirements; and
- regulate advertising in the foundation repair industry.

License holders would still have to observe local ordinances, and political subdivisions could set stricter standards and continue requiring license holders to submit permit applications.

The bill would create the Foundation Repair Advisory Board, to meet at least annually. The board would provide advice and recommendations to the commission on technical matters including exam content, licensing standards, foundation repair standards, fees, rules, and continuing education requirements.

The board would consist of nine volunteer members appointed by the presiding officer of the commission and serving staggered six-year terms. Four members would hold foundation repair master licenses, and one would be a journeyman license holder. The commission's presiding officer would appoint the members as soon as practicable after the effective date of the bill.

The commission or executive director of TDLR could impose administrative penalties or sanctions. A person who violated license requirements, inappropriately employed an unlicensed person, or

submitted a false license application to the department could be charged with a class C misdemeanor (maximum fine of \$500).

The commission would be able to take enforcement actions beginning September 1, 2014. The bill's licensing requirements would take effect September 1, 2014. TDLR would adopt rules to implement the bill by February 1, 2014. The department would begin accepting applications by March 1, 2014, and foundation repair contractors would need to obtain a license by September 1, 2014, after which TDLR would be authorized to take enforcement actions.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CASHB 613 would create oversight of an industry that sorely needs it. Other building trades are already regulated by the state, including electricians, plumbers, and air conditioning and refrigeration contractors. This bill would set up a licensing program similar to the ones the state uses to license those professions, administered by TDLR and guided by an industry advisory board.

Texas has unusually diverse soils which may expand or contract with moisture. These shifts may damage the foundation of a house, causing the whole structure of a home to crack. Each year, between 25,000 and 30,000 homes need repair done on their foundations, and the recent drought has exacerbated the problems caused by soil expansion and contraction.

This work currently is performed by an unregulated foundation repair industry. Improperly done foundation repair is not only costly; it can be permanent because usually a foundation can withstand only three attempts to repair it. The damage wrought by a botched foundation repair is significant enough to merit imposing competency standards for entrants to the industry.

CASHB 613 would provide independent quality control and, in an important step for consumer protection, it would require foundation repair companies to carry insurance. Finally, the bill would give TDLR the power to sanction bad actors with the imposition of penalties, which would give consumers recourse.

While some cities already require the registration of foundation repair companies and contractors, many smaller communities might not have this

capacity, nor would many Texans living outside city boundaries.

OPPONENTS
SAY:

Texas imposes too many licensing requirements. This bill would impose high barriers to entry into the foundation repair industry, forcing members of the profession to pay fees, take an exam, submit to a criminal background check, complete continuing education, and demonstrate many years of practical experience. This could raise prices by artificially preventing competition, which would be bad for consumers. New and small businesses would find these costs difficult to bear.

Foundation repair is not akin to work in the electrical, plumbing or air conditioning and refrigeration industries. Those industries have major consumer safety issues, and improperly done work can endanger public health. Faulty foundation repair at most results in the cracking of the walls of a house, but does not endanger any lives. Furthermore, determining who is at fault for a bad foundation is not as simple as pinpointing who did bad electrical wiring, plumbing, or air conditioning.

OTHER
OPPONENTS
SAY:

The bill would not be effective because of the many licensing exemptions it contains. Among others, the bill would exempt the contractors building the foundation in the first place and remodelers who would still be allowed to perform foundation repair alongside other home improvements. The bill should close these loopholes and more tightly regulate the industry.

Foundation repair is already registered by some municipalities, and others could follow suit. The state should not impose requirements on local communities, which are capable of protecting local consumers.

NOTES:

According to the Legislative Budget Board, the bill would have no significant impact to general revenue in fiscal 2014-15. TDLR is projected to need 7 FTEs as a result of the bill, but the estimated \$939,000 cost to the state is expected to be covered by license fee adjustments.