

## **BILL ANALYSIS**

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S.B. 1399  
By: Patrick  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

For more people, a home is the largest investment they will make. It is self-evident that repairs to a home's foundation may impact not only the resident's enjoyment of his or her property, but also its habitability and resale value. While repair failure may occur even under the best of circumstances, industry experience best serves to reduce this risk since necessary repairs are often complex propositions requiring significant expertise to provide the best opportunity for satisfactory performance.

However, in light of existing economic issues, some Texas homeowners may consider cost as the only factor in making repair decisions. This potentially leaves well-intentioned but inexperienced contractors to undertake certain repairs beyond their level of expertise to the detriment of Texas homeowners. Moreover, in light of Texas' drought history, increasing numbers of predatory practices by underfunded but opportunistic repair companies have been reported. Currently, there is no state regulation in place to directly mitigate these risks.

This bill 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.

As proposed, 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 1003.102 and 1003.163, Occupations Code) of this bill.

### **SECTION BY SECTION 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," "chief administrator," "commission," "department," "executive director," "foundation," "foundation repair contracting," "foundation repair contractor," "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 contracting in connection with the business in which the individual is employed but who does not engage in that work for the public; or
- (3) an individual who engages in foundation repair contracting for a mobile structure.

(b) Provides that an individual is not required to hold a license under this chapter if the individual 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 contracting by an individual who is exempt under this chapter remains 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:

- (1) the executive director of the Texas Department of Licensing and Regulation (executive director; TDLR);
- (2) the chief administrator; and
- (3) seven members appointed by the presiding officer of the Texas Commission of Licensing and regulation (TCLR), with TCLR's approval.

Sec. 1003.052. APPOINTED MEMBERS. (a) Requires each appointed 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 appointed members be appointed as follows:

- (1) one member who is an official of a municipality;
- (2) one member who is an engineer licensed by this state;
- (3) four members who are full-time licensed foundation repair contractors, 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. EX OFFICIO MEMBERS. Requires the executive director and the chief administrator to serve as ex officio members. Provides that the executive director and the chief administrator are nonvoting members of the advisory board.

Sec. 1003.054. ADVISORY BOARD DUTIES. Requires the advisory board to provide advice and recommendations to TDLR and TCLR on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, applicable fees, rules, and continuing education requirements.

Sec. 1003.055. TERMS; VACANCY. (a) Requires appointed 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. 1003.056. 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. 1003.057. 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.

Sec. 1003.058. MEETINGS. (a) Requires the advisory board to meet at least once every six months and authorizes the advisory board to meet at other times at the call of the presiding officer of the advisory board.

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

[Reserves Sections 1003.059-1003.100 for expansion.]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 1003.101. GENERAL DUTIES. Requires TCLR to maintain a record of TCLR's proceedings under this chapter.

Sec. 1003.102. RULES. (a) Requires TCLR to adopt rules as necessary to implement this chapter.

(b) Requires that the rules establish standards for the practice of foundation repair at least as stringent as the standards provided by:

(1) the Foundation Repair Association; or

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

Sec. 1003.103. INSURANCE REQUIREMENTS. (a) Requires TCLR to establish insurance requirements for a license holder under this chapter.

(b) Authorizes TCLR to waive the insurance requirements for a license holder who does not engage in foundation repair contracting for the public.

Sec. 1003.104. 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. 1003.105. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer this chapter.

Sec. 1003.106. CHIEF ADMINISTRATOR. (a) Provides that the chief administrator is responsible for the administration of this chapter under the direction of TDLR. Requires the chief administrator to perform duties as prescribed by TDLR.

(b) Provides that the chief administrator is a full-time employee of TDLR.

Sec. 1003.107. DIRECTORY OF LICENSE HOLDERS. (a) Requires TDLR to maintain a directory of license holders and make the directory available to the public.

(b) Authorizes TDLR to sell the directory for a reasonable fee set by TDLR.

[Reserves Sections 1003.108-1003.150 for expansion.]

#### SUBCHAPTER D. LICENSE REQUIREMENTS

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

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

Sec. 1003.152. LICENSE CLASSIFICATIONS. Requires TDLR to issue master, journeyman, tradesman apprentice, and apprentice foundation repair contractor licenses.

Sec. 1003.153. MASTER LICENSE. (a) Provides that a master license entitles the license holder to engage in foundation repair contracting.

(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 experience working in foundation repair contracting under the supervision of a master license holder during the preceding seven years;
- (3) have a high school diploma or its equivalent; and
- (4) pass an examination administered by TDLR.

Sec. 1003.154. JOURNEYMAN LICENSE. (a) Provides that a journeyman license entitles the license holder to engage in the design and sale of foundation repair and of lifting, lowering, and adjusting 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 experience working in foundation repair contracting under the supervision of a master license holder during the preceding five years;
- (3) have a high school diploma or its equivalent; and
- (4) pass an examination administered by TDLR.

Sec. 1003.155. TRADESMAN APPRENTICE LICENSE. (a) Provides that a tradesman apprentice license entitles the license holder to engage in providing an estimate or design for a foundation repair or for the lifting, lowering, or adjusting of a building if the estimate or design is reviewed and approved in writing by a master license holder not

later than the 10th business day after the date the estimate or design is presented to a member of the public.

(b) Requires an applicant for a tradesman apprentice 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. 1003.156. APPRENTICE LICENSE. (a) Provides that an apprentice license entitles the license holder to engage in the repair of a foundation under the supervision of a master license holder.

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

Sec. 1003.157. 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:

- (1) the degree is from an institution of higher education; and
- (2) the institution's program is approved by the Texas Board of Professional Engineers for the purpose of licensing engineers.

Sec. 1003.158. 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.

(c) Requires that the application be accompanied by:

- (1) a statement containing evidence satisfactory to TDLR of the applicant's required practical experience;
- (2) the examination fee; and
- (3) proof of insurance as required by this chapter or TDLR rule.

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

Sec. 1003.159. EXAMINATIONS. (a) Requires TDLR to prescribe a separate examination for each class of license, except that an examination is not required for an apprentice license.

(b) Requires TDLR to prescribe the method and content of an examination administered under this chapter and to contract with a statewide association of foundation repair contractors for the examination.

(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. 1003.160. ISSUANCE AND TERM OF LICENSE. (a) Requires TDLR to issue a foundation repair contractor license to an applicant who:

- (1) provides evidence of insurance coverage required by TCLR;
- (2) passes the applicable examination;
- (3) passes a criminal background check;
- (4) pays the required fees; and
- (5) meets the requirements of this chapter.

(b) Requires TDLR, not later than the 30th day after the date an applicant fulfills the license requirements, to issue a license to the applicant.

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

Sec. 1003.161. 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 under this chapter or TCLR rule; and
- (4) show evidence of having completed the continuing education requirements established by TCLR.

Sec. 1003.162. FORM OF LICENSE. Requires the executive director to prescribe the design of an original license and a renewal license.

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 contracting regulations in each municipality in which the individual engages in foundation repair contracting.

(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. REQUIREMENTS FOR FOUNDATION REPAIR CONTRACTING COMPANY. (a) Requires a foundation repair contracting company to employ at least one full-time license holder who holds a master license.

(b) Prohibits a foundation repair contracting company that does not employ a license holder as required by Subsection (a) at the time a contract for foundation

repair contracting services is signed and at the time the services are performed from collecting a fee or otherwise enforcing the contract.

Sec. 1003.166. PROHIBITED PRACTICES BY LICENSE HOLDER. (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.

[Reserves Sections 1003.167-1003.200 for expansion.]

#### SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

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

Sec. 1003.202. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly engages in foundation repair contracting without holding a license under 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. INITIAL LICENSING. (a) Requires TDLR to waive the requirements of Section 1003.153(b) for a master license for an applicant who has been an owner or manager of a foundation repair contracting company continuously for at least 10 years before March 1, 2012.

(b) Requires TDLR to waive the requirements of Section 1003.154(b) for a journeyman license for an applicant who has worked continuously for a

foundation repair contractor as a salesman, estimator, or manager for at least four years before March 1, 2012.

Sec. 1003.252. 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 1003.161.

Sec. 1003.253. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires June 1, 2013.

SECTION 2. (a) Requires TCLR to appoint the members of the advisory board as soon as practicable after the effective date of this Act.

(b) Requires the members of the advisory board appointed under Chapter 1003, Occupations Code, as added by this Act, to draw lots to determine 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 1003.165, Occupations Code, as added by this Act, prospective to March 1, 2012.

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

(b) Provides that a person is not required to obtain a license to engage in foundation repair contracting under Chapter 1003, Occupations Code, as added by this Act, before March 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 and 1003.202, Occupations Code, as added by this Act: March 1, 2012.