

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 612

INTRODUCER: Senator Hooper

SUBJECT: Building Construction Regulations and System Warranties

DATE: January 12, 2024 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Baird	McKay	CM	Pre-meeting
2.		CA	
3.		RC	

I. Summary:

SB 612 implements the following changes:

- Expands the scope of work for specified HVAC system contractors to include specified line-side repairs or replacements and the repair or replacement of specified components for dedicated HVAC circuits.
- Authorizes an attorney fee award to the prevailing party in a Building Code or Accessibility Code interpretation challenge.
- Prohibits the conditioning of an HVAC system warranty on product registration and specifies that the full length of such a warranty's coverage term begins on the date a licensed contractor installs the system.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Explanation of the Present Situation is provided in the Effect of Proposed Changes, below.

III. Effect of Proposed Changes:

Definitions of Contractor

Part I of Chapter 489, F.S., pertains to regulation of construction contracting. Section 489.105, F.S., provides the definitions used throughout the part.

“Contractor” means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related

improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term “demolish” applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences.¹

“Class A air-conditioning contractor” means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.²

“Class B air-conditioning contractor” means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for

¹ Section 498.105(3), F.S.

² Section 489.105(3)(f), F.S.

disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.³

“Mechanical contractor” means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.⁴

HVAC System Contractor Limitations

An electrical disconnect switch is a switch that isolates all wiring in a home or other structure, or the wiring in a dedicated electrical circuit,⁵ from its power source.⁶ Electricity to a disconnect switch is fed from the “load side,” or outgoing side, of the power source to the “line side,” or incoming side, of the switch; electricity is then fed from the “load side” of the disconnect switch

³ Section 489.105(3)(g), F.S.

⁴ Section 489.105(3)(i), F.S.

⁵ A “dedicated electrical circuit” has its own circuit breaker and supports a single outlet; thus, only one electrically powered device can draw power from that circuit at any given time. Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, (August 16, 2021), available at <https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them> (last visited January 12, 2024).

⁶ Power will flow to the breaker so long as the power source is operational, but power will only flow from the breaker through the structure if the disconnect switch is flipped to the “on” position. This is what is meant by “isolate.” American Electrical, Inc., *Switching to Safety: Exploring the Importance of Disconnect Switches in Electrical Systems*, (June 20, 2023), available at <https://www.linkedin.com/pulse/switching-safety-exploring-importance-disconnect/> (last visited January 12, 2024).

to the “line side” of the device to be powered.⁷ The components of an electrical circuit, including an electrical disconnect switch, are rated for a maximum flow of electrical current, measured in amperes; the higher the ampere rating, the more continuous electrical current an electrical circuit can handle without the risk of component deterioration or overheating.⁸

An HVAC unit must have a dedicated electrical disconnect switch, which switch must be located within sight of and be readily accessible from the HVAC unit.⁹ Electricity runs from the power source to the dedicated HVAC electrical disconnect switch through the switch’s “line side,” and from the switch’s “load side” to the HVAC unit.

Under Florida law, only a licensed electrical contractor may perform “line side” work on the dedicated HVAC electrical disconnect switch.¹⁰ Thus, HVAC system contractors, whether they are class A, class B, or mechanical, are currently prohibited from replacing, disconnecting, or reconnecting power wiring on the line side of the dedicated HVAC disconnect switch or from repairing or replacing power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits. However, the Building Code requires that HVAC units and components thereof be installed in compliance with the amperage requirements of the unit or component.¹¹ Thus, where components of a home or structure’s existing electrical circuit cannot handle the ampere requirements of the new or repaired HVAC unit, a licensed electrical contractor is generally needed to upgrade the insufficient components before the HVAC contractor may safely turn on the new or repaired HVAC unit.

Section 1 amends the definition of “Class A air-conditioning contractor,” “Class B air-conditioning contractor,” and “mechanical contractor” to allow them to replace, disconnect, or reconnect power wiring on the *line or load* side of the dedicated existing electrical disconnect switch *on single-phase electrical systems*, and to repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits.

Florida Building Code Interpretations

The Florida Building Codes Act (“Building Code”), established in part IV of Ch. 553, F.S., provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single state building code that must be applied, administered, and enforced uniformly and consistently across the state.¹² The Building Code is adopted by the Florida Building Commission (“Commission”) and enforced by local governments.¹³

⁷ Barbara Bellesi Zito, *Line vs. Load Wire: What’s the Difference*, (May 5, 2023), available at <https://www.angi.com/articles/line-vs-load-wire.htm> (last visited January 12, 2024).

⁸ Dave Robbs, *What are Amps, Watts, Volts, and Ohms, How Stuff Works*, (October 3, 2022), available at <https://science.howstuffworks.com/environmental/energy/question501.htm> (last visited January 12, 2024).

⁹ Section 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

¹⁰ Section 489.505(12), F.S.

¹¹ Section 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

¹² Section 553.72(1), F.S.

¹³ Sections 125.56, 553.72, 553.73, and 553.74, F.S.

The Building Code's primary purpose is the regulation of new construction and existing structure modifications to achieve the highest safety level and the fewest construction defects.¹⁴ To accomplish this, the Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state, and incorporates all state laws and rules pertaining to such standards, including the technical portions of the Accessibility Code.¹⁵

Interpretations

Any substantially affected person, including an owner or builder subject to a local building official's decision or an association of owners or builders having members who are subject to such decisions, may petition the Commission for a review of such decisions where the interpretation of the Building Code or the Accessibility Code is contested.¹⁶ The Commission must coordinate with the Building Officials Association of Florida, Inc., to designate a panel composed of seven members to hear decision review requests and adopt a form for the petition, which form must include:

- The name and address of the county or municipality in which provisions of the Building Code or Accessibility Code are being interpreted;
- The name and address of the local building official who has made the interpretation being appealed;
- The petitioner's name, address, and telephone number, if any, along with an explanation of how the petitioner's substantial interests are being affected by the local interpretation;
- A statement of the provisions of the Building Code or Accessibility Code which are being interpreted by the local building official;
- A statement of the interpretation given to the Building Code or Accessibility Code provisions and a statement supporting the petitioner's interpretation; and
- Space for the local building official to respond in writing.¹⁷

The petitioner must submit the petition form to the local building official, who must place the date of the petition's receipt on the petition.¹⁸ The local building official must then:

- Respond to the petition, which response must, at a minimum, include a statement admitting or denying the statements contained in the petition and a statement of the interpretation of the Building Code or the Accessibility Code which the local jurisdiction or local building official contends is correct.¹⁹
- Return the petition, along with his or her response, to the petitioner within five business days after receipt.

¹⁴ Fla. Bldg. Comm., *Advanced Florida Building Code Principals*, available at http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited January 12, 2024).

¹⁵ Section 553.73(1), F.S. The civil rights portions of the Accessibility Code are not incorporated.

¹⁶ Section 553.775(3), F.S.

¹⁷ Such panel must be comprised of five licensed building code administrators, one licensed architect, and one licensed engineer; and each panelist must have experience in interpreting or enforcing the Building Code and the Accessibility Code. *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

The petitioner may file the petition with Commission at any time after the local building official provides a response, or, if no such response is provided, within ten days after submitting the petition to the local building official.²⁰ However, the Commission may undertake a decision review only after the local board of appeals has considered the decision, if such a board exists, and if such appeals process is concluded within 25 business days.²¹

Upon receipt of a petition which meets all statutory requirements, the Commission must immediately give copies of the petition to the panel and publish the petition, including any response thereto, on the Building Code Information System (“BCIS”) in a manner that allows interested persons to address the issues by posting comments.²² The panel must then:

- Conduct proceedings necessary to resolve the issue, giving due regard to the petitions, the response, and to comments posted on the BCIS.
- Issue an interpretation of the Building Code or Accessibility Code within 21 days after the petition’s filing, which interpretation must be given to the Commission.

The Commission must then publish the interpretation on the BCIS and in the Florida Administrative Register.²³ Such interpretation is considered an interpretation of the Commission and is binding upon the parties and all jurisdictions subject to the Building Code or Accessibility Code unless it is superseded by a declaratory statement issued by the Commission or by a final order entered after an appeal proceeding conducted under this section.²⁴ Such an appeal may be brought by any substantially affected party by filing a petition with the Commission within 30 days after the interpretation’s publication.²⁵ Hearings on such petitions for appeal must be conducted in accordance with the Administrative Procedures Act codified in Ch. 120, F.S. and the uniform rules of procedure.²⁶ The Commission’s final order is binding on the parties and all jurisdictions subject to the Building Code or Accessibility Code, but Commission decisions are subject to judicial review under s. 120.68, F.S.

Section 2 amends s. 553.775(3), F.S., to provide that, in a proceeding on a petition for an interpretation of the Building Code or Accessibility Code by the Commission, the prevailing party is entitled to recover all attorney fees accrued from the losing party.

HVAC System Warranties

A warranty is an assurance that a manufacturer or seller makes about the condition of its product.²⁷ A warranty means that a manufacturer or seller will replace or repair the product under certain instances. A warranty can be either express or implied.²⁸

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Will Kenton, *Warranty Definition, Types, Example, and How It Works*, Investopedia, (November 24, 2022), available at <https://www.investopedia.com/terms/w/warranty.asp> (last visited January 12, 2024).

²⁸ 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

An express warranty is a verbal or written assurance for the product.²⁹ On the other hand, an implied warranty is an unstated assurance that the product is made for its intended purpose.³⁰ An implied warranty is in addition to an express warranty. However, an implied warranty may be negated or limited by an express warranty. There is no implied warranty if a seller states that the product is “as is,” “with all faults,” or similar language.³¹

A manufacturer warranty attaches to the purchase of the product by the manufacturer. A manufacturer warranty is considered a limited warranty because the warranty is only valid for a certain time period after the purchase. These terms and conditions are created by the manufacturer. Once the period of coverage is over, someone can purchase an extended warranty under different coverage terms to extend the protection of the product beyond the terms and conditions laid out in the manufacturer warranty.³²

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)³³ is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.³⁴

The MMWA defines three kinds of consumers:

- A buyer of any consumer product.
- Any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product.
- Any other person who is entitled by the terms of such warranty or under applicable State law to enforce the obligations of the warranty.³⁵

Manufacturer Warranties for HVAC Systems in Florida

Most manufacturers require that an HVAC contractor purchase and install the HVAC system before the consumer can register the HVAC system for the limited manufacturer warranty. Generally, manufacturers provide a warranty for the HVAC system for 5 to 10 years. The warranty covers parts that might fail such as the air compressor or furnace heat exchanger. The

²⁹ “An express warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain.” Section 672.313, F.S.

³⁰ Section 672.314, F.S.

³¹ Section 672.316, F.S.

³² Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, (July 9, 2019), available at <https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference> (last visited January 12, 2024).

³³ 15 U.S.C. §§ 2301-2312 (1975).

³⁴ MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, (September 26, 2021), available at https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited January 12, 2024).

³⁵ *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); see also, § 2310(d) of MMMWA provides that, “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...”.

manufacturer will replace or repair any parts at no cost if the parts are covered under the warranty.³⁶

Before July 1, 2023, if a building or house that contained an HVAC system with a manufacturer warranty was sold to another person, the warranty time could be cut short or not transfer to the new owner. The assignment of the HVAC warranty to the new owner was contingent upon the terms and conditions for the warranty. In Florida, most manufacturer warranties are tied to a person instead of the property. Usually, the manufacturer warranty is tied to the original owner and does not transfer when the property is sold unless the previous owner transfers it to the new owner if that is an option in the warranty.

However, in 2023, the Florida Legislature enacted Chapter 2023-288, Laws of Florida, which, in pertinent part, provided that an HVAC manufacturer's warranty on a system that is a fixture to the property runs with the property, not with the original purchaser; thus, in the sale of a residential property, the manufacturer's warranty automatically passes to the new owner.³⁷

Further, the law specifies that:

- The warranty continues in effect as if the new owner were the original purchaser of the covered system or component;
- A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty so transferred and may not charge a fee for such transfer;³⁸ and
- Such a transfer does not extend the remaining time of the warranty's coverage period.³⁹

Before July 1, 2023, an HVAC system manufacturer could refuse to honor the terms of an HVAC system warranty if the purchaser of the HVAC system or a component covered by the warranty did not register the warranty with the manufacturer. Pursuant to the law enacted in 2023, a manufacturer's HVAC warranty is deemed registered with the manufacturer if a contractor licensed under Part I of Ch. 489, F.S.:.

- Installs the new HVAC system; and
- Provides the manufacturer with the date of issuance of the certificate of occupancy for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.⁴⁰

Such a contractor must document the installation through an invoice or a receipt and give the invoice or receipt to the customer.⁴¹

Section 3 amends s. 559.956, F.S., to remove language:

- Indicating that an HVAC system manufacturer's warranty is deemed registered if a licensed contractor installs the new HVAC system and provides the manufacturer with the date of

³⁶ Bryan Carnahan, *HVAC Warranties and You: What Are They, and Why Should You Register Your Product?*, Fire & Ice Heating and Air Conditioning, Inc., (July 1, 2022), available at <https://indoortemp.com/resources/hvac-warranties-and-product-registration> (last visited January 12, 2024).

³⁷ Section 559.956(1), F.S.

³⁸ *Id.*

³⁹ Section 559.956(2), F.S.

⁴⁰ Section 559.956(4), F.S.

⁴¹ Section 559.956(5), F.S.

issuance of the certificate of occupancy for installations relating to new construction or the serial number of the HVAC system for installations relating to existing construction.

- Requiring a licensed contractor who installs a new HVAC system to document the installation through an invoice or receipt and provide the invoice or receipt to the customer.

Section 4 creates s. 559.957, F.S., to specify that the full length of a manufacturer's, distributor's, or retailer's HVAC system or system component warranty is effective in Florida on the date of installation if installed by a contractor licensed under Part I of Ch. 48, F.S. Under this new section created by the bill, if an HVAC system or system component manufacturer, distributor, or retailer provides a warranty or product registration card form, or an electronic, online warrant or product registration form, the card or form must contain the following information, which information must be displayed in a clear and conspicuous manner:

- The card or form is for the product registration.
- Failure to complete and return the card or form does not diminish any warranty rights or decrease the warranty length.
- Any offered manufacturer's, distributor's, or retailer's HVAC system or system component warranty may not be in any way conditioned upon the product registration.

Relatedly, the bill amends s. 559.956, F.S., to specify that an HVAC system manufacturer's warranty may not be in any way conditioned upon product registration. This provision applies if:

- A sale of a residential property that includes an HVAC system as a fixture occurs on or after July 1, 2024; and
- A manufacturer's warranty is still in effect on the HVAC system or a system component.

Effective Date

Section 5 specifies an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.105, 553.775, 559.956, and 559.957.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.