

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 481 Building Construction Regulations and System Warranties

**SPONSOR(S):** Maggard

**TIED BILLS:** IDEN./SIM. BILLS: SB 612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Building Codes Act (“Building Code”), set out in part IV of ch. 553, F.S., 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 Florida Accessibility Code for Building Construction (“Accessibility Code”). A substantially affected person may challenge a Building Code or Accessibility Code interpretation by petitioning the Florida Building Commission; however, Florida law does not presently authorize an automatic attorney fee award in such challenges.

An electrical disconnect switch is a switch that isolates all wiring in a structure, or the wiring in a dedicated electrical circuit, from its power source. Each component of an electrical circuit, including the disconnect switch, is rated for a maximum flow of electric current, measured in amperes. Under Florida law, an HVAC unit must have a dedicated electrical disconnect switch; electricity runs from the power source to the switch through the switch’s “line side,” and from the switch’s “load side” to the HVAC unit. Installation of an HVAC unit or components thereof must be done in compliance with the unit’s or component’s amperage requirements. However, only a licensed electrical contractor may perform “line side” work on a dedicated HVAC electrical disconnect switch. Thus, where components of a structure’s existing electrical circuit cannot handle the amperage requirements of a new or repaired HVAC unit, a licensed electrical contractor is generally needed to upgrade the insufficient components before the HVAC system contractor may turn on the new or repaired HVAC unit.

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product’s manufacturer, distributor, or retailer to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement. Under current law, an HVAC system warranty runs with the property on which the system is fixed and thus transfers to a subsequent purchaser thereof automatically. An HVAC system warranty is also considered registered if it was installed by a licensed contractor who then provides specified documentation to the warrantor and the consumer; however, a warrantor can still refuse to honor a warranty’s terms if the warranty is unregistered.

HB 481:

- Authorizes an attorney fee award to the prevailing party in a Building Code or Accessibility Code interpretation challenge.
- 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.
- 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 does not appear to have a fiscal impact on state government but may have a fiscal impact on local governments. The bill provides an effective date of July 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0481.CJS

**DATE:** 1/9/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Building Construction Standards

##### *Florida Accessibility Code for Building Construction*

The Florida Accessibility Code for Building Construction (“Accessibility Code”), established in part II of ch. 553, F.S., incorporates into Florida law the requirements of the American’s with Disabilities Act<sup>1</sup> with the goal of maintaining United States Department of Justice certification of the Accessibility Code as being equivalent to federal standards for building accessibility.<sup>2</sup> The Accessibility Code also sets out additional standards which building construction in the state must meet if such standards provide increased accessibility.<sup>3</sup>

The Accessibility Code applies to:

- All areas of newly-designed and newly-constructed buildings as determined by specified federal standards;
- Portions of altered buildings as determined by specified federal standards;
- A building that is being converted from residential to nonresidential or mixed use, as those terms are defined in Florida law; and
- Buildings where the original construction or any former alteration or renovation violate applicable permitting law.<sup>4</sup>

However, persons subject to the Accessibility Code who face unreasonable hardships in meeting the Code’s requirements may apply to the Florida Building Commission (“Commission”), housed within the Department of Business and Professional Regulation (“DBPR”), for a waiver from strict Code compliance.<sup>5</sup> The Accessibility Advisory Council<sup>6</sup> must review any such waiver before it may be granted, and any such waiver may not violate applicable Federal law.<sup>7</sup> If the Commission denies a waiver application, the applicant may appeal the decision to the Florida Department of Community Affairs.<sup>8</sup>

##### *Florida Building Code*

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.<sup>9</sup> The Building Code is adopted by the Commission and enforced by local governments.<sup>10</sup>

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<sup>1</sup> See 42 U.S.C. ss. 12101, et seq. Areas regulated include vertical accessibility; barriers at common or emergency entrances and exits; parking; door and gate opening force; lavatory and water closet accessibility; and hotel, motel, and condominium special accessibility features.

<sup>2</sup> S. 553.502, F.S.

<sup>3</sup> Ss. 553.502 and 553.503, F.S.

<sup>4</sup> S. 553.507, F.S.

<sup>5</sup> S. 553.512, F.S.

<sup>6</sup> The Accessibility Advisory Council consists of seven members knowledgeable in the area of accessibility for persons with disabilities and appointed by DBPR’s Secretary. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> S. 553.72(1), F.S.

<sup>10</sup> Ss. 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.<sup>11</sup> 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.<sup>12</sup>

### *Plan Review and Building Permits*

Each local government must issue building permits for construction projects within its jurisdiction.<sup>13</sup> However, the building official may not issue a building permit before first reviewing the plans and specifications and finding that such plans and specifications comply with the Building Code.<sup>14</sup> No person, firm, or corporation may construct, erect, alter, repair, secure, or demolish any structure without first obtaining a building permit, if required, from the building official.<sup>15</sup>

### *Inspections and Violations*

For any construction requiring a building permit, the building official<sup>16</sup> must inspect the work to ensure that it complies with the Building Code.<sup>17</sup> Where a local government determines that an engineer, architect, or contractor has committed a "material violation" of the Building Code and has failed to correct the violation within a reasonable time, the local government must impose a fine on such licensee of no less than \$500 and no more than \$5,000 per violation.<sup>18</sup> A "material violation," as the term is used here, is a violation existing within a completed building, structure, or facility which may result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.<sup>19</sup>

### *Certificates of Completion or Occupancy*

The building official issues a certificate of completion when an existing building or structure is renovated or remodeled without a change in its occupancy or use, or when a shell building<sup>20</sup> is newly constructed, and such work passes its final building inspection.<sup>21</sup> When a new structure to be occupied<sup>22</sup> passes its final building inspection, the building official issues a certificate of occupancy.<sup>23</sup> A building or structure requiring a certificate of completion or occupancy generally may not be used or occupied until the appropriate certificate is issued; however, the building official may issue a temporary certificate of completion or occupancy before the project's close if a portion of the building or structure may be safely used or occupied.<sup>24</sup> The temporary certificate grants the applicant the same rights as a

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<sup>11</sup> Fla. Bldg. Comm., *Advanced Florida Building Code Principals*, [http://www.floridabuilding.org/Upload/Courses\\_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf](http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf) (last visited Jan. 8, 2024).

<sup>12</sup> S. 553.73(1), F.S. The civil rights portions of the Accessibility Code are not incorporated.

<sup>13</sup> A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific construction activity. Ss. 125.01(1)(bb), 125.56(1), 468.603(2), and 553.80(1), F.S.

<sup>14</sup> Ss. 125.56 and 553.79, F.S.

<sup>15</sup> Building permits are generally not required for cosmetic improvements, such as painting or flooring replacement. S. 553.79, F.S.

<sup>16</sup> A building official is a local government employee or a person contracted with a government entity who supervises building code activities. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> S. 553.781, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> A shell building separates a structure's interior space from its exterior and generally consists of the foundation, outer walls, roofing, windows, and exterior doors. When a shell building is constructed, the developer leaves the structure's interior unfinished so that the purchaser or tenant may contract with other construction professionals to customize its elements (including flooring, ceilings, interior walls, interior doors, and electrical fittings). Nassau County Building/Code Enforcement Department, *Guidelines for Shell Building and Tenant Build-Out Permits*, <https://www.nassaucountyfl.com/DocumentCenter/View/13984/Guidelines-for-Shell-Building-and-Tenant-Build-Out-Permits?bidId> (last visited Jan. 8, 2024).

<sup>21</sup> Passage of a final building inspection includes obtaining approvals for all permits issued for the project (such as building and fire permits and sub-permits such as electrical, mechanical, elevator, plumbing, and roof permits). S. 553.79(17)(a), F.S.; S. 110, Fla. Bldg. Code, 7th Ed. (2020).

<sup>22</sup> This includes an existing building or structure for which the occupancy classification is changing.

<sup>23</sup> S. 111, Fla. Bldg. Code, 7th Ed. (2020).

<sup>24</sup> Typically, the building official also requires that any outstanding work be nearing completion before issuing a temporary certificate.

See City of Tampa, *Apply for a Temporary Certificate of Occupancy*, <https://www.tampa.gov/document/apply-temporary-certificate>

certificate of completion or occupancy but expires after a set time period unless the building official grants an extension.<sup>25</sup> A building official may also suspend or revoke a temporary or final certificate of occupancy or completion if the certificate was issued in error or on the basis of incorrect information or where it is determined that the building or structure is in violation of any ordinance, regulation, or Building Code provision.<sup>26</sup>

### *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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup>
- Return the petition, along with his or her response, to the petitioner within five business days after receipt.

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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> The panel must then:

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[occupancy-tco-35571](#) (last visited Jan. 8, 2024) (requiring an applicant for a temporary certificate of occupancy to affirm that construction will be complete within 90 days); *id.*

<sup>25</sup> S. 111, Fla. Bldg. Code, 7th Ed. (2020).

<sup>26</sup> *Id.*

<sup>27</sup> S. 553.775(3), F.S.

<sup>28</sup> 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.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

- 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.

## HVAC System Contractors

### *Job Scopes*

Chapter 489, F.S., regulates the profession of contracting in the state. Generally speaking, a contractor is 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, and whose job scope is substantially similar to the job scopes described in s. 489.105, F.S.<sup>38</sup> Such job scopes include a:

- "Class A air-conditioning contractor," meaning 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 central air-conditioning, heating, and ventilation ("HVAC") systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side<sup>39</sup> of the dedicated existing electrical disconnect switch.<sup>40</sup>
- "Class B air-conditioning contractor," meaning a contractor whose services are limited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design HVAC systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.<sup>41</sup>
- "Mechanical contractor," meaning 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 HVAC systems and to perform other tasks,<sup>42</sup> including replacing, disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.<sup>43</sup>

### *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,<sup>44</sup> from its power source.<sup>45</sup> Electricity to a disconnect switch is fed

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> S. 489.105(3), F.S.

<sup>39</sup> The electrical wiring to the disconnect feed is fed from the "load side," or outgoing side.

<sup>40</sup> S. 489.105(3), F.S.

<sup>41</sup> *Id.*

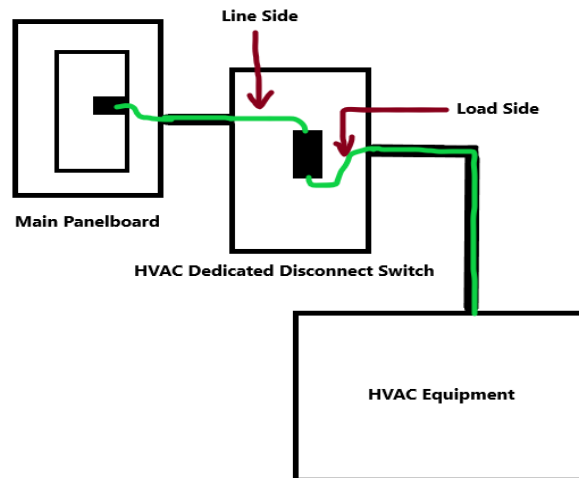
<sup>42</sup> In addition to the tasks a class A contractor may perform, a mechanical contractor may work on medical and fuel gas lines.

<sup>43</sup> *Id.*

<sup>44</sup> 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*

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 to the “line side” of the device to be powered.<sup>46</sup> 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.<sup>47</sup>

Under Florida law, 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.<sup>48</sup> 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, as indicated in the diagram below:



Under Florida law, only a licensed electrical contractor may perform “line side” work on the dedicated HVAC electrical disconnect switch.<sup>49</sup> 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.<sup>50</sup> 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.

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*Need Them*, Aug. 16, 2021, <https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them> (last visited Jan. 8, 2024).

<sup>45</sup> 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*, Jun 20, 2023, <https://www.linkedin.com/pulse/switching-safety-exploring-importance-disconnect/> (last visited Jan. 8, 2024).

<sup>46</sup> Barbara Bellesi Zito, *Line vs. Load Wire: What’s the Difference*, May 5, 2023, <https://www.angi.com/articles/line-vs-load-wire.htm> (last visited Dec. 20, 2023).

<sup>47</sup> Dave Robbs, *What are Amps, Watts, Volts, and Ohms, How Stuff Works*, Oct. 3, 2022, <https://science.howstuffworks.com/environmental/energy/question501.htm> (last visited Jan. 8, 2024).

<sup>48</sup> S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

<sup>49</sup> S. 489.505(12), F.S.

<sup>50</sup> S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

**STORAGE NAME:** h0481.CJS

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## HVAC System Warranties

### *General Background*

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product's manufacturer or seller to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement.<sup>51</sup> A warranty can be either express or implied.<sup>52</sup> An express warranty is a verbal or written assurance for a product, which 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.<sup>53</sup> Conversely, an implied warranty is an unstated assurance that the product is made for its intended purpose, which warranty exists in addition to any express warranty.<sup>54</sup> However, there is no implied warranty where a seller states that the product is sold "as is," "with all faults," or where the seller uses similar language.<sup>55</sup>

### *Manufacturer's, Distributor's, and Retailer's Warranties*

A manufacturer's, distributor's, or retailer's warranty protects a consumer from defects in a faulty product and generally attaches to a product at the time of its sale.<sup>56</sup> Such warranties are considered limited warranties because their coverage period generally lasts only for a certain time period after the product's sale, which time period is specified in the warranty agreement.<sup>57</sup>

Once the coverage period expires, the consumer may have the option to purchase an extended warranty under different coverage terms from the original warranty provider or a third-party provider to extend the product's protection period.<sup>58</sup> Such a warranty may also be purchased at any time to protect the consumer from common issues not typically covered by a standard manufacturer's, distributor's, or retailer's warranty, such as installation error or cosmetic defects.

### *Magnuson-Moss Warranty Act*

The Magnuson-Moss Warranty Act ("Act")<sup>59</sup> governs consumer product warranties at the federal level. Passed in 1975, the Act requires the manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.<sup>60</sup> The Act defines three types of consumers:

- The buyer of a consumer product;
- Any person to whom such product is transferred during the duration of an applicable warranty; and
- Any other person who is entitled by the terms of such warranty or under applicable State law to enforce the warranty's obligations.<sup>61</sup>

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<sup>51</sup> Will Kenton, *Warranty Definition, How it Works, Types, and Example*, Investopedia, Oct. 6, 2023, <https://www.investopedia.com/terms/w/warranty.asp> (last visited Jan. 8, 2024).

<sup>52</sup> 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

<sup>53</sup> S. 672.313, F.S.

<sup>54</sup> S. 672.314, F.S.

<sup>55</sup> S. 672.316, F.S.

<sup>56</sup> Kenton, *supra* note 51.

<sup>57</sup> *Id.*

<sup>58</sup> Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, July 9, 2019, <https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference> (last visited Jan. 8, 2024).

<sup>59</sup> 15 U.S.C. ss. 2301-2312 (1975).

<sup>60</sup> The Act does not apply if a seller or manufacturer does not provide a warranty on the product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, [https://thebusinessprofessor.com/en\\_US/consumer-law/magnuson-moss-warranty-act](https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act) (last visited Jan. 8, 2024).

<sup>61</sup> *O'Connor v. BMW of North America, LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); see also, s. 2310(d) of the Act (providing 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...").



## *HVAC System Warranties*

Before July 1, 2023, if a residential property that included an HVAC system was conveyed to a new owner, a manufacturer's warranty in effect on that system or a component thereof would not necessarily pass to the new owner, and if it did, the coverage period might be shortened or additional conditions might be imposed. Whether or not a warranty would pass to the new owner, and what consequences would attach, depended on the warranty agreement's terms and conditions.

However, in 2023, the Florida Legislature passed CS/HB 1203, which, in pertinent part, provided that an HVAC manufacturer's warranty runs with the property on which the HVAC system is a fixture, not with the original purchaser; thus, in the sale of a residential property as described above, the manufacturer's warranty automatically passes to the new owner. Further, the bill specified 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; and
- Such a transfer does not extend the remaining time of the warranty's coverage period.

Further, before July 1, 2023, it was possible for an HVAC system manufacturer to 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. However, under 2023 CS/HB 1203, 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.

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

### Attorney Fees

The traditional "English rule" entitled a prevailing party in a civil action to recover his or her attorney fees from the losing party as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the "American rule," where each party bears its own attorney fees unless a "fee-shifting statute" provides an entitlement to fees.

When such a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee; in 1985, the Florida Supreme Court held that courts should calculate this amount under what is known as the "loadstar approach."<sup>62</sup> Under this approach, the court must first determine the number of hours reasonably expended by the prevailing party's attorney. The court must then determine a reasonable hourly rate for such attorney, which may involve a consideration of the attorney's experience and practice locale. The number of hours reasonably expended (determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the "loadstar amount," which is considered an objective basis for what the attorney fee amount should be.

In certain instances, however, the court may greatly increase the loadstar amount by applying a contingency fee multiplier, which essentially takes the loadstar amount and multiplies that amount by a factor of 1.5, 2.0, 2.5, or some other number.<sup>63</sup> The concept of the contingency fee multiplier arose from judicial interpretations of statutory authorization of attorney fees in particular cases,<sup>64</sup> but the

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<sup>62</sup> *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

<sup>63</sup> The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-31 (Fla. 1990). Contingency risk multipliers are also referred to as contingency fee multipliers.

<sup>64</sup> The rationale for applying a contingency risk multiplier to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.



Legislature has also expressly provided for use of a contingency fee multiplier in certain cases.<sup>65</sup> In 2023, the Legislature amended s. 57.104, F.S., to provide that there is generally a strong presumption that the loadstar amount is sufficient and reasonable.<sup>66</sup>

## Effect of Proposed Changes

### Florida Building Code

HB 481 amends s. 553.775, 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 recuperate all attorney fees accrued from the losing party.

### HVAC Contractors

The bill amends s. 489.105, F.S., to broaden the definitions of “class A air-conditioning contractor,” “class B air-conditioning contractor,” and “mechanical contractor” to include a contractor whose services may extend to the execution of contracts requiring the skill, knowledge, and experience to:

- Replace, disconnect, and reconnect power wiring on the line side of the dedicated existing electrical disconnect switch on a single-phase electrical system; and
- Repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits.

Practically speaking, this would allow class A air-conditioning, class B air-conditioning, and mechanical contractors to complete an HVAC system repair or replacement without having to wait for a licensed electrical contractor to complete the line-side work or to repair or replace dedicated HVAC circuit components.

### HVAC System or System Component Warranties

The bill 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 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.

Instead, the bill 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.

Similarly, 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. Under the bill, s. 559.956, F.S., applies if:

- A sale of a residential property that includes an HVAC system as a fixture occurs on or after July 1, 2024; and

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<sup>65</sup> See s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

<sup>66</sup> Ch. 2023-15, L.O.F.

- A manufacturer's warranty is still in effect on the HVAC system or a system component.

Practically speaking, this means that if the purchaser of an HVAC system or system component for which a manufacturer's, distributor's, or retailer's warranty is provided fails to register the product, the warranty continues in full force and effect as though it had been registered. Further, on or after July 1, 2024, the new owner of a residential property sold with an HVAC system for which a manufacturer's warranty is still in place would not have to register the product with the manufacturer for the warranty to transfer and continue in full effect.

#### Effective Date

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 489.105, F.S., relating to definitions.

**Section 2:** Amends s. 553.775, F.S., relating to interpretations.

**Section 3:** Amends s. 559.956, F.S., relating to registration and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.

**Section 4:** Creates s. 559.957, F.S., relating to registration of heating, ventilation, and air-conditioning systems; prohibition against warranty conditioned upon registration.

**Section 5:** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill may have a positive fiscal impact on local government revenues to the extent that such entities prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus allowed to recoup all of their attorney fees, which fees are not subject to a reasonableness limitation.

##### 2. Expenditures:

The bill may have a negative fiscal impact on local government expenditures to the extent that such entities do not prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus required to pay all of the opposing party's attorney fees, which fees are not subject to a reasonableness limitation.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive economic impact on the private sector to the extent that private persons or businesses prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus authorized to recoup all of their attorney fees, which fees are not subject to a reasonableness limitation. Conversely, the bill may have a negative economic impact to the extent that private persons or businesses do not prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus required to pay all of the opposing party's attorney fees, which fees are not subject to a reasonableness limitation.

The bill may also have a positive economic impact on the private sector to the extent that it:

- Preserves an HVAC system or system component warranty where the original consumer, or a subsequent purchaser, does not register the product.
- Allows a class A air-conditioning, class B air-conditioning, or mechanical contractor to complete the line-side procedures of an HVAC system or system component repair or replacement in a manner that reduces costs for a consumer.

Further, the bill may have a negative economic impact on HVAC manufacturers, distributors, and retailers to the extent that such persons have to honor warranties they would not have otherwise had to honor.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**