Legal Update
ROPER, TOWNSEND & SUTPHEN, P.A.
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RELUCTANT EXPERTS

City, county, municipal and state employees occasionally find themselves designated and deposed as non-retained expert witnesses in litigation in which the government entity is neither a party nor has an interest in the outcome. These matters usually involve permitting, licensing or code issues. In such matters, governmental employees who most often perform purely administrative functions find themselves subject to the broad scope of expert discovery which are of no consequence to the governmental entity.

Typically, the designation of "expert" is founded upon the specialized knowledge an individual possesses through experience or education. Arguably, a government employee's expertise is acquired through the administerial work in the day-to-day operation of the governmental entity.

However, the government employee's knowledge is most often limited to what is contained within the administrative record in his or her performance of administrative duties. As such, an expert designation may be improper given an employee's limited knowledge of facts in the underlying matter for which the opinion is sought.

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ELEVENTH CIRCUIT CLARIFIES PUBLIC FORUM DOCTRINE

On September 16, 2024, the Eleventh Circuit decided, in part, *McDonough v. Garcia*, _F.4th _ (11th Cir. 2024). In *McDonough*, McDonough attended a Homestead city council meeting, which was open to the general public. The council invited speeches of up to three minutes at a time on any matters "pertinent to the City" during the public comment portion of each session. McDonough, a self-styled citizen activist, was a regular at these meetings, and after one of his comments was perceived as a threat, he was removed from a July, 2016 meeting. A month later, planning to attend the August meeting, McDonough arrived at City Hall. This time, a police sergeant was waiting for him. He informed McDonough that because of his behavior at the last meeting, the City had issued what it called a "trespass order." That order banned him from City Hall - including city council meetings. McDonough,

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This limitation was recognized in *Miami-Dade County v. Morejon*, 299 So.3d 1092 (Fla 3d DCA 2019). More specifically, the Third District Court of Appeals held a county employee cannot testify as an expert witness without explicit authorization* and personal knowledge of the underlying proceedings. The case was a wrongful death action brought by the father of a workman who died after falling through a skylight while working on a warehouse roof. The plaintiff sued the developer and contractor alleging these parties had failed to obtain certain permits from the County which created the condition causing his son's death. The developer and contractor listed the County Building Official as an expert. Neither the County nor the official were a party to the proceeding.

Plaintiff sought to depose the building official and the County filed a motion for protective order seeking to preclude the parties from eliciting testimony from the official as he was neither a retained expert nor a proper fact witness. The trial court denied the motion, however, that denial was overturned on appeal.

The Third District Court found that the building official did not possess personal knowledge of the subject warehouse, related permitting or the underlying proceedings. As such, he was neither qualified to testify as an expert nor as a fact witness under section 90.701, Florida Statutes (2019).

Florida courts also recognize that an unretained expert cannot be compelled to render an opinion where he lacks knowledge of the facts of the case. *See, e.g., Meltzer v. Coralluzzo*, 499 So.2d 69, 70 (Fla. 3d DCA 1986). Thus, under Florida law it is reversible error when a court compels an expert to testify when he has not been retained by the parties and has no specific knowledge of the case. *Kridos v. Vinskus*, 483 So.2d 727, 732 (Fla. 4th DCA 1985).

Court intervention through a protective order offers relief to a government employee designated and subpoenaed as a non-retained expert. Moreover, in some instances that employee may not even be a proper fact witness. We can provide assistance and guidance in these matters. Please contact our offices with any questions or comments.

By: Jeffrey A. Carter

*The City of Miami has an ordinance which states a County employee cannot testify as an expert without the County's explicit authorization.

understandably displeased, asked how he could get the ban lifted. The sergeant's response was that he could "write a letter." To whom, it was not clear, and what the letter should say was equally opaque.

McDonough's August trip to City Hall ended with an arrest for disorderly conduct. Needless to say, he was also prevented from attending the city council meeting. McDonough skipped the next several meetings too, fearing another arrest. He never did write a letter asking for his ban to be lifted, but starting in December of that year he returned to City Hall without incident and attended a meeting. He resumed his habit of regular attendance after that.

McDonough eventually filed suit and raised a variety of claims against the City of Homestead, the sergeant who escorted him out of the July meeting, and other involved officers. Only one issue concerns the Eleventh Circuit: whether the trespass order and his ban from future city council meetings violated the First Amendment. On that point, the district court found no constitutional error.

A panel of the Eleventh Circuit disagreed. *McDonough v. Garcia*, 90 F.4th 1080, 1094 (11th Cir.), *vacated and reh'g en banc granted*, 93 F.4th 1220, 1221 (11th Cir. 2024). After describing the parties' disagreement about the forum type involved, the Court noted that the "parties' uncertainty reflects the fact that our caselaw does not offer an easy answer." *Id.* at 1092. The panel came to what we called "the somewhat uncomfortable conclusion" that our earliest precedent dictated that the city council meeting McDonough attended was a designated public forum. *Id.* at 1087. And that early holding, we said, "was reaffirmed after Supreme Court precedents that pointed to—but did not demand—a different answer." *Id.* The panel then completed the analysis under the designated-public-forum standard, reversing the granting of summary judgment to the City but affirming the sergeant's qualified immunity win. *Id.* at 1094, 1096–97.

Soon enough, the full Court voted to hear this case *en banc*. The Court instructed the parties to brief two questions: *first*, "[w]hat kind of public forum are the City of Homestead's city-council meetings," and *second*, "what legal test applies to speech restrictions within that kind of forum?" Those questions were now considered.

The Eleventh Circuit first constructed a brief history of the Supreme Court's decisions on public forum doctrine and concluded that there were four separate and distinct categories of public forums - the traditional public forum, the designated public forum, the limited public forum, and the nonpublic forum.

The Eleventh Circuit noted that its own precedent had not followed the decisions laid down by the Supreme Court. Applying the Supreme Court's precedent, the Eleventh Circuit determined that Homestead's city council meetings were limited public forums – because while they were open to the public at large, they imposed content-based restrictions on speech. This rule sets out a content-based restriction defining the scope of the forum. Thus, the test for government's restrictions on speech "must not discriminate against speech on the basis of viewpoint" and "must be reasonable in light of the purpose served by the forum." However, the Court remanded the decision of whether Homestead's restrictions were reasonable to the panel.

By: David R. Jadon

2024 LEGISLATIVE UPDATE

The 2024 Florida legislative session came to a close with lawmakers finishing their work on time. The new budget totals 117.5 billion dollars, which has been described as a decrease from last year; however, when all appropriations are counted, it is an increase of more than 1 billion dollars but there was also a 3 billion dollar decrease in federal funds in the budget. The Legislature passed 325 bills, less than last year's 356 bills, but still the second biggest number in 17 years.

The following Legislative wrap-up summarizes those bills that will have the biggest impact on local government.

Agriculture & Environment

Department of Agriculture and Consumer Services

CS/CS/SB 1084 is the Department of Agriculture and Consumer Services legislative package. Among other things, the bill preempts the regulation of electric vehicle charging stations to the state and prohibits local governments from enacting related regulations.

Effective date: July 1, 2024, except as specified.

Energy Resources

CS/CS/HB 1645 revises various statutes relating to energy policy and regulation. It requires rural electric cooperatives and municipal electric utilities to have at least one mutual aid agreement with another electric utility for power restoration purposes following a natural disaster. In addition, it provides that a "Resiliency Facility" is a permitted use in all local government, commercial, industrial, and manufacturing land use categories and districts, and it specifies that such facilities must comply with landscape and buffering requirements for similar uses. A Resiliency Facility is defined as a facility of a public utility used for assembling, creating, holding, or deploying natural gas reserves for temporary use during a system outage or natural disaster. The bill prohibits a local government, after July, 2024, from amending its comprehensive plan or land development regulations in a manner that would conflict with a resiliency facility's classification as a permitted use in all land use categories and districts.

The bill prohibits community development districts and homeowners' associations from prohibiting utility fuel sources and gas appliances.

Effective date: July 1, 2024.

Regulation of Water Resources

CS/CS/1136 revises the criteria for licensing as a water well contractor to require a certain threshold of permitted contracting experience within the state.

Effective date: July 1, 2024.

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Employment & Personnel

Florida Retirement System
CS/HB 151 establishes the contribution rates paid by employers that participate in the Florida Retirement System (FRS), beginning July 1, 2024. In addition, the bill authorizes an FRS retiree to be reemployed with an FRS employer and receive both compensation and retirement benefits, provided the retiree is not reemployed within the six months immediately following the date of retirement. The effect of this change will eliminate the "suspension of benefits" period typically applied during months 7 through 12 after the date of retirement. The bill also closes the FRS Preservation of Benefits Plan to new members effective July 1, 2026.

Effective date: July 1, 2024.

Medical Treatment Under the Workers' Compensation Law
CS/SB 362 increases the limits on expert witness fees for healthcare providers from $200 to $300 per hour. The bill also increases the maximum reimbursement allowances for physicians and surgical procedures from 100 percent to 175 percent of the reimbursement allowed by Medicare, and 140 percent to 210 percent, respectively.

Effective date: January 1, 2025.

Employment Regulations
CS/CS/HB 433 addresses minimum wage and employment benefits requirements by political subdivisions, workplace heat exposure requirements, and employee scheduling regulations. The bill creates Section 448.106, F.S., to prohibit a political subdivision from requiring employers, including employers contracting to provide goods or services to the political subdivision, to meet or provide heat exposure requirements not otherwise required under state or federal law. It also prohibits a political subdivision from giving preference in a competitive solicitation to an employer based on the employer's heat exposure requirements. The bill does not limit the authority of a political subdivision from establishing heat exposure requirements for its own employees. "Heat exposure requirement" is defined in the bill and includes any standard to control an employee's exposure to heat or the sun, including water consumption and first aid measures.

The bill amends section 218.077, F.S., relating to wage and employment benefit requirements by political subdivisions by specifying that a political subdivision may not maintain a requirement that an employer pay a minimum wage other than a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law. It also prohibits a political subdivision through its purchasing or contracting procedures from seeking to control or affect the wages or benefits provided by its vendors, contractors, or other parties doing business with the political subdivision, and prohibits a political subdivision from using evaluation factors or bid qualifications to otherwise award preferences on the basis of wages or benefits provided by vendors or other parties doing business with the political subdivision. The bill specifies that amendments to section 218.077 do not impair any contract entered

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before September 30, 2026. Lastly, the bill preempts any local government regulation or requirement regulating scheduling, including predictive scheduling, by a private employer except as expressly authorized or required by state or federal law, or pursuant to federal grant requirements.

Effective date: July 1, 2024.

Law Enforcement and Correctional Officers
HB 601 addresses the use of civilian oversight boards relating to municipal and county law enforcement. It amends section 112.533, F.S., to ensure a uniform process for receiving, processing, and investigating complaints against law enforcement and correctional officers, and prohibits a political subdivision from adopting or enforcing any ordinance relating to the processing or investigation of complaints of misconduct except as expressly provided in section 112.533 or relating to civilian oversight of investigations by law enforcement agencies of complaints of misconduct. The bill authorizes sheriffs and municipal police chiefs to establish civilian oversight boards to review the policies and procedures of the sheriff's office and police department and provides for the membership of such boards.

Effective date: July 1, 2024.

Treatment by a Medical Specialist
CS/CS/SB 808 allows firefighters, law enforcement officers, correctional officers, and correctional probation officers to choose a medical specialist for the treatment of a compensable presumptive condition. Written notice of the selected specialist must be provided to the workers' compensation carrier, self-insured employer, or third-party administrator, who must authorize treatment by the chosen specialist or an alternative medical specialist with the same or greater qualifications. Within five days after receipt of the written notice, the carrier, employer, or third-party administrator must authorize treatment and schedule an appointment. The bill limits reimbursement for specialist treatment to 200 percent of the Medicare rate and specifies that the specialist must be board-certified in the relevant medical specialty.

Effective date: October 1, 2024.

Military Leave
SB 818 provides that public officials and employees of the state, a county, a municipality, or a political subdivision are entitled to their full pay for the first 30 days of active federal military service if such service is equal to or greater than 90 consecutive days.

Effective date: July 1, 2024.

Local Government Employees
SB 958 raises the statutory base salary rates for tax collectors and district school superintendents by $5,000. The bill also: allows tax collector employees to be eligible for a lump-sum monetary benefit for adopting a child from the child welfare system; allows county tax collectors to budget for and pay a hiring or retention bonus to employees, if such expenditure is approved by the Department of Revenue or board of county commissioners;

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and allows district school boards to contract with the county tax collector for a tax collector employee to administer road tests for driver licensure on school grounds at schools within the district.

Effective date: July 1, 2024.

Peer Support for First Responders
CS/HB 1415 revises the definition of "first responder" in section 111.09, F.S., to include correctional officers and correctional probation officers.

Effective date: October 1, 2024.

Qualifications for County Emergency Management Directors
CS/CS/HB 1567 creates minimum education, experience, and training standards for all county emergency management directors which include: 50 hours of training in business or public administration, business or public management, or emergency management or preparedness or a bachelor's degree; 4 years of specified experience in comprehensive emergency management services with direct supervisory responsibility for responding to at least one emergency or disaster; and 150 hours in comprehensive emergency management training provided through or approved by the Federal Emergency Agency (FEMA), including completion of specified courses. The bill provides that a master's degree in certain fields may be substituted for 2 years of the required experience but not for the required supervisory experience, or alternatively, certain professional accreditation may substitute for the required experience if the certification remains in good standing until the experience requirements are met.

Effective date: July 1, 2024.

Ethics & Elections

Artificial Intelligence Use in Political Advertising
CS/HB 919 creates section 106.145 of the Florida Statutes. It defines "generative artificial intelligence" as a machine-based system capable of emulating input data to generate synthetic content. The bill requires certain political advertisements, electioneering communications, or other political advertisements containing content generated with generative artificial intelligence to include a prominent disclaimer stating: "Created in whole or in part with the use of generative artificial intelligence (AI)." The disclaimer requirement applies if the generated content appears to depict a real person performing an action that did not actually occur, and the generated content was created with intent to injure a candidate or to deceive regarding a ballot issue, the political advertisement, electioneering communication, or other advertisement. The disclaimer must meet specific requirements regarding font size, readability, and presentation across different types of media. Failure to include the required disclaimer is punishable as a first-degree misdemeanor, in addition to any civil penalties provided by law. The bill also allows any person to file a complaint with the Florida Elections Commission for violations, with provisions for expedited hearings.

Effective date: July 1, 2024.

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Finance & Tax

Improvements to Real Property
CS/CS/SB 770 clarifies that a Property Assessed Clean Energy (PACE) program administrator may offer financing to a residential or commercial property only within the jurisdiction of a county or municipality that has authorized the program by ordinance or resolution. The bill also expands the eligible uses of the program, which include improvements for advanced wastewater treatment, flood mitigation, and sustainable building. The bill tightens the consumer protections surrounding the program (including additional disclosure requirements and greater financial scrutiny on a property owner's ability to repay), enhances oversight of contractors that install improvements, and imposes additional obligations on program administrators. Commercial and residential PACE programs are placed into separate statutes for clarity. It allows current contracts and authorizations between a county or municipality and a program administrator to continue without additional action by counties or municipalities, but a program administrator must comply with the changes and any contract, authorization, or interlocal agreement must be amended to comply with the changes.

Effective date: July 1, 2024.

Verification of Eligibility for Homestead Exemption
CS/HB 1161 requires the Department of Revenue to create a form that a property appraiser may use to provide a person with tentative verification of that person's eligibility to receive an exemption related to the applicant's status as a disabled veteran or surviving spouse after the purchase of homestead property.

Effective date: July 1, 2024.

Sheriffs in Consolidated Governments
CS/CS/SB 1704 modifies section 30.53, F.S., regarding the independent authority of sheriffs over personnel selection and management, and purchasing, by adding "procurement" and clarifying its applicability to sheriffs in consolidated governments.

Effective date: July 1, 2024.

General Government

Special Districts
CS/CS/HB 7013 revises several provisions of law relating to special districts. The bill repeals section 163.3756, F.S., relating to inactive community development agencies. It prohibits the creation of a new safe neighborhood improvement district on or after July 1, 2024. It repeals section 165.0615, F.S., relating to the municipal conversion of independent special districts upon elector-initiated and approved referendum.

In addition, the bill creates section 189.0312, F.S., relating to independent special districts. This new statute specifies that an elected member of an independent special district governing body may not serve for more than 12 consecutive years and provides that service of a term of

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office that commenced before November 5, 2024, does not count toward the 12-year limitation. This term limit does not apply to a community development district established under Chapter 190 or an independent special district created pursuant to a special act that provides that any amendment to Chapter 190 to grant additional powers constitutes a power of the district. In addition, the bill clarifies this new section does not require an independent special district governed by an appointed body to convert to an elected governing body. The bill also creates section 189.0313, F.S., which specifies that the boundaries of an independent special district shall be changed only by general law or special act and clarifies this section does not apply to a community development district created under Chapter 190.

The bill revises section 189.062, F.S., relating to special procedures for inactive special districts, by adding the following criteria as required documentation for the Department of Commerce to declare a special district inactive: the district is an independent special district or community redevelopment district created under part III of chapter 163 that has reported no revenue, no expenditures, and no debt for at least five consecutive fiscal years; and for a mosquito control district, the department has received notice from the Florida Department of Agriculture that the district has failed to file a tentative work plan and tentative work plan budget as required by law. The bill also revises this section of law relating to newspaper publication requirements for the declaration of inactive status of a special district that is a dependent special district with a governing body that is not identical to the governing body of a single county or a single municipality. It specifies that the notice must be mailed to the governing body of the county or municipality on which the district is dependent and provides that any objection to the declaration filed pursuant to Chapter 120 may include that the special district has outstanding debt obligations. It further provides that if a special district is declared inactive pursuant to section 189.062, the district may expend only funds necessary to service outstanding debt and to comply with existing bond covenants and contractual obligations.

The bill creates section 189.0694, F.S., to establish performance measures and standards for special districts, to include the following: establishing goals and objectives for each program and activity undertaken by the district, and providing an annual report on its website describing goals and objectives achieved by the district and any goals and objectives the district did not achieve.

The bill revises section 189.0695, F.S., to require the Office of Program Policy Analysis and Government Accountability to conduct a performance review of all safe neighborhood improvement districts no later than September 30, 2025. The bill repeals section 190.047, F.S., relating to the incorporation or annexation of a community development district. Also, the bill requires each independent fire control district to report annually to the State Fire Marshal regarding whether each of the district's volunteer firefighters has completed required trainings and certifications established pursuant to section 633.408, F.S. The bill amends chapter 388 relating to mosquito control districts. It provides that the boundaries of each mosquito control district may be changed only by a special act of the Legislature. It reduces the allowable special tax that may be levied by a mosquito control district from 10 mills to 1 mill and authorizes the board of a district to increase the special tax to no more than 2 mills if approved by referendum.

Effective date: July 1, 2024. *Cont'd 10*

Lost and Abandoned Property
CS/HB 487 amends section 705.103 of the Florida Statutes, which outlines procedures for law enforcement officers handling abandoned or lost property or a vessel that is present on public property or in public waters. Section 705.103 requires law enforcement to affix a notice to the property or vessel informing the owner that the property must be removed within a specified time, the consequences for failing to remove it, and, in the case of a vessel that has been designated derelict or a public nuisance, of the right to a hearing. This section also requires law enforcement to make reasonable efforts to obtain the name and address of the owner and any lienholder and to mail notice to the owner and lienholder. The bill changes the period within which a law enforcement officer must mail a copy of the required notice to the owner and lienholders. While current law requires the notice to be mailed on or before the date the notice is posted on the property or vessel, the bill requires the notice to be mailed on the date the notice is posted on the property or vessel or as soon thereafter as is practical.

Effective date: July 1, 2024.

Broadband
HB 1147 amends section 288.9963, F.S., relating to the provision of broadband service to unserved or underserved areas. It extends the expiration date of a promotional rate ($1 per wireline attachment per pole per year) that municipal electric utilities are required to offer to broadband providers for pole attachments within a municipal electric utility service territory. The date is extended from July 1, 2024, to December 31, 2028.

Effective date: June 30, 2024.

Food Delivery Platforms
CS/SB 676 provides for the regulation of food delivery platforms and expressly preempts such regulation to the state. A "food delivery platform" means a business that acts as a third-party intermediary for consumers by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The term does not include delivery or pickup orders placed directly with and fulfilled by a food service establishment. The bill authorizes the Department of Business and Professional Regulation to implement and enforce the provisions of the bill.

Effective date: Upon becoming law.

License or Permit to Operate a Vehicle for Hire
HB 377 authorizes vehicle-for-hire operators with a valid license or permit from one county or municipality to operate in other areas without obtaining additional licensing, permitting, or fees under specified conditions and excludes airports and seaports. The bill specifies that it does not grant specific authority to municipalities or counties to regulate or license vehicles for hire, which is preempted under section 163.211, F.S. (preemption of occupational licensing to the state).

Effective date: July 1, 2024.

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Unsolicited Proposals for Public-Private Partnerships

CS/HB 781 revises the process for public-private partnership proposals with respect to unsolicited proposals. It changes the requirement for public entities to publish notice of unsolicited proposals from mandatory to optional. The bill permits public entities to proceed with unsolicited proposals without a public bidding process if two public meetings are held, at which the public entity considers the benefits to the public, financial structure, qualifications of the private entity, compatibility with infrastructure plans, and public comments. It specifies that before approving an agreement, public entities must ensure the project is in the public's best interest, identify benefits apart from ownership if ownership is not transferred within 10 years for an unsolicited project, and determine adequate safeguards against costs or service disruptions. If the public entity decides to proceed without engaging in a public bidding process, it must publish in the Florida Administrative Register a report that includes information on the public entity's public interest determination.

Effective date: July 1, 2024.

Continuing Contracts

CS/CS/CS/HB 149 revises requirements relating to continuing contracts under the Consultants' Competitive Negotiation Act (CCNA). Under current law, the CCNA authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed $4 million, or study activities if the fee for professional services for each study does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation (except the contract must include a termination clause). HB 149 increases the maximum limit for continuing contracts under the CCNA from $4 million to $7.5 million plus an annual increase based on the Consumer Price Index. The increase will be adjusted annually by the Department of Management Services and published on its website.

Effective date: July 1, 2024.

Towing and Storage

CS/CS/HB 179 revises state laws relating to the towing and storage of vehicles and vessels. Current law requires counties, and authorizes municipalities, to establish maximum towing and storage rates. If the Florida Highway Patrol (FHP) requests a tow, the maximum rates set by FHP apply, unless the municipality or county has established rates. The towing company may have a lien on the vehicle relating to the towing or storage fee. A county or municipality may charge a fee of up to 25% of the maximum towing rate when a vehicle is towed from public property. This fee is collected by the towing company and given to the county or municipality after it is collected. The bill requires counties and the FHP to establish maximum rates that towers may charge for cleanup and disposal of hazardous and non-hazardous materials relating to a nonconsensual tow. It authorizes, but does not require, municipalities to establish such rates. The bill requires a tower requested to perform cleanup or disposal of hazardous or nonhazardous materials to notify the applicable local government or FHP of its intent not to perform such cleanup and disposal. A local government that has established maximum towing and storage rates must publish the rates on its website and such local government must establish a process for investigating and resolving complaints about fees

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charged that exceed such rates. The bill provides a list of fees that a towing-storage operator may charge the owner or operator of a vehicle or vessel and clarifies that these fees create a lien against a vehicle or vessel. It adds a provision that a tow requested by a local government is a type of tow for which any of the listed fees create a lien against the vehicle or vessel. The bill also revises processes for law enforcement agencies to check for vehicle or vessel information. Current law requires a law enforcement agency to contact the appropriate state agency within 24 hours of authorizing a towing-storage operator to remove a vehicle or vessel or receiving notification from a towing-storage operator to determine the owner's identity and any insurers or lienholders. The bill clarifies that the current law process for law enforcement's search for information on a towed vehicle or vessel may be used only if an approved third-party service cannot obtain the information. Current law authorizes an investigating agency to place a hold on a vehicle stored at a tower's storage facility under specified circumstances. The bill provides that if a vehicle is stored at a tower's facility under an investigatory or evidentiary hold, the investigating agency must take possession of the vehicle within 30 days unless another timeframe is otherwise agreed upon by the agency and the tower. In addition, the bill modifies the timeframes for the sending of a notice of lien by a towing-storage operator, revises the number of days that must pass before certain vehicles or vessels may be sold, amends provisions relating to the inspection or release of a vehicle, vessel, or personal property, amends provisions relating to challenging a wrongful taking and to posting a bond, amends the timeframes associated with notices of public sale of vehicles or vessels, and revises record retention requirements for towing-storage operators.

Effective date: July 1, 2024.

Motor Vehicle Parking on Private Property

CS/CS/HB 271 imposes duties and requirements on the owner or operator of private property used for motor vehicle parking, including a requirement to post visible signage containing the rules and rates for parking facilities. While current law prohibits counties and municipalities from enacting regulations restricting or prohibiting the right of a private property owner to establish rules and rates for parking on the property, the bill authorizes counties and municipalities to regulate the posted signage required by the bill relating to rules and rates for parking facilities.

Effective date: July 1, 2024.

Public Works Projects

CS/HB 705 (Shoaf) revises the definition of "public works project" in section 255.0992, F.S. to include all projects that are paid for with local funds in addition to state-appropriated funds. As amended, the definition excludes the provision of goods, services, or work incidental to the public works project, such as the provision of security services, janitorial services, landscaping services, maintenance services, transportation services, or other services that do not require a construction contracting license or involve supplying or carrying construction materials for a public works project. Under current law, section 255.0992 prohibits the state and political subdivisions from requiring bidders for public works projects to meet local preferences, wages, and employment benefit prerequisites. In addition to the revision of the "public works project" definition, the bill also clarifies that section 255.0992(2)(a), which prohibits the state

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or any political subdivision that contracts for a public works project from preventing a contractor, subcontractor, supplier, or carrier from participating in bidding based on geographic location, does not apply to a county or municipality that contracts for a public works project for which the county or municipality is the sole source of funding.

Effective date: July 1, 2024.

United States-produced Iron and Steel in Public Works Projects
SB 674 requires the state, local governments, and other public agencies and taxing districts to include a requirement in contracts for a public works project or the purchase of materials for a public works project that any iron or steel product permanently incorporated in the project be produced in the United States. The bill provides definitions for "government entity," "iron or steel product," "manufacturing process," "produced in the United States," and "public works project." A public works project means an activity paid for with any state-appropriated funds or state funds administered by a governmental entity that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of specified projects and facilities owned in whole or in part by a governmental entity. The requirement does not apply if the governmental entity administering funds for the project or purchase of materials for the project solely determines that: iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality; the use of United States iron or steel products will increase the total cost of the project by more than 20 percent; or compliance with the requirement is inconsistent with the public interest. The bill does not preclude the minimal use of foreign iron and steel materials if: the materials are incidental and ancillary to the primary product and are not separately identified in the project specifications; and the cost of the materials does not exceed one-tenth of one percent of the total contract cost or $2,500, whichever is greater. The bill also exempts specified electrical components, equipment, systems, and appurtenances. The bill directs the Department of Management Services to develop guidelines and procedures by rule to implement the bill's requirements.

Effective date: July 1, 2024.

Identification Documents
HB 1451 prohibits counties and municipalities from accepting as identification any identification card or document issued by any person or entity that knowingly issues such identification cards or documents to individuals who are not lawfully present in the United States. The prohibition does not apply to any documentation issued by, or on behalf of, the Federal Government.

Effective date: July 1, 2024.

Land Use, Housing, Building & Development

Building Regulations
CS/CS/CS/HB 267 revises standards and timeframes for the issuance of building permits by local governments, including the timeframes for determining whether an application is

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complete, whether additional information is necessary for the application to be deemed complete, and whether the application is approved or denied. The bill requires a local government to provide written notice to an applicant within 5 business days (reduced from 10) after receipt of an application advising the applicant what information, if any, is needed to deem the application complete. In addition, the bill requires a local government to approve, approve with conditions, or deny a complete building permit application, as follows:

- Within 30 business days after receiving a complete and sufficient application if an applicant uses a local government plans reviewer to obtain the following building permits if the structure is less than 7,500 square feet: a single-family residential unit or dwelling, accessory structure, alarm, electrical, irrigation, landscaping, mechanical, plumbing, or roofing;
- Within 60 business days after receiving a complete and sufficient application if an applicant uses a local government plans reviewer to obtain the following building permits if the structure is 7,500 square feet or more: residential units, accessory structure, alarm, electrical, irrigation, landscaping, mechanical, plumbing, or roofing;
- Within 60 business days after receiving a complete and sufficient application if an applicant uses a local government plans reviewer to obtain the following building permits: signs or nonresidential buildings that are less than 25,000 square feet;
- Within 60 business days after receiving a complete and sufficient application if an applicant uses a local government plans reviewer to obtain the following building permits: multifamily residential not exceeding 50 units; site-plan approvals and subdivision plats not requiring public hearing or public notice; and lot grading and site alteration;
- Within 12 business days after receiving a complete and sufficient application if an applicant uses a master building permit consistent with section 553.794 to obtain a site-specific building permit;
- Within 10 business days after receiving a complete and sufficient application for an applicant for a single-family residential dwelling applied for by a Florida-licensed contractor on behalf of a property owner who participates in a Community Development Block Grant Disaster Recovery program, except as specified; and
- Within 10 business days for applicants using an engineer or architect private provider who affixes her or her professional seal to the required affidavit.

These timeframes may be waived in writing by an applicant; however, a local government may not require waiver of the timeframes as a condition precedent to reviewing a building permit application. The bill removes from current law the procedure by which local governments may make up to three requests for additional information from an applicant. If a local government fails to meet specified deadlines, it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline unless the parties agree in writing to a reasonable extension of time, the delay is caused by the applicant, or the delay is attributable to a force majeure event or other extraordinary circumstance. A local government does not have to reduce the fee if the local government provides written notice to the applicant within the appropriate timeframe specifically identifying the reasons the

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application is deficient. If the applicant revises the application within 10 business days after receiving such notice, the local government has 10 business days to approve or deny the permit unless the applicant agrees to a longer period in writing. If the local government fails to issue or deny the permit within 10 days after receiving revisions, it must reduce the permit fee by 20 percent for each business day it fails to meet the deadline unless the applicant agrees to a longer period. The bill amends section 553.80, relating to enforcement, to clarify that local governments may use fees and any related fines or investment earnings, they have collected for enforcing the Florida Building Code to upgrade technology hardware and software systems used to enforce the Florida Building Code.

Effective date: January 1, 2025.

Alternative Mobility Funding Systems

CS/HB 479 addresses the use of mobility fees by local governments as an alternative to transportation concurrency and modifies section 163.31801 relating to impact fees. The bill amends section 163.3164, F.S., to define "mobility fee" and "mobility plan" in the Community Planning Act. The bill makes clarifying changes to proportionate share requirements in section 163.3180, F.S., relating to transportation concurrency. If a local government elects to repeal transportation concurrency, the bill authorizes the local government to adopt an alternative transportation system that is mobility-plan and fee-based or an alternative transportation system that is not mobility-plan and fee-based. The local government may not use an alternative transportation system to deny, time, or phase an application for land use approval provided the applicant agrees to pay for the development's identified transportation impacts via the funding mechanism adopted by the local government. It specifies the alternative funding mechanism must comply with section 163.31801 relating to impact fees and provides that the local government may not impose upon new development any responsibility to fund an existing transportation deficiency. The bill specifies that if a county and a municipality charge the developer a fee for transportation capacity impacts, the local governments must execute an interlocal agreement to coordinate the mitigation of their respective capacity impacts. The bill establishes minimum requirements for the interlocal agreement, including provisions to ensure the development is not charged twice for the same impacts, establish a methodology for determining the legally permissible fee, require the local government that issues the building permit to collect the fee unless agreed to otherwise, and provide a method for the distribution of collected revenue between the county and the municipality. If a county and municipality have not entered an interlocal agreement by October 2025, the bill specifies that: 1) the fee charged to the development shall be based on the apportioned impacts as identified in the developer's traffic impact study or the county or municipality's adopted mobility plan; 2) the developer shall receive a 10 percent reduction in the total fee; and 3) the county or municipality issuing the building permit must collect the fee and distribute the proceeds within 60 days after the developer's payment. The bill amends section 163.31801 relating to impact fees by specifying the data used in an impact fee study must be available within four years of the current impact fee update, and that the new study must be adopted by the local government within 12 months of the initiation of the new impact fee study if the local government increases the impact fee. It further specifies that if a local government adopts an alternative transportation system, the holder of any transportation impact fee credits is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date the new alternative system was established.

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Effective date: October 1, 2024.

Expedited Approval of Residential Building Permits

CS/CS/CS/SB 812 requires specified counties and municipalities to establish a program for subdivisions and planned communities with a two-step process for obtaining a preliminary and final plat. The program allows developers to obtain building permits and begin the construction process prior to the issuance of the final plat. By October 1, 2024, counties with over 75,000 residents, and municipalities with over 10,000 residents and 25 acres or more of contiguous land designated in the municipal comprehensive plan as land that is agricultural or to be developed for residential purposes, must create the program. The bill requires the governing body of municipalities and counties to create:

- A two-step application process for the adoption of a preliminary plat and for a final plat, and to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes that the governing body must issue, but not less than 50 percent of the applicable building permits for the residential subdivision or planned community indicated in the preliminary plat. By December 31, 2027, the program must be updated to increase the percentage to 75%.
- The governing body must maximize its administrative processes to expedite the review and approval of applications, plats, and plans under the program.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities. A master building permit issued pursuant to this requirement is valid for three consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier. After a new Florida Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for three consecutive years.

The bill allows an applicant to use a private provider to expedite the application process for building permits after a preliminary plat is approved under the program. Additionally, the bill requires a governing body to establish a registry of at least three "qualified contractors," as defined in the bill, whom the local government may use to supplement staff resources in ways determined by the governing body for processing and expediting the review of an application for a preliminary plat or related plans. Such qualified contractors may not have a conflict of interest with the applicant. The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application. The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the county or municipality's governing body and recorded in the public records by the clerk of the circuit court. The bill provides that an applicant for a building permit may not obtain a temporary or final certificate of occupancy for each residential structure or building until the final plat is approved by the governing body and recorded in the public records. The bill requires an applicant to post a performance bond of up to 130% for

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infrastructure construction on a phase-by-phase basis. It also requires an applicant to indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury. However, such indemnification does not extend to governmental actions that infringe on the applicant's vested rights.

An applicant has a vested right in a preliminary plat that has been approved with conditions by a governing entity, if: the applicant relies in good faith on the approved preliminary plat; and the applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property. Upon the establishment of an applicant's vested rights, a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill defines other terms used in the act including "Applicant," "Final plat," "Local building official," "Plans," and Preliminary plat."

Effective date: May 29, 2024

Education

CS/CS/HB 1285 makes numerous changes to laws relating K-12 public schools. In addition, the bill imposes limitations on certain local government land use approvals relating to private schools. Specifically, the bill authorizes a private school to use facilities on any property owned or leased by a library, community service organization, museum, performing arts venue, theatre, cinema, or church facility under section 170.201, which is or was actively used as such within 5 years of any executed agreement with a private school to use the facility, any facility or land owned by a Florida College System institution or university, any similar public institutional facilities, and any facility recently used to house a school or licensed child care facility, under any such facility's preexisting zoning and land use designations without rezoning or obtaining a special exception or a land use change, and without complying with any mitigation requirements or conditions. The facility must be located on property used solely for the purposes described and must meet applicable state and local health, safety, and welfare laws and regulations, including fire safety and building safety. Similar provisions are included for private schools that purchase lands from any of these facilities and institutions.

Effective date: July 1, 2024.

Local Government Actions

CS/CS/SB 1628 modifies the exemptions to the current law requirement in sections 125.66(3) and 166.041(4), F.S., which require municipalities and counties to provide a business impact estimate prior to ordinance adoption. The bill requires local governments to complete a business impact statement prior to adopting and implementing a comprehensive plan amendment or land development regulation, other than those amendments initiated by a private party.

Effective date: October 1, 2024. *Cont'd 18*

Public Records & Public Meetings

County and City Attorneys
CS/HB 103 creates a new public records exemption for personal identifying information of current county and municipal attorneys, including deputy and assistant city and county attorneys, and their families. Information exempted includes home addresses, telephone numbers, dates of birth, places of employment of spouses and children, and names and locations of schools and daycare facilities of children.

Effective date: July 1, 2024.

Animal Foster or Adoption
CS/CS/HB 273 introduces an exemption from public records requirements for records containing personal identifying information of individuals who foster, adopt, or receive legal custody of an animal from an animal shelter or animal control agency operated by a humane society or local government.

Effective date: June 21, 2024

Reporter of Child Abuse, Abandonment, or Neglect
HB 7001 removes the scheduled repeal for the exemption from public record requirements for identifying information related to individuals reporting child abuse, abandonment, or neglect, except under certain circumstances.

Effective date: October 1, 2024.

Utility Owned or Operated by a Unit of Local Government
CS/SB 7006 saves from repeal the current public records and public meetings exemptions of the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access;
- Information relating to the security of existing or proposed information technology systems or industrial control technology systems; and
- Customer meter-derived data and billing information in increments less than one billing cycle.

Effective date: October 1, 2024.

Recording of Notification Service
CS/CS/HB 285 provides that all electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to a clerk of court or property appraiser for the purpose of registering for a recording notification service or a related service pursuant to section 28.47, F.S., are confidential and exempt from disclosure as a public record. The bill expands upon legislation enacted in 2023 that required court clerks and authorized property appraisers to create a free recording notification service under which property owners

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may register for notification if a land record has been filed on their property. The public records exemption applies to information held before, on, or after the bill's effective date.

Effective date: May 6, 2024

Financial Information Regarding Competitive Bidding
CS/HB 379 revises a current law public records exemption for any financial statement that an agency requires a prospective bidder to submit to prequalify for bidding or responding to a proposal for a road or any other public works project. The bill expands this exemption to include "any other financial information necessary for the agency to verify the financial adequacy of a prospective bidder."

Effective date: July 1, 2024.

Suicide Victims
CS/SB 474 creates a public records exemption for a photograph or video or audio recording that depicts or records the suicide of a person when it is held by an agency, as well as an autopsy report of a person whose manner of death was suicide. It allows for disclosure to a surviving spouse, surviving parents, or surviving adult children or siblings, as specified. The bill also defines the term "suicide of a person" and specifies procedures for disclosure to certain government entities and notification of the disclosure to appropriate next of kin. The records exemptions in the bill are retroactive.

Effective date: March 22, 2024

Military Personnel and their Spouses and Dependents
SB 548 creates a public records exemption for the identification and location information of current and former military personnel and their families. "Military personnel" means those employed by the U.S. Department of Defense with access to "secret" or "top secret" information or service members of special operations forces. The bill requires such military personnel to submit a written request to exempt the information from public disclosure to an agency holding such information. The written request must state the requestor has made reasonable efforts to protect the information from being accessible through other means available to the public. The exemption applies retroactively.

Effective date: April 26, 2024

Clerks of the Circuit Court, Deputy Clerks, and Clerk Personnel
CS/HB 983 provides a public records exemption for personal and identifying and location information of current clerks of circuit court, deputy clerks of circuit court, and clerk of circuit court personnel and the names and personal identifying and location information of spouses and children of such persons. The exemption is retroactive.

Effective date: July 1, 2024.

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School Guardians
HB 1509 creates a public records exemption for information relating to school guardians held by the Florida Department of Law Enforcement, a law enforcement agency, a school district, or a charter school.

Effective date: July 1, 2024

Public Safety

Lights Displayed on Fire Department Vehicles
CS/HB 463 addresses the circumstances under which government-owned fire department vehicles may display blue lights. Current law permits fire department and fire patrol vehicles to display red or red and white lights. The bill authorizes government-owned fire department vehicles, except vehicles of the fire patrol or volunteer fire departments, to display blue lights in addition to red or red and white lights, if the vehicles: have a gross vehicle rating of more than 24,000 pounds, are authorized in writing by the fire chief of the government agency; and show or display the blue lights only in the rear.

Effective date: July 1, 2024.

Unauthorized Public Camping and Public Sleeping
CS/CS/HB 1365 creates section 125.0231, F.S., which specifically states that a County or Municipality **MAY NOT AUTHORIZE OR OTHERWISE ALLOW** any person to regularly engage in public camping or sleeping on any publicly owned property, at any public building or its grounds, and on any public right of way under the jurisdiction of the local government. ***Ignoring or being complaisant about a person camping or sleeping in public falls into the category of "otherwise allowing".***

IMPORTANT TO NOTE: Any County/Municipal resident or owner of a business in the County/Municipality or the Attorney General may bring a civil action against the County for failure to abide by the above requirement. If the resident or business owner prevails in a civil action, the court may award reasonable expenses incurred in bringing the action including court costs and attorney's fees, investigative costs, witness fees, and deposition costs.

A County/Municipality MAY, by majority vote, designate a public property for use by homeless populations. A County/Municipality does not have to designate a public property for such use but if it does, there is a rather onerous list of things that the County/Municipality has to do in order to maintain such a property including but not limited to:

- The designated property can only be maintained for a "homeless camp" for a continuous period of not more than one year;
- The site cannot cause a reduction in value to a residential or commercial property adjacent to the designated area;
- The designated property must be approved by the Department of Children and Families;
- The County must develop a plan to ensure the following standards at the designated property:

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- ***safety and security
- ***clean and operable restrooms and running water
- ***coordinate access to behavioral health treatment resources
- prohibit illegal substances
- publish standards on website

- Undergo inspections by the Department of Children and Families.

***Fiscally constrained Counties do not have to comply with these items if the governing body finds compliance would result in a financial hardship

ALSO IMPORTANT TO NOTE: During a Declared State of Emergency these statutory requirements do not apply.

Effective date: July 1, 2024.

Purple Alert
HB 937 requires local law enforcement agencies to develop policies for activation of a "Purple Alert" for missing adults with certain mental or cognitive disabilities, intellectual or developmental disabilities, a brain injury, or another physical, mental, or emotional disability, under specified circumstances. The local policy requirements apply to a missing adult on foot or in an unidentified vehicle. The bill specifies minimum requirements for local Purple Alert policies and the conditions under which a local law enforcement agency may request the Florida Department of Law Enforcement's (FDLE) Missing Endangered Persons Information Clearinghouse to open a case. It also identifies the roles of FDLE and other agencies in disseminating a Purple Alert.

Effective Date: July 1, 2024.

<u>Transportation</u>

Traffic Enforcement
CS/CS/HB 1363 (Busatta Cabrera) imposes additional requirements on the installation and use of traffic infraction detectors, including school zone cameras. The bill prohibits, after July 2025, using a contract awarded by another governmental entity outside this state to procure contracts with any traffic infraction system vendor or manufacturer. It also prohibits a governmental entity from knowingly entering or renewing a contract for a camera to enforce traffic infractions where the contracting vendor is owned by the government of a foreign country of concern or a foreign country of concern has a controlling interest in the contracting vendor. The bill revises section 316.0083, F.S., to add a new paragraph (4) (a), which requires the following:

- After July 1, 2025, a county or municipality must enact an ordinance for the placement or installation of, one or more traffic infraction detectors. It requires the local government to consider, at the public hearing on the ordinance, data supporting the installation and operation of each detector, including intersection-specific safety data.
- A county or municipality operating traffic infraction detectors must

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annually report the results of all traffic infraction detectors within the county or municipality's jurisdiction and consider the report at a public meeting.

- Before a county or municipality contracts or renews a contract to place or install traffic infraction detectors, the county or municipality must approve the contract or contract renewal at a regular or special meeting of the county or municipality's governing body.
- Specific public meeting requirements relating to the adoption of ordinances, consideration of the annual report, and contracts relating to traffic infraction detectors.

A local government's compliance or sufficiency of compliance with the new paragraph (4)(a) may not be raised in a proceeding challenging specified traffic violations enforced by a traffic infraction detector. A local government that does not comply with the new paragraph (4)(a) is suspended from operating traffic infraction detectors under 316.0083(4) until such noncompliance is corrected. Lastly, the bill requires local governments operating traffic infraction detectors to report specified information to the Department of Highway Safety and Motor Vehicles on an annual basis.

Effective date: July 1, 2024.

If you have any questions regarding any of these bills or the impacts of the same, you should contact your general counsel or feel free to contact our office directly.

By: Sherry G. Sutphen
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FIRM NEWS

We are pleased to celebrate Kiley Smith passing the Florida Bar exam and transitioning from a law clerk to a licensed attorney with our firm! Kiley served as a law clerk with our firm in the Spring of 2024 before graduating law school and taking the Florida Bar exam. Through her experience with our firm as well as her time serving as a Certified Legal Intern with the Ninth Circuit Public Defender's office and intern for the Honorable Judge Bronwyn C. Miller in the Florida Third District Court of Appeal, Kiley has laid a strong foundation for her legal career. Kiley was sworn in to the Florida Bar by Judge Jewett at the Orange County Courthouse last week after receiving her results. Now, as a licensed attorney, Kiley is ready to make an even greater impact with the firm by zealously advocating for our clients and further advancing her legal expertise.

FIRM SUCCESS

Dismissal Granted for the Court's Lack of Subject Matter Jurisdiction

Recently, David Belford was able to secure the dismissal of a Complaint based on Plaintiff's failure to plead an amount in controversy sufficient to meet the jurisdiction of Circuit Court. Based on *Fla. Stat.* § 26.012(2)(a), Circuit Courts in the State of Florida have exclusive jurisdiction over all actions at law not granted to county courts. After January 1, 2023, *Fla. Stat.* § 34.01(c) provides that county courts have jurisdiction over matters that do not exceed $50,000.

It was argued, and the Court agreed, that the Complaint failed to plead damages sufficient to meet the jurisdictional threshold. Therefore, Court determined that it lacked the authority to adjudicate any of the claims, defenses, or controversies presented. Plaintiff's Complaint was dismissed and the matter was closed.

Court Agrees with County on Notice Issue and Open and Obvious Nature of Condition, in Granting Summary Judgment

A Circuit Court Judge recently agreed with the arguments in the Defendant's Motion for Summary Judgment, drafted by Attorney Ramon Vazquez, and argued by Attorney Chris Prusinowski, that an allegedly dangerous condition (a floor mat) was an open and obvious condition. The Court further agreed that the County did not have actual or constructive notice of the allegedly dangerous condition of the floormat, in Granting Final Judgment on behalf of the County. In the Order Granting Final Judgment, the Court cited to the County's case law which provided, "the mere fact that an accident occurred does not give rise to an inference of negligence." *Robinson v. Allstate Insurance Company*, 367 So.2d 708 (Fla. 3d DCA 1979); *Vermuelun v. Worldwide Holidays, Inc*., 922 So.2d 271, 273 (Fla. 3d DCA 2006) (affirming summary judgment and finding that "the mere happening of an accident does not give rise to an inference of negligence."). The Court further noted in its order that the Plaintiff's lack of a response to the County's Motion was sufficient in itself to grant summary judgment in favor of the County.

The Court's ruling marked a favorable end to a matter that had been in litigation since 2020.

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If you are interested in being added to our newsletter e-mail list, or if you wish to be taken off of this list, please contact Krysta Reed at kreed@roperpa.com.

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