

**ESCAMBIA COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AND CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER**

**Use of Tourist Development Taxes**



Sherrill F. Norman, CPA  
Auditor General

**Board of County Commissioners, Clerk of the Circuit Court and Comptroller,  
and County Administrator**

During the period October 2020 through December 2021, the following individuals served on the Escambia County Board of County Commissioners:

	<u>District No.</u>
Jeffrey Bergosh, Chairman from 11-16-21, Vice Chairman 11-17-20 through 11-15-21	1
Douglas Underhill, Vice Chairman from 11-16-21	2
Lumon May	3
Robert Bender, Chairman 11-17-20 through 11-15-21, Vice Chairman through 11-16-20	4
Steven Barry, Chairman through 11-16-20	5

Also, during the period October 2020 through December 2021, Pamela Childers served as Clerk of the Circuit Court and Comptroller, Janice Gilley served as County Administrator through June 17, 2021, and Wes Moreno served as Interim County Administrator from June 18, 2021.

The team leader was Jim Beaumont, CPA, and the audit was supervised by Shane Herman, CPA.

Please address inquiries regarding this report to Derek Noonan, CPA, Audit Manager, by e-mail at [dereknolan@aud.state.fl.us](mailto:dereknolan@aud.state.fl.us) or by telephone at (850) 412-2864.

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# ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AND CLERK OF THE CIRCUIT COURT AND COMPTROLLER

## **SUMMARY**

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This operational audit of the Escambia County Board of County Commissioners (BCC) and Clerk of the Circuit Court and Comptroller (Clerk) focused on the BCC and Clerk's use of tourist development tax (TDT) collections in accordance with Section 125.0104, Florida Statutes, and BCC ordinances. Our audit disclosed the following:

**Finding 1:** BCC ordinances include provisions related to the authorized uses of TDT collections that are contrary to State law.

**Finding 2:** Contrary to State law, the BCC did not review TDT expenditures that the Tourist Development Council believed to be unauthorized and take appropriate administrative or judicial actions to ensure compliance with State law.

**Finding 3:** Our audit disclosed TDT projects and expenditures for which BCC and Clerk records did not demonstrate that the primary purpose was to carry out specified provisions of State law and promote tourism. In addition, the BCC did not have policies and procedures requiring a determination of record be made that the primary purpose of a proposed TDT project or expenditure is to carry out specified provisions of State law and promote tourism.

## **BACKGROUND**

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Pursuant to the State Constitution,<sup>1</sup> the Board of County Commissioners (BCC) is the governing body in Escambia County (County), and State law<sup>2</sup> outlines the general duties and responsibilities of the BCC. The BCC is composed of five County Commissioners, and each County Commissioner is elected to a 4-year term by the voters in the geographical district in which he or she resides. The BCC approves the County budget, adopts local ordinances and resolutions, and establishes policies and procedures that govern the County and protect the health, safety, and welfare of the citizens.

The Escambia County Clerk of the Circuit Court and Comptroller (Clerk) was established by the State Constitution<sup>3</sup> as a county officer elected by the citizens of Escambia County. The Clerk serves as the ex-officio clerk of the BCC, auditor, recorder, and custodian of all county funds and, per BCC ordinances,<sup>4</sup> the Clerk is responsible for the collection and administration of the tourist development tax (TDT).

State law<sup>5</sup> authorizes counties to levy and impose five separate local option taxes, collectively referred to as the TDT, and allows TDT rates of up to 6 percent of each dollar collected from rents of living quarters or accommodations in short-term (less than 6-month) arrangements. Pursuant to State law,<sup>6</sup> TDT

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<sup>1</sup> Article VIII, Section 1 of the State Constitution.

<sup>2</sup> Chapter 125, Florida Statutes.

<sup>3</sup> Article VIII, Section 1(d) of the State Constitution.

<sup>4</sup> Section 90-55, Escambia County Code of Ordinances.

<sup>5</sup> Section 125.0104, Florida Statutes.

<sup>6</sup> Section 125.0104(5)(e), Florida Statutes.

collections are to only be used for purposes specified in law and any use for a purpose not specified is expressly prohibited. Generally, TDT collections may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the local option tax levied.<sup>7</sup> The Attorney General has opined on numerous occasions<sup>8</sup> that, in addition to carrying out a provision of State law, an expenditure of TDT collections must be based on a determination by the governing body of the county that the activity directly and primarily promotes tourism.

As a condition precedent to the receipt of TDT collections, State law<sup>9</sup> provides that a county must establish a tourist development trust fund to account for TDT collections. State law<sup>10</sup> also provides that at least 60 days prior to the enactment of the ordinance levying the tax, the BCC shall adopt a resolution establishing and appointing the members of the county tourist development council (TDC)<sup>11</sup> and that the TDC is to continuously review expenditures from the tourist development trust fund and receive, at least quarterly, expenditure reports from the BCC or its designee.<sup>12</sup> Expenditures which the TDC believes to be unauthorized are to be reported to the BCC and the Florida Department of Revenue, which are required to review the TDC's findings and take appropriate administrative or judicial action to ensure compliance with State law.<sup>13</sup>

Pursuant to State law and BCC ordinances,<sup>14</sup> the BCC accounts for its TDT transactions in the Tourist Promotion Fund. During the period October 2020 through March 2021, the BCC levied and imposed TDT of 4 percent (based on three separate levies) on each dollar collected from short-term rentals of living quarters or accommodations within the County. Effective April 1, 2021, the BCC levied an additional TDT of 1 percent (a fourth levy), for a total of 5 percent. As shown in Table 1 below, during the period October 2020 through December 2021, the BCC received TDT collections of \$21.9 million.

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<sup>7</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 2021.

<sup>8</sup> For example, Attorney General Opinion Nos. 83-18, 2010-09, and 2015-14.

<sup>9</sup> Section 125.0104(3)(i), Florida Statutes.

<sup>10</sup> Section 125.0104(4)(b) and (e), Florida Statutes.

<sup>11</sup> Pursuant to Section 125.0104(4)(e), Florida Statutes, the chair of the BCC, or any other member of the BCC as designated by the chair, shall serve on the TDC. Two members of the TDC shall be elected municipal officials, at least one of whom shall be from the most populous municipality in the county or subcounty special taxing district in which the TDT is levied. Six members shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the TDC shall be electors of the county.

<sup>12</sup> Section 125.0104(3)(i) and (4)(e), Florida Statutes.

<sup>13</sup> Section 125.0104(4)(e), Florida Statutes.

<sup>14</sup> Section 90-58(a), Escambia County Code of Ordinances.

**Table 1**  
**Tourist Development Tax Collections**  
**(in Thousands)**

**For the Period October 2020 through December 2021**

TDT Levied	Amount
First Levy: 2 Percent	\$ 9,295
Second Levy: 1 Percent	4,647
Third Levy: Professional Sports Franchise Facility Tax (1 Percent)	4,647
Fourth Levy: Additional Professional Sports Franchise Facility Tax <sup>a</sup> (1 Percent)	3,306
<b>Total TDT Collections</b>	<b><u>\$21,895</u></b>

<sup>a</sup> Effective April 1, 2021.

Source: Clerk records.

## FINDINGS AND RECOMMENDATIONS

### Finding 1: Escambia County Code of Ordinances

Our examination of Escambia County Board of County Commissioners (BCC) ordinances disclosed instances in which Tourist Development Tax (TDT) provisions were contrary to State law. Specifically, we found that the provisions related to TDT administration costs and allowable uses were not consistent with State law.

**TDT Administration Costs.** While State law<sup>15</sup> provides that the TDT collected will be remitted to the Florida Department of Revenue (DOR) before being returned to the county, State law also provides that a county may adopt an ordinance allowing the county to locally collect and administer the TDT instead. State law<sup>16</sup> requires such an ordinance to include specific provisions. One such provision is that a portion of the TDT collected may be retained by the county for costs of administration, but such portion shall not exceed 3 percent of collections.

As allowed by State law, the BCC adopted an ordinance<sup>17</sup> providing for the County's collection and administration of the TDT. Pursuant to the BCC ordinance, the Clerk of the Circuit Court and Comptroller (Clerk) is responsible for those activities. The ordinance<sup>18</sup> further provides that 3 percent of the TDT moneys collected shall be retained and allocated to the Clerk for the costs of administering the TDT. As such, the ordinance requires the County to retain 3 percent of TDT collections even when the actual costs of administering the TDT are less than 3 percent of TDT collections, which is contrary to the intent of the State law. In response to our inquiry, BCC personnel stated that the ordinance provision indicating that a total of 3 percent of TDT collections shall be retained for costs of administration was enacted prior to the hiring of current BCC personnel, and "it was likely assumed that the costs of administration would always come to at least 3 percent."

<sup>15</sup> Section 125.0104(10)(a), Florida Statutes.

<sup>16</sup> Section 125.0104(10)(b), Florida Statutes.

<sup>17</sup> Section 90-55, Escambia County Code of Ordinances.

<sup>18</sup> Section 90-56(b), Escambia County Code of Ordinances.

We also noted that the Clerk's procedures,<sup>19</sup> were inconsistent with the ordinances as the procedures specify that the Clerk retains the lesser of 3 percent of the budgeted TDT collections or the actual costs of TDT administration up to a maximum of 3 percent of actual TDT collections. During the 2020-21 fiscal year, the Clerk retained a total of \$300,000 for administering the TDT, which was less than both the Clerk's calculated \$336,000 TDT administration costs and 3 percent of the actual TDT collections of \$17.67 million, or \$530,100. Notwithstanding, without revision, the ordinance provisions specifying that 3 percent of the TDT moneys collected shall be retained and allocated to the Clerk for the costs of administering the TDT are contrary to State law and increase the risk that future TDT collections will be retained in excess of the actual administration costs permitted in State law.

**Allowable Uses of TDT Collections.** State law<sup>20</sup> provides that TDT collections are to only be used for purposes specified in law and any use for a purpose not specified is expressly prohibited. State law<sup>21</sup> specifies allowable uses of TDT collections based upon the particular local option tax levied. Pursuant to State law,<sup>22</sup> the first 3 percent levied by the BCC may be used for various purposes, including, but not limited to, activities related to the construction, remodeling, or operation of publicly owned and operated convention centers, sports stadiums, sports arenas, or coliseums and publicly owned auditoriums, aquariums, or museums; to finance the maintenance, improvement, and protection of beaches as those uses relate to the physical preservation of the beaches; and for the promotion and advertisement of tourism to the County.

As shown in Table 1 in the **BACKGROUND** section of this report, the other 2 percent of the TDT levied by the BCC consists of two 1 percent local option taxes commonly referred to as the Professional Sports Franchise Facility Tax (PSFFT) and the Additional Professional Sports Franchise Facility Tax (APSFFT). The authorized uses provided in State law<sup>23</sup> for the PSFFT and APSFFT collections are more limited. Specifically, the PSFFT is to be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers; to pay the operation and maintenance costs of convention centers, subject to certain limitations; and to promote and advertise tourism. The APSFFT may be used for the same purposes excluding the construction, renovation, maintenance, or operation of convention centers.

We noted that some BCC ordinances authorize uses of PSFFT collections for purposes not explicitly authorized by State law. Specifically, one ordinance<sup>24</sup> provides that PSFFT collections may be used to pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. These are allowable uses for collections from the first 3 percent of the TDT levied but are not allowable uses for collections from the PSFFT levy. Another ordinance<sup>25</sup> authorizes uses of

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<sup>19</sup> *TDT Cost Allocation Procedure.*

<sup>20</sup> Section 125.0104(5)(e), Florida Statutes.

<sup>21</sup> Sections 125.0104(3)(l) and (n) and 125.0104(5)(a) through (d), Florida Statutes.

<sup>22</sup> Section 125.0104(5)(a) through (d), Florida Statutes.

<sup>23</sup> Section 125.0104(3)(l) and (n), Florida Statutes.

<sup>24</sup> Section 90-52(a), Escambia County Code of Ordinances.

<sup>25</sup> Section 90-57, Escambia County Code of Ordinances, provides that any unspent and unencumbered funds from the fourth cent tax (PSFFT) may be used for any purpose expressly set forth in Section 125.0104(3)(l), Florida Statutes, or Section 125.0104(5)(a)-(c), Florida Statutes.

PSFFT collections for purposes that may only be funded from collections of the first 3 percent of the TDT levied.

In response to our inquiries regarding the language in BCC ordinances that conflicts with State law, the County Attorney asserted that the more permissive language in County ordinances prevails because Section 125.0104(5), Florida Statutes, “essentially expands the possible legal uses” of the PSFFT tax enumerated in Section 125.0104(3)(l), Florida Statutes, to also include any uses allowed for collections of the first 3 percent levied. Notwithstanding the County Attorney’s assertion, the Attorney General has opined<sup>26</sup> that “the one percent tax authorized under subsection (3)(l) [of Section 125.0104, Florida Statutes] can only be used for the purposes enumerated in that subsection.” As such, the County ordinance language regarding uses of PSFFT collections that are not explicitly authorized by State law increases the risk that those collections will be used contrary to State law and may have contributed to some of the unallowable uses of TDT collections discussed in Finding 3.

**Recommendation: The BCC should amend County ordinances to conform with State law by:**

- **Clarifying that a portion of the TDT collected may be retained by the County for the costs of administration, but such portion shall not exceed 3 percent of collections, rather than requiring 3 percent be retained.**
- **Restricting the authorized uses of the PSFFT collections to only those explicitly provided in State law.**

## **Finding 2: Administrative and Judicial Action of Expenditures**

Pursuant to State law,<sup>27</sup> the Escambia County Tourist Development Council (TDC) is required to continuously review TDT expenditures from the Tourist Promotion Fund and report to the BCC and the DOR any expenditures believed to be unauthorized. The BCC and the DOR are then required to review the expenditures reported to them by the TDC and take appropriate administrative or judicial action to ensure compliance with State law.

In April 2021, the TDC sent a letter to the BCC and the DOR detailing TDT expenditures that the TDC believed to be unauthorized. The questioned expenditures pertained to Clerk administrative costs, BCC administrative costs, and certain disbursements for the operation of the BCC’s Marine Resources Division. Rather than requesting the BCC and the DOR to review the expenditures and take appropriate administrative or judicial action, the letter requested the matter be referred to the Auditor General “... so that a third-party neutral can further evaluate the issues stated herein.”

To determine whether the BCC reviewed the expenditures included in the TDC’s April 2021 letter and took appropriate administrative or judicial action in accordance with State law, we examined BCC meeting minutes and inquired of BCC personnel. Our examination of the minutes for the BCC’s May 20, 2021, meeting disclosed that the BCC discussed the TDC’s letter; however, the BCC minutes did not note any discussion regarding BCC review of the TDT expenditures the TDC believed to be unauthorized, or any resulting administrative or judicial action. Rather, the meeting minutes noted that the BCC approved a motion to forward a copy of the TDC letter to the Auditor General. In response to our inquiries, BCC

<sup>26</sup> Attorney General Opinion No. 2021-02.

<sup>27</sup> Section 125.0104(4)(e), Florida Statutes.

personnel indicated that the BCC's administrative action consisted of review and discussion of the TDC's April 2021 letter. On May 21, 2021, the County Administrator employed at the time sent a copy of the TDC letter to the Auditor General.

Notwithstanding the BCC's response and actions, review and discussion of the TDC letter and subsequent submittal of the letter to the Auditor General does not constitute administrative or judicial action as intended by State law. As further described in Finding 3, the Attorney General has opined on numerous occasions<sup>28</sup> that the determination of whether a project's primary purpose is to carry out the provisions of State law is one that must be made by the governing body of the county. For example, Attorney General Opinion No. 2015-14 states, "It is the governing body of the county that must make the factual determination of whether a particular facility or project is related to tourism and primarily promotes such a purpose. This determination must follow appropriate legislative findings and due consideration of the specific needs and conditions of the particular locality." Consequently, it is not apparent why the BCC did not follow State law and review the TDT expenditures questioned by the TDC and take appropriate administrative or judicial action on its own or in conjunction with the DOR. Failure to review the expenditures or take appropriate administrative or judicial action in accordance with State law increases the risk that TDT collections will not be used in accordance with State law.

In response to our inquiries, BCC personnel indicated that, because the TDT was locally administered by the Clerk, the BCC had not adopted policies and procedures to review and take administrative or judicial action for TDT expenditures reported by the TDC. Notwithstanding this response, adoption of appropriate policies and procedures would provide guidance to assist the BCC in complying with the statutory requirement to review and take appropriate administrative or judicial action for questioned expenditures reported to them by the TDC.

**Recommendation: The BCC should comply with State law by reviewing TDT expenditures questioned by the TDC and taking appropriate administrative or judicial action. To assist the BCC with such actions, the BCC should establish policies and procedures that provide guidance:**

- **For the conduct of the BCC's review of TDT expenditures reported and questioned by the TDC as unauthorized.**
- **Requiring documentation of the BCC's determination as to the allowability of such expenditures.**
- **For ascertaining and taking appropriate administrative or judicial actions should the BCC determine the TDT expenditures to be unallowable.**

### **Finding 3: TDT Expenditure Allowability**

State law<sup>29</sup> governs the use of TDT collections by authorizing the specific purposes for which the taxes may be used and provides that any use of TDT collections not expressly authorized in law is prohibited. The Attorney General has opined<sup>30</sup> that, the determination of whether the primary purpose of a particular

<sup>28</sup> Attorney General Opinion Nos. 83-18, 92-66, and 2015-14.

<sup>29</sup> Section 125.0104, Florida Statutes.

<sup>30</sup> Attorney General Opinion No. 92-66.



project is to carry out the provisions specified in State law, is one that must be made by the governing body of the county.

Additionally, on other occasions,<sup>31</sup> the Attorney General opined that the purpose and intent of Section 125.0104, Florida Statutes, is “to provide for the advancement, generation, growth and promotion of tourism, the enhancement of the tourist industry, and the attraction of conventioners and tourists from within and without the state to a particular area or county of the state.” These Attorney General opinions provide that an expenditure of TDT collections must be based on a determination that the related activity directly and primarily promotes tourism. Such determinations must follow appropriate legislative findings and due consideration of the specific needs and conditions of the particular locality and must show a distinct and direct relationship between the expenditure of TDT collections and the promotion of tourism.

During the period October 2020 through December 2021, the BCC expended TDT collections of \$13 million, including \$9.9 million to their marketing organization, Visit Pensacola, Inc.,<sup>32</sup> and \$2.2 million for the operation of the Pensacola Bay Center.<sup>33</sup> To determine whether the remaining TDT expenditures of \$858,770 were primarily for purposes authorized by State law and the promotion of tourism, we selected for examination expenditures totaling \$505,110 that occurred during the period October 2020 through December 2021. In addition, we examined selected expenditures that occurred during the period December 2019 through September 2020,<sup>34</sup> and totaled \$109,047. The selected expenditures included those questioned by the TDC in its April 2021 letter (as discussed in Finding 2).

Our examination disclosed that BCC records did not always adequately demonstrate that the expenditures of TDT collections were based on a determination that the related activity directly and primarily promoted tourism and were for the TDT purposes specified by State law. Specifically, we noted that:

- TDT collections totaling \$287,265 were expended for the salaries, benefits, and operating expenses of the BCC’s Marine Resources Division (Division) during the period October 2020 through December 2021. According to the BCC Web site, the Division provides local knowledge and expertise in issues that affect the health and accessibility of Escambia County’s marine, freshwater, and coastal resources. The Division’s stated goal is the safe, efficient, and sustainable use and enjoyment of the County’s natural resources by residents and visitors. In addition, the Division is responsible for constructing artificial reefs, reducing shoreline erosion, monitoring sea turtle nesting trends, monitoring and maintaining County boat ramps, and monitoring algal blooms in local coastal waters. In response to our request for documentation justifying the use of TDT collections for Division activities, Clerk personnel cited provisions in State law,<sup>35</sup> several Attorney General opinions<sup>36</sup> and the BCC’s approval of the Division’s overall

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<sup>31</sup> For example, Attorney General Opinion Nos. 83-18, 2010-09, and 2015-14.

<sup>32</sup> Visit Pensacola, Inc., is a not-for-profit organization that serves as the marketing organization for Escambia County. It supports the community vision of tourism by serving as the central body responsible for building tourism as an economic engine for the community through leadership, connection, collaboration, and communication.

<sup>33</sup> The Pensacola Bay Center is a 10,000-seat arena owned by Escambia County. It includes over 20,000 square feet of exhibition space and 13,000 square feet of meeting rooms and was opened in 1985 as the Pensacola Civic Center.

<sup>34</sup> As discussed in Finding 2, in April 2021, pursuant to Section 125.0104(4)(e), Florida Statutes, the TDC sent a letter to the BCC and the DOR outlining several expenditures believed to be unauthorized by State law. Some of the expenditures questioned by the TDC were incurred prior to the period October 2020 through December 2021. Consequently, to determine the allowability of those expenditures, we also examined records for selected expenditures totaling \$109,047 incurred during the period December 2019 to September 2020.

<sup>35</sup> Section 125.0104, Florida Statutes.

<sup>36</sup> For example, Attorney General Opinion Nos. 92-66, 97-48, and 2013-29.

budget for the 2020-21 fiscal year. Notwithstanding the Clerk's response and that Division activities may relate, at least in part, to tourism, BCC records did not adequately demonstrate that the TDT-funded Division activities were directly and primarily to promote tourism and carry out the provisions specified by State law.

- TDT collections totaling \$73,936 were used to purchase five all-terrain vehicles (ATVs) in December 2019. At its August 15, 2019, meeting, the BCC approved the purchase of the ATVs for use by the BCC's Pensacola Beach Public Works Department. Although the Attorney General opined<sup>37</sup> that TDT collections may be used to purchase ATVs, the Attorney General opinion specified that the primary purpose of the ATVs must be to carry out TDT-related provisions of State law,<sup>38</sup> opposed to other purposes such as general law enforcement or citizen and tourist safety. Our examination of the records provided by the Clerk, including BCC meeting minutes and related meeting agenda materials and two budget amendment requests associated with the ATVs purchase disclosed that the records did not provide a description of how the ATVs were intended to be used. Although the budget amendment requests for the ATVs purchase included detailed justification sections that indicated State law and Attorney General opinions allow for TDT collections to be used for beach park facilities, nourishment, restoration, enhancement, cleanup, and other related activities, the ATVs were purchased using the PSFFT portion of the TDT, which, as described in Finding 1, does not specifically allow those uses. Further, it was not apparent from the documentation that the ATVs would primarily be used for those purposes or to promote tourism.
- TDT collections of \$29,792 were used to purchase a truck in February 2021 for the Division. According to the County Administrator's report that was included in the agenda materials for the BCC's September 3, 2020, meeting, at which the purchase was approved, the truck was to be used for derelict vessel response and removal, boat ramp monitoring and maintenance, hauling equipment and boats, sea turtle nest monitoring efforts at Pensacola Beach and Perdido Key, and attending meetings to give presentations to citizens at outreach and educational events. Several of those intended uses may relate, at least in part, to tourism and the TDT purposes specified by State law; however, a connection to tourism and the specified statutory purposes is not apparent for other intended uses, such as citizen presentations.
- In August 2020, TDT collections of \$1,425 were paid for a plaque naming an artificial reef in commemoration of a former BCC employee. The purchase was approved by the BCC at its June 4, 2020, meeting. Clerk personnel provided records, including a recommendation from the County Administrator employed at the time, the proclamation to name the artificial reef, the BCC-approved resolution adopting the proclamation, and the invoice and expenditure voucher for the plaque. Although the records evidenced BCC approval of the expenditure, the records did not demonstrate that the plaque's primary purpose was to carry out the provisions specified by State law and promote tourism.
- As approved by the BCC at its February 20, 2020, meeting, TDT collections were used to pay a vendor \$153,738 for landscape maintenance services provided during the period October 2020 through December 2021. The landscaping services provided were mowing and edging services on Pensacola Beach. In addition to other specified uses, State law<sup>39</sup> allows TDT collections from the first 3 percent levied to be used to finance beach park facilities; beach, channel, estuary, or lagoon improvement, maintenance, renourishment, restoration, and erosion control, including construction of beach groins and shoreline protection; and enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, channel, estuary, lagoon, or inland lake or river. State law<sup>40</sup>

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<sup>37</sup> Attorney General Opinion No. 92-66.

<sup>38</sup> Section 125.0104, Florida Statutes.

<sup>39</sup> Section 125.0104(5)(a)5., Florida Statutes.

<sup>40</sup> Section 125.0104(5)(b), Florida Statutes.

also allows a county with a population of less than 950,000 to use TDT collections from the first 3 percent levied for the operation or maintenance of nature centers, which are either publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. However, the meeting minutes and agenda materials for the BCC's February 20, 2020, meeting did not demonstrate that the mowing and edging services were directly and primarily to promote tourism and either related to the physical preservation of the beach or that the area serviced was part of a nature center.

- Costs of \$8,000 for Division temporary staffing for monitoring sea turtle nests was paid from TDT collections as approved by the BCC at its August 15, 2019, meeting. In response to our inquiries, BCC personnel provided documentation of a presentation the Division gave to the TDC at its April 13, 2021, meeting, demonstrating, among other things, the Division's efforts to market sea turtle nesting activities. The Clerk also responded to our inquiries and indicated that the Division was vetted and established as the County's focus on tourism. Notwithstanding those responses, and that Division activities apparently relate to tourism to some extent, documentation was not provided that adequately demonstrates that the primary purpose of the turtle nesting activities was to promote tourism. In addition, records were not otherwise provided demonstrating that the temporary staffing expenditures related to the operation of a nature center, or other allowable use specified in State law.
- TDT collections totaling \$60,000 were authorized by the BCC at its January 23, 2020, meeting to pay for the assessment and survey of local waterways to determine the presence of *Vibrio Vulnificus* (*Vibrio*) bacteria.<sup>41</sup> The County Administrator's report, included in the meeting agenda materials, indicated that the project's assessment of local waters would provide, for the benefit of tourists and citizens who visit local waterways, a better understanding of the abundance and distribution of *Vibrio*. While that description indicates the assessment relates, at least in part, to tourism, it does not demonstrate that the project's primary purpose was to carry out the provisions specified by State law and promote tourism.

In response to our inquiries, BCC personnel indicated that these expenditures were addressed in BCC meeting agendas and supported with backup materials, and BCC authorization of the expenditures was recorded in BCC meeting minutes. Notwithstanding, records indicated necessary and appropriate by several Attorney General opinions were not provided to show that the BCC made the required determinations, and the provided records, including the BCC meeting minutes, did not demonstrate that the primary purpose of the expenditures was to carry out the provisions specified by State law and to promote tourism.

While BCC personnel indicated they strictly follow State law governing TDT collections, corresponding authority from Attorney General opinions, and BCC ordinances, they did not provide or reference any policies and procedures requiring that records clearly demonstrate that the primary purpose of TDT expenditures and projects are to carry out the provisions specified in State law and promote tourism. Absent policies and procedures requiring the BCC to determine and document, of record, that the primary purpose of planned expenditures of TDT collections is to carry out statutorily authorized purposes and promote tourism, there is an increased risk that TDT collections will not be used in accordance with State law.

**Recommendation: The BCC should establish policies and procedures that require the BCC to document authorization for the expenditure of TDT collections based on a determination that the related activity directly and primarily promotes tourism. The determination should follow**

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<sup>41</sup> A bacteria found in warm, shallow, coastal salt water that can cause vomiting, diarrhea, and abdominal pain as well as necrotizing wound infections.

appropriate legislative findings and due consideration of the specific needs and conditions of the County and show a distinct and direct relationship between the expenditure of TDT collections and the promotion of tourism and be supported by documentation referencing the applicable specific provision in the governing State law. In addition, the policies and procedures should identify circumstances under which the BCC could request the Attorney General to opine on actual or proposed uses of TDT collections.

## ***OBJECTIVES, SCOPE, AND METHODOLOGY***

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The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(3)(a), Florida Statutes, the Legislative Audit Committee, at its October 14, 2021, meeting, directed us to conduct this operational audit of the Escambia County Board of County Commissioners (BCC) and the Clerk of the Circuit Court and Comptroller (Clerk).

We conducted this operational audit from January 2022 through August 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the BCC and the Clerk focused on the use of tourist development tax (TDT) collections.

For those areas addressed by this audit, our objectives were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, weaknesses in management's internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, or contracts and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included transactions, as well as events and conditions, occurring during October 2020 through December 2021, and selected actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors and, as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, ordinances, and policies and procedures, and interviewed BCC and Clerk personnel to gain an understanding of BCC and Clerk processes and the related requirements.
- Evaluated whether the BCC and Clerk, as applicable, had established effective policies and procedures to document determinations as to whether certain uses of TDT collections directly and primarily promoted tourism and were specifically authorized by State law; to outline the process for reviewing potentially unallowable TDT expenditures reported by the Tourist Development Council (TDC) and taking appropriate action, if warranted; and to adequately document that assessed TDT administrative costs were calculated correctly using a systematic and reasonable cost allocation methodology.
- Examined the BCC and TDC meeting minutes for the period October 2020 through December 2021, and selected meeting minutes prior to that period, to identify any matters significant to the scope of the audit.
- Inquired with BCC and Clerk personnel to determine whether the BCC and Clerk, respectively, had established anti-fraud policies and procedures to provide guidance to employees for identifying and communicating known or suspected fraud to appropriate individuals.
- Evaluated BCC policies and procedures for identifying potential conflicts of interest. Additionally, for the five members of the BCC and the Clerk who served during the period October 2020 through December 2021, we reviewed the Department of State, Division of Corporations, records; the full and public disclosure of financial interests filed for the 2020 calendar year; and Clerk records to identify any relationships that represented a potential conflict of interest.
- Examined Commission on Ethics records to determine whether the BCC members and Clerk who served during the period October 2020 through December 2021, filed a full and public disclosure of financial interests for the 2020 calendar year as required by Section 112.3144, Florida Statutes.
- Examined Clerk and BCC records and reviewed the BCC meeting minutes for the period October 2020 through December 2021 to determine if any construction or electrical projects were

financed with TDT collections and performed using BCC services, employees, or equipment with estimated or actual costs exceeding the thresholds specified in Section 255.20, Florida Statutes.

- Inquired with BCC personnel to determine if the BCC made any expenditures or entered into any contracts utilizing the authority granted by a state of emergency declared or renewed on or after July 1, 2021.
- Examined BCC records to determine whether the BCC adopted an ordinance providing for the local collection and administration of the TDT as allowed by Section 125.0104(10)(a), Florida Statutes. Additionally, examined BCC records to determine whether the ordinance included the provision required by Section 125.0104(10)(b), Florida Statutes, allowing for a portion of the TDT collected to be retained by the County for costs of administration.
- Examined BCC records to determine whether the BCC adopted an ordinance to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such responsibility to the Department of Revenue, in accordance with Section 125.0104(10)(c), Florida Statutes.
- Based on inquiry with Clerk personnel and examination of Clerk records, prepared a schedule of the administrative costs incurred by the Clerk to administer the TDT during the period October 2020 through September 2021 and determined whether the administrative costs were calculated based on a systematic and reasonable methodology.
- Examined Clerk records to determine the amount of TDT collections retained by the Clerk during the period October 2020 through September 2021 for administrative costs and compared that retained amount to the administrative costs incurred, as well as to the 3 percent threshold provided in Section 125.0104(10)(b)5., Florida Statutes, for the purpose of determining if the amount of collections retained exceeded the administrative costs incurred not to exceed the 3 percent threshold provided in Section 125.0104(10)(b)5., Florida Statutes.
- From the population of \$336,130 in costs incurred by the Clerk to administer the TDT during the period October 2020 through September 2021, examined the support for costs totaling \$10,163 associated with 10 expenditures to determine whether those costs were accurately calculated, supported, and solely and directly attributable to auditing, assessing, collecting, processing, or enforcing payments of delinquent TDTs as prescribed by Section 125.0104(10)(c), Florida Statutes.
- Based on inquiries with Clerk personnel and examination of Clerk records, determined whether the BCC used TDT collections during the period October 2020 through December 2021 to fund indirect administrative costs incurred for services performed by the BCC on behalf of a promotion agency, as allowed by Section 125.0104(5)(a)4., Florida Statutes.
- Based on inquiries with Clerk personnel and examination of Clerk records, determined whether accounting records were sufficient to allow Clerk personnel to monitor and control TDT collections for the purpose of ensuring the administration and use of the funds in accordance with State law.
- Reviewed the BCC's contract with Visit Pensacola, a destination marketing organization, to evaluate the adequacy of contract provisions to provide assurance that the moneys paid by the BCC to Visit Pensacola were used in accordance with State law and BCC intent. From the population of 18 invoices totaling \$9.9 million paid by the BCC to reimburse Visit Pensacola during the period October 2020 through December 2021, examined records supporting the payments for 2 invoices totaling \$1.9 million to determine whether the Clerk and the BCC had adequately monitored Visit Pensacola expenditures for compliance with State law and contractual provisions.
- To determine if the primary purpose of selected expenditures was to carry out the provisions in Section 125.0104, Florida Statutes, and to promote tourism, we identified 15 TDT expenditure types and, for those expenditure types, examined BCC and Clerk records for:

- Selected expenditures totaling \$505,110 from the population of 826 TDT expenditures totaling \$858,770 incurred during the period October 2020 through December 2021 for other than payments to Visit Pensacola and operation costs for the Pensacola Bay Center.
- Selected expenditures totaling \$109,047 incurred during the period December 2019 through September 2020.
- Examined BCC records and inquired of BCC personnel to determine whether the BCC had established policies and procedures to review potentially unauthorized TDT expenditures reported by the TDC and take appropriate administrative or judicial action, as required by Section 125.0104(4)(e), Florida Statutes.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

## ***AUTHORITY***

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Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is fluid and cursive, with a large initial "S" and "N".

Sherrill F. Norman, CPA  
Auditor General

# MANAGEMENT'S RESPONSE

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## Board of County Commissioners Escambia County, Florida

Jeff Bergosh  
District One

Mike Kohler  
District Two

Lumon J. May  
District Three  
Chairman

Robert D. Bender  
District Four

Steven Barry  
District Five  
Vice Chair

January 27, 2023

Honorable Sherrill F. Norman, CPA  
Auditor General, State of Florida  
Claude Denson Pepper Building, Suite G74  
111 West Madison Street  
Tallahassee, Florida 32399  
[flaudgen\\_audrpt\\_lg@aud.state.fl.us](mailto:flaudgen_audrpt_lg@aud.state.fl.us)

Dear Ms. Norman:

Enclosed please find the Escambia County Board of County Commissioners' written statement of explanation responsive to the preliminary and tentative audit findings, dated January 10, 2023. This response sets forth the proposed corrective actions intended to be taken by the Board of County Commissioners to address the three findings set forth by your office. It is understood that a final report will be forthcoming and that a review should be expected in eighteen months to ensure compliance with our proposed corrective actions.

Pursuant to guidance provided at the exit interview, this response is provided under signature of the Chairman of the Board of County Commissioners. The Clerk of Court and Comptroller is copied on this response and she was provided a draft of the written statement of explanation.

It is hoped that the proposed corrective actions are sufficient to address the concerns raised in the three findings. Should any additional information be needed, please contact Alison Rogers, County Attorney, at [alison\\_rogers@myescambia.com](mailto:alison_rogers@myescambia.com) or 850-595-4970.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lumon J. May", is written over a light blue horizontal line.

Lumon J. May  
Chairman, BCC

cc: Pam Childers, Clerk of Circuit Court and Comptroller  
Enclosure

221 Palafox Place, Suite 400 | P.O. Box 1591 | Pensacola, Florida 32591-1591 | (850) 595-4900



**RESPONSE TO AUDITOR GENERAL'S  
PRELIMINARY AND TENTATIVE AUDIT FINDINGS**

Pursuant to Section 11.45(4)(d), Florida Statutes, the Escambia County Board of County Commissioners (hereinafter, the "Board" or the "County") submits the following written statement of explanation with proposed corrective actions in response to the Auditor General's Preliminary and Tentative Audit Findings, dated January 10, 2023.

The County finds it important to note the absence of any finding suggesting that a previous TDT project or expenditure was illegal or unauthorized. Rather, the tentative findings and recommendations were characterized as precautionary measures to preemptively protect the County from possible future missteps. The County will endeavor to address the Auditor General's noted concerns by taking the necessary corrective action as further described herein.

**FINDING 1: Escambia County Code of Ordinances**

The County concurs with the proposed finding and recommendation for clarification of the relevant Code provisions. The County's proposed corrective action is to amend the relevant provisions of the Escambia County Code of Ordinances as recommended. Specifically, in accordance with Section 125.0104(10)(b), Florida Statutes, the County will amend Sec. 90-56(b) of the Code of Ordinances to reflect that the total amount retained by the County for the costs of administration shall be based upon the actual cost incurred and may not exceed three percent (3%) of collections. The County will also amend Sec. 90-52(a) and Sec. 90-57 of the Code of Ordinances to expressly limit the use of the Professional Sports Franchise Facility Tax collections for those uses explicitly authorized by State law.

When exercising ordinance-making powers, including the enactment of an ordinance to amend an existing ordinance, the County must adhere to the procedures set forth in Section 125.66, Florida Statutes, which require public notice and a public hearing. The County will follow the requisite statutory procedures and amend the relevant provisions of the Code of Ordinances.

**FINDING 2: Administrative and Judicial Action of Expenditures**

The County concurs with the proposed finding and recommendation to establish and implement policies and procedures governing the Board's review and appropriate legislative action regarding questioned expenditures. The County's proposed corrective action is to establish policies and procedures to ensure the Board complies with its statutory obligation to review expenditures questioned by the TDC, make a factual determination regarding the allowability of the expenditure, and take appropriate administrative or judicial action where warranted. The policy will include the use of a worksheet that will serve to document the Board's legislative finding(s) and factual determination(s) regarding the questioned TDT expenditure and any resulting administrative or judicial action.

**FINDING 3: TDT Expenditure Allowability**

As stated above, the County concurs with the proposed finding and recommendation to establish and implement policies and procedures to adequately document the Board's determination regarding questioned TDT expenditures. The proposed corrective action is to establish County policies and procedures that require documentation of the Board's determination that a TDT expenditure is for an authorized purpose. The policy will specify that such a determination must

follow legislative findings of the Board to include consideration of the needs of the County, how the expenditure directly and primarily promotes tourism, and the relationship between the expenditure and the specific authorization under State law to use that collection for the stated purpose. The policy will also include direction to obtain an opinion from the Attorney General's Office when appropriate, such as if the authority for the expenditure is unclear. The Board will also adopt a resolution finding our local beaches and waterways to be nature centers which are open to the public as provided in Section 125.0104(5)(b), Florida Statutes, and further construed in Attorney General Opinion No. 2015-14, to ensure the appropriate legislative foundation to support TDT expenditures for the County's Marine Resources Division.

In conclusion, Escambia County appreciates the professional and cooperative spirit with which these tentative findings and recommendations were presented to the County. Further, the County acknowledges that our locally administered TDT program requires cooperation with the Escambia County Clerk of Court, who has also been involved in this audit process.

All three proposed corrective actions will be completed within a reasonable timeframe. It is understood that Escambia County should expect a follow-up review in eighteen months for an evaluation to determine compliance with these proposed corrective actions. Finally, the County is open to receiving any template policies or language that may facilitate these proposed corrective actions.