



Florida Department of TRANSPORTATION

Office of Inspector General Kristofer B. Sullivan, Inspector General

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Kristofer B. Sullivan

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Audit Report No. 23C-011
Section 129 Financial Review

November 21, 2023

What We Did

At the request of the Florida Department of Transportation's (Department) Office of the Comptroller, the Office of Inspector General conducted an independent audit of Department owned toll facility records to verify financial compliance with requirements concerning the limitation on use of revenues as outlined in Title 23 United States Code (U.S.C.), Highways, Chapter 1, Federal-Aid Highways, Section 129, Toll Roads, Bridges, Tunnels, and Ferries, specifically subsection 129(a)(3).¹

The scope of the audit was the 9 toll facilities owned by the Department for the period July 1, 2022, to June 30, 2023. The Section 129 requirement to verify adequate maintenance of the toll facilities is conducted by the Department's Office of Maintenance for Fiscal Year 2023 and is outside the scope of this audit.

What We Found

We determined the Department's use of toll revenues complied in all material respects with limitations set forth in Title 23 U.S.C., Section 129(a)(3).

Of the 114,352 transactions reported for 8 of 9 toll facilities, we reviewed all 81 transactions greater than \$250,000, their accounting system object code, description, and vendor. These transactions represented \$67,406,300 of the total \$124,460,463, or 54 percent. Of the 81 transactions, we tested the supporting documentation for a judgmental sample of eight transactions totaling \$5,409,560 of the total \$67,406,300, or 8 percent. We also tested the supporting documentation for a statistical sample of 65 transactions totaling \$1,883,290, whose amounts were between \$500 and \$250,000.

Additionally, we tested the 9th facility, I-95 Express Lanes, transactions for compliance with Section 129 as part of OIG engagement 23C-012, Department Value Pricing Pilot Program.

What We Recommend

This report does not contain recommendations as the audit found the transactions were compliant with the applicable Section 129 requirements.

¹ This is commonly referred to as Section 129.

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BACKGROUND AND INTRODUCTION

At the request of the Florida Department of Transportation's (Department) Office of the Comptroller, the Office of Inspector General (OIG) conducted an independent audit of Department owned toll facility records to verify financial compliance with requirements concerning the limitations on use of revenues as outlined in Title 23 United States Code (U.S.C.), Highways, Chapter 1, Federal-Aid Highways, Section 129, Toll Roads, Bridges, Tunnels, and Ferries, specifically subsection 129(a)(3).²

The scope of the audit was the 9 toll facilities owned by the Department for the period July 1, 2022, to June 30, 2023. The Section 129 requirement to verify adequate maintenance of the toll facilities is conducted by the Department's Office of Maintenance for Fiscal Year 2023 and is outside the scope of this audit.

The compliance requirements for Department owned toll facilities are outlined in Section 129 (a)(3)(A), Limitations on Use of Revenues, and state:

A public authority with jurisdiction over a toll facility shall ensure that all toll revenues received from operation of the toll facility are used only for:

- (i) debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing.
- (ii) a reasonable return on investment of any private person financing the project, as determined by the State or interstate compact of States concerned.
- (iii) any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation.
- (iv) if the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and
- (v) if the public authority certifies annually that the tolled facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under this title.

Additionally, Section 129 (a)(3)(B)(i), Annual Audit, states:

A public authority with jurisdiction over a toll facility shall conduct, or have an independent auditor conduct, an annual audit of toll facility records to verify

² This is commonly referred to as Section 129.

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adequate maintenance and compliance with subparagraph (A) and report the results of the audits to the Secretary.

The following Department owned toll facilities and associated records are subject to the audit and maintenance requirements in Section 129:

1. I-275 Sunshine Skyway Bridge
2. I-295 Express East and West
3. I-4 Ultimate
4. I-595 Express
5. I-75 Alligator Alley
6. I-75 Express Lanes
7. Pinellas Bayway System
8. SR 429 Wekiva Parkway

The I-95 Express Lanes Phase 3 is the ninth facility subject to Section 129 requirements. Phase 3 extends 29 miles north from Sterling Road in Broward County to Linton Boulevard in Palm Beach County. Phases 1, and 2 were built under the Value Pricing Pilot Program (VPPP) and include Miami Dade County and a part of Broward County.

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RESULTS OF REVIEW

The OIG reviewed the Department's current processes to ensure the use of toll facility revenues complied with Section 129. We found the governance of toll facility expenditures were outlined in a September 24, 2021, memorandum from the Department's Office of Comptroller to the Federal Highway Administration (FHWA). The memorandum states in part:

FDOT has a process whereby prior to obligating, the use of those revenues is requested by the district, reviewed for compliance by the Federal Aid Office, reviewed for financial soundness by the Office of Comptroller and Office of Work Program and Budget, and approved/disapproved by the Assistant Secretary of Finance and Administration.

The Project Finance Office confirmed this process was in use for Fiscal Year 2022-23.

The Office of Comptroller's General Accounting Office provided toll facility expenditure records for the period July 1, 2022, to June 30, 2023. The expenditure population for the 8 facilities was 114,352 transactions totaling \$124,460,463. See Figure 1.

Figure 1: Summary of Toll Facility Expenditures

Section 129 Toll Facilities Summary of Expenditure Transactions July 1, 2022 to June 30, 2023		
Toll Facility	Transaction Count	Dollars
I-275 Sunshine Skyway Bridge	15,816	\$ 30,869,914
I-295 Express East and West	11,533	1,505,011
I-4 Ultimate	11,681	18,018,803
I-595 Express	11,551	453,860
I-75 Alligator Alley	15,437	52,919,255
I-75 Express Lanes	22,349	7,727,728
Pinellas Bayway System	14,378	9,172,696
SR 429 Wekiva Parkway	11,607	3,793,196
Totals	114,352	\$ 124,460,463

Source: OIG Prepared Schedule

We reviewed all 81 transactions greater than \$250,000, their accounting system object code, description, and vendor. These transactions represented \$67,406,300 of the total \$124,460,463, or 54 percent. Of the 81 transactions, we tested the supporting documentation for a judgmental sample of 8 transactions totaling \$5,409,560 of the total \$67,406,300, or 8 percent. We also tested the supporting documentation for a statistical

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sample of 65 transactions totaling \$1,883,290 whose amounts were between \$500 and \$250,000. The sampling of transactions to support the determination followed acceptable auditing practices associated with the scope.

For the ninth facility, we reviewed 50 transactions associated with the I-95 Express Lanes totaling \$1,962,499. These lanes were constructed in three phases; Phases 1 and 2 are subject to the Value Pricing Pilot Program while Phase 3 is subject to Section 129, of Title 23 U.S.C., requirements. The Department system that houses tolling activity cannot identify expenditures with a specific phase. Section 129 and VPPP are subject to the same limitations on the use of toll revenues, with VPPP having one additional requirement. We randomly selected and tested I-95 Express Lanes transactions as part of OIG engagement 23C-012, Department Value Pricing Pilot Program. All transactions tested complied with Section 129(a)(3) regardless of expenditure phase.

As a result of our review, **we determined** the Department's use of toll revenues complied in all material respects with limitations set forth in Title 23 United States Code, Section 129(a)(3).

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APPENDIX A – Purpose, Scope, and Methodology

The **purpose** of this engagement was to determine if the Department complied with Title 23 United States Code, Highways, Chapter 1, Federal-Aid Highways, Section 129(a)(3), Toll Roads, Bridges, Tunnels, and Ferries, Limitations on use of toll revenue.

The **scope** of this audit includes the expenditures assigned to the subject toll facilities for the period of July 1, 2022, to June 30, 2023.

The **methodology** included:

- verifying Department owned toll facilities subject to Section 129 governance with the Project Finance Office;
- reviewing applicable laws, statutes, and Department Memorandum of Understandings with Federal Highway Administration; and
- examining and testing transactions for Section 129 compliance.

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APPENDIX B – Management Response

The Office of the Comptroller, Project Finance Office responded on November 6, 2023, by email with the following response:

Thank you for the opportunity to review the two P&T reports for the Section 129 and the Value Pricing Pilot Program tolling programs. We do not have a response to either report.

We do have one minor edit: 1) add I-95 Express Phase 3 to the list of facilities reviewed under the Section 129 audit, and 2) specify that the review covered I-95 Express Phases 1 and 2 under the VPPP audit. Phase 3 is under a Section 129 MOA and Phases 1 and 2 are covered by a VPPP agreement.

The OIG addressed the requested edits within the body of the report.

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PROJECT TEAM

Engagement was conducted by:
Corbitt Lyons, Staff Auditor

Under the supervision of:
Luis Camejo, Senior Audit Supervisor
Ryan Moore, Deputy Audit Director for Contracts
Joseph W. Gilboy, Director of Audit

Approved by:
Kristofer B. Sullivan, Inspector General

STATEMENT OF ACCORDANCE

The Department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to provide independent and objective investigative and audit services that promote accountability, integrity, and efficiency within the Florida Department of Transportation and its partners.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, and conforms with The Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

Please address inquiries regarding this report to the Department's Office of Inspector General at (850) 410-5800.