

**STANDARDS ESTABLISHING CRITERIA FOR THE APPROVAL
OF FIRST NATION BORROWING LAWS, 2016**

[Consolidated to 2017-03-22]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the criteria for the approval of laws made under paragraph 5(1)(d) of the Act;
- B. Subsection 32(1) of the Act provides that the Commission must not approve a law made under paragraph 5(1)(d) of the Act for financing capital infrastructure unless the First Nation has unutilized borrowing capacity;
- C. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and
- D. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the criteria for Commission approval of First Nation borrowing laws enacted under paragraph 5(1)(d) of the Act. These Standards are used by the Commission in its review and approval of First Nations' borrowing laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

**PART IV
APPLICATION**

These Standards apply to every borrowing law submitted to the Commission for approval under the Act. These Standards do not apply to a borrowing agreement law.

**PART V
DEFINITIONS**

In these Standards:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“aggregate capital liabilities” means all of the liabilities of the First Nation payable from local revenues, as set out in subsection 4.3;

“Authority” means the First Nations Finance Authority established under the Act;

“available service tax revenues” means ninety percent (90%) of the service tax revenues;

“average residential tax levy” means the average tax levy on residential property subject to taxation by a First Nation, calculated in accordance with subsection 7.4;

“borrowing agreement law” means a law made under paragraph 5(1)(d) of the Act that authorizes a First Nation to enter into a borrowing agreement with the Authority respecting the borrowing of money and does not authorize borrowing by a First Nation;

“borrowing law” means a law made under paragraph 5(1)(d) of the Act authorizing the borrowing of money from the Authority for a capital infrastructure project;

“Commission” means the First Nations Tax Commission established under the Act;

“completed”, in respect of a capital infrastructure project, means that the project has been certified as substantially completed by a registered professional;

“debt servicing costs” means the estimated annual cost of servicing the aggregate capital liabilities of the First Nation for a year, as determined under subsection 4.1;

“First Nation” means a band named in the schedule to the Act;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“previous year’s revenues” means local revenues of the First Nation received in the budget year prior to the year in which the First Nation submits a borrowing law to the Commission for approval, as determined in accordance with section 5;

“project” means the provision of capital infrastructure that a First Nation proposes to finance, in whole or in part, by borrowing under a borrowing law;

“project plan” means a plan relating to proposed borrowing that meets the requirements set out in section 10;

“Province” refers to the province in which the reserve is situated;

“refinancing” means the replacement of an existing debt obligation with borrowing authorized under a borrowing law;

“registered professional” means an individual qualified and licensed as a professional engineer or architect in the Province;

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the *Indian Act*;

“service tax” means a tax levied under a service tax law;

“service tax law” means a law enacted under subparagraph 5(1)(a)(iii) of the Act; and

“service tax revenues” means the revenues collected or to be collected annually under a service tax law that are allocated to paying the costs of borrowing to the Authority for the term of the loan.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

PART VI
STANDARDS

1. Determination of Unutilized Borrowing Capacity

1.1 The Commission will determine the unutilized borrowing capacity of a First Nation at the time a borrowing law is submitted to the Commission for review and approval.

1.2 A First Nation has sufficient unutilized borrowing capacity to undertake the borrowing under a proposed borrowing law where, at the time a First Nation proposes to borrow under a borrowing law,

(a) the debt servicing costs of the First Nation do not exceed twenty-five percent (25%) of the previous year's revenues; and

(b) the borrowing under the proposed borrowing law would not cause the debt servicing costs of the First Nation to exceed twenty-five percent (25%) of the previous year's revenues.

1.3 Despite subsection 1.2, where a First Nation meets all of the criteria set out in subsection 1.4, the First Nation has sufficient unutilized borrowing capacity to undertake the borrowing under a proposed borrowing law where, at the time a First Nation proposes to borrow under a borrowing law,

(a) the debt servicing costs of the First Nation do not exceed forty percent (40%) of the previous year's revenues; and

(b) the borrowing under the proposed borrowing law would not cause the debt servicing costs of the First Nation to exceed forty percent (40%) of the previous year's revenues.

1.4 The criteria for the purposes of subsections 1.3 and 2.3 are as follows:

(a) more than thirty percent (30%) of the First Nation's total real property tax revenues are derived from non-residential properties;

(b) no single industrial or commercial property represents more than fifty percent (50%) of the First Nation's total assessed values; and

(c) not more than fifty percent (50%) of the First Nation's total local revenues are committed to providing local services, either directly or under service agreements with third parties.

2. Borrowing Capacity Where a Service Tax is Levied to Pay the Costs of Borrowing

2.1 Despite subsections 1.2 and 1.3, where

(a) a First Nation has made a service tax law that levies a service tax to recover all or a portion of the costs relating to the provision of capital infrastructure in respect of a service, and

(b) the service tax law provides for all or a portion of the service taxes collected to be used to pay the costs of borrowing under a proposed borrowing law,

the Commission will determine the First Nation's borrowing capacity for the purposes of the proposed borrowing law in accordance with subsection 2.2 or subsection 2.3, as applicable.

2.2 A First Nation has sufficient unutilized borrowing capacity to undertake the borrowing under the proposed borrowing law where, at the time a First Nation proposes to borrow under a borrowing law,

(a) the debt servicing costs of the First Nation do not exceed the sum of the available service tax revenues and twenty-five percent (25%) of the previous year's revenues; and

(b) the borrowing under the proposed borrowing law would not cause the debt servicing costs of the First Nation to exceed the sum of the available service tax revenues and twenty-five percent (25%) of the previous year's revenues.

2.3 Despite subsection 2.2, where a First Nation meets all of the criteria set out in subsection 1.4, the First Nation has sufficient unutilized borrowing capacity to undertake the borrowing under the proposed borrowing law where, at the time a First Nation proposes to borrow under a borrowing law,

- (a) the debt servicing costs of the First Nation do not exceed the sum of the available service tax revenues and forty percent (40%) the previous year's revenues; and
- (b) the borrowing under the proposed borrowing law would not cause the debt servicing costs of the First Nation to exceed the sum of the available service tax revenues and forty percent (40%) the previous year's revenues.

3. Borrowing for Capital Infrastructure

3.1 A borrowing law must authorize borrowing only for

- (a) the provision of capital infrastructure to the reserve that is within the categories of capital infrastructure listed in the Schedule to this Standard; or
- (b) refinancing an existing debt obligation where
 - (i) the debt was originally incurred to provide capital infrastructure to the reserve that is within the categories of capital infrastructure listed in the Schedule to this Standard, and
 - (ii) the capital infrastructure has been completed.

3.2 In addition to other requirements and limitations in these Standards, a borrowing law for refinancing must not authorize borrowing in an amount that exceeds the First Nation's existing capital debt obligation in respect of the capital infrastructure project for which the refinancing is proposed.

4. Debt Servicing Costs

4.1 The debt servicing costs of a First Nation will be determined by the Commission based on the Commission's estimate of the annual costs of servicing the aggregate capital liabilities of the First Nation.

4.2 In calculating the estimated annual costs of servicing the aggregate capital liabilities of the First Nation in relation to the borrowing proposed under a borrowing law,

- (a) the First Nation must use the interest rate provided on the website of the Authority for the applicable borrowing term at the time the borrowing law is made by the Council; and
- (b) the Commission must consider the interest rate provided on the website of the Authority for the applicable borrowing term at the time the borrowing law is considered for approval by the Commission.

4.3 The aggregate capital liabilities of a First Nation include

- (a) the general capital commitments of the First Nation against local revenues;
- (b) the contingent capital commitments of the First Nation against local revenues;
- (c) all debts of the First Nation for moneys borrowed under borrowing laws of the First Nation;
- (d) all unused borrowing authorized under borrowing laws of the First Nation for which the authority to borrow has not yet expired;
- (e) the total amount of all outstanding loan guarantees given by the First Nation; and
- (f) any other non-current capital liabilities against local revenues.

5. Previous Year's Revenues

5.1 Subject to section 6 and section 7, the previous year's revenues of a First Nation are the total revenues of the First Nation from the following sources:

- (a) all local revenues received by the First Nation in that year; and
- (b) investment income derived from local revenues in that year.

5.2 For the purposes of subsection 5.1, local revenues

- (a) include only payments in lieu of taxes that are received under the *Payments in Lieu of Taxes Act*; and
- (b) does not include moneys received as development cost charges and moneys received under a service tax law.

6. Local Revenues from British Columbia Class 4 (Major Industry) Properties

6.1 For reserves located in British Columbia, local revenues derived from property value taxes levied on Class 4 (Major Industry) properties will be determined by applying the tax rate calculated under subsection 6.2 to the assessed value of the property calculated under subsection 6.3, as follows:

(calculated tax rate) x (calculated assessed value) = local revenue from Class 4 property.

6.2 The calculated tax rate is the lower of

- (a) the actual tax rate levied by the First Nation; and
- (b) the provincial average tax rate for Class 4 property.

6.3 The calculated assessed value is

- (a) the total assessed value of all Class 4 properties on the reserve if the total is equal to or less than twenty percent (20%) of the total assessed value of all assessable properties on the reserve; or
- (b) twenty percent (20%) of the total assessed value of all assessable properties on the reserve, if the total assessed value of all Class 4 properties on the reserve is greater than twenty percent (20%) of the total assessed value of all assessable properties on the reserve.

7. Local Revenues from Certain Residential Properties

7.1 Where a First Nation derives local revenues from property value taxes levied on residential properties, and

- (a) the total assessed value of all assessable residential property on the reserve is greater than eighty-five percent (85%) of the total assessed value of all assessable property on the reserve, and
- (b) the average residential tax levy is less than the amount determined under subsection 7.5,

the local revenues derived from property value taxes levied on residential properties will be calculated as provided in this section.

7.2 Where the First Nation's average residential tax levy is less than or equal to the amount determined under subsection 7.6, the local revenues derived from residential assessments will be discounted by seventy-five percent (75%).

7.3 Where the First Nation's average residential tax levy is greater than the amount determined under subsection 7.6 and less than or equal to the amount determined under subsection 7.5, the local revenues derived from residential assessments will be discounted by the ratio determined by dividing the average residential tax levy by the amount determined under subsection 7.5, as follows:

[(average residential tax levy) ÷ (subsection 7.5 amount)] x (local revenues from residential assessments) = discounted local revenues from residential assessments.

7.4

- (a) The calculation of the average residential tax levy must deduct the amount of any homeowner grant, residential tax credit or similar tax reduction program given by the First Nation.

(b) The average residential tax levy is calculated as follows:

$$\frac{[(\text{residential tax rate} \times \text{total residential assessed values}) - (\text{total residential grants or credits}) \div (\text{total number of residential folios})]{}}{= \text{average residential tax levy.}}$$

7.5 For the purposes of paragraph 7.1(b), the amount is seven hundred and seventy-seven dollars (\$777) for the 2016 calendar year, and will be adjusted in each subsequent year by the national rate of inflation.

7.6 For the purposes of subsections 7.2 and 7.3, the amount is five hundred and eighty-two dollars (\$582) for the 2016 calendar year, and will be adjusted in each subsequent year by the national rate of inflation.

8. Public Input Requirements

8.1 The Council of a First Nation must, at least thirty (30) days before making a borrowing law,

- (a) publish a notice of the proposed borrowing law in the *First Nations Gazette*;
- (b) post the notice in a public place on the reserve of the First Nation; and
- (c) mail or email the notice to the Commission.

8.2 The notice required under subsection 8.1 must

- (a) describe the proposed borrowing law;
- (b) state where a copy of the proposed borrowing law may be obtained;
- (c) state where the project plan relating to the proposed borrowing law may be viewed;
- (d) invite representations regarding the proposed borrowing law to be made, in writing, to the Council within thirty (30) days after the date stated in the notice; and
- (e) if the Council is to review the proposed borrowing law at a public meeting, state the time and place of the meeting.

8.3 During the thirty (30) day period referred to in subsection 8.1, the First Nation must make the project plan relating to the proposed borrowing law available for viewing by any First Nation member or taxpayer, or any other person who may be affected by the proposed borrowing law.

8.4 Before making a borrowing law, the Council of a First Nation must consider any representations that were made in accordance with paragraph 8.2(d) or at a meeting referred to in paragraph 8.2(e).

8.5 When the Council of a First Nation sends a borrowing law to the Commission for approval, the Council must

- (a) provide a copy of the borrowing law to any persons who made representations under paragraph 8.2(d), or under the First Nation's law referred to in subsection 8.7; and
- (b) invite those persons to make written representations to the Commission within fifteen (15) days after the day on which they receive the copy of the borrowing law.

8.6 Before approving a borrowing law, the Commission must consider any representations made to it under paragraph 8.5(b) in respect of the law by First Nation members or others who have interests in the reserve lands of the First Nation or rights to occupy, possess or use those lands.

8.7 Where a First Nation has a law that provides for taxpayer and member notice and input into the First Nation's law development and approval processes, Council may follow the processes in such a law instead of the processes in subsections 8.1 to 8.4, provided the First Nation's processes require reasonable notice to taxpayers and members respecting the borrowing law, access to the project plan, and an opportunity for public input on the borrowing law.

8.8 The Commission may exempt a First Nation from the requirements of this section in respect of an amendment to a borrowing law where the Commission determines that the amendment is not significant. [am. FNTC Resolution 2017-03-22.]

9. Submitting a Borrowing Law to the Commission

When submitting a borrowing law to the Commission for approval, the First Nation must submit

- (a) a description of the notices that were given and any public input process undertaken by the Council before making the borrowing law;
- (b) a copy of the project plan relating to the proposed borrowing law;
- (c) the letter required under subsection 10.7;
- (d) written confirmation from the authorized signatory of the First Nation referenced in paragraph 10.8(b) that the matters confirmed by that person under subsection 10.6 remain true and are accurate as of the date the borrowing law is submitted to the Commission; and
- (e) written confirmation from the signatory of the Certificate of Capital Liabilities and Calculation of Borrowing Capacity attached as a schedule to the borrowing law that the information set out in that Certificate remains true and accurate as of the date the borrowing law is submitted to the Commission.

10. Project Plan

10.1 The First Nation must develop a project plan in support of the proposed borrowing law that meets the requirements of subsections 10.6, 10.7 and 10.8, and includes, for

- (a) borrowing other than refinancing, the elements set out in subsections 10.2, 10.4 and 10.5; and
- (b) refinancing, the elements set out in subsections 10.3 and 10.4.

10.2 The project plan for borrowing other than refinancing must describe the project in sufficient detail to demonstrate that the project is for the development of capital infrastructure for the provision of local services, and must include

- (a) a description of the nature of the project;
- (b) a description of how the project will serve and benefit the community, including any assumptions used to quantify the benefits;
- (c) a description of how the project meets the long-term infrastructure needs of the community;
- (d) details respecting how the project will be construction bonded;
- (e) details respecting whether the project is to provide new infrastructure, or to expand, improve or replace existing infrastructure;
- (f) details respecting the proposed financing for the project; and
- (g) a detailed estimate of the costs of constructing, operating and maintaining the infrastructure and of its eventual replacement.

10.3 The project plan for refinancing must describe the completed project in sufficient detail to demonstrate that the project developed capital infrastructure for the provision of local services, and must include

- (a) a brief description of the project, and the date the project was completed;
- (b) details respecting the original financing of the project, the total outstanding capital debt obligations, and the proposed amount and time frame of the refinancing; and
- (c) a budget outlining the actual costs of constructing, operating and maintaining the infrastructure and of its eventual replacement.

10.4 The project plan must set out a fiscal forecast of revenues and expenditures over the next five (5) years, including the assumptions used in estimating future property tax revenues and growth in the assessment base.

10.5 The project plan must include land development and impact information, including

- (a) a description of any land that will be serviced as a result of the project;
- (b) a description of the types of development the First Nation proposes for each parcel of land serviced by the project, to the extent known;
- (c) identification of all interests in land required for the project and confirmation that the First Nation has legally acquired, or secured the right to legally acquire, these interests in land;
- (d) a description of all other infrastructure required to enable development on the lands serviced by the project; and
- (e) confirmation that all required environmental investigations, assessments and reports have been undertaken and completed, and all environmental approval requirements applicable to the project have been met.

10.6 The First Nation must attach to the project plan, at the time the project plan is made available for viewing under subsection 8.3,

- (a) for borrowing other than refinancing,
 - (i) a report, certified by a registered professional, confirming that the project plan includes the elements set out in paragraphs 10.2(a), 10.2(g) and 10.5(e), and
 - (ii) confirmation by the First Nation that the project plan includes the elements set out in subsections 10.2, 10.4 and 10.5, other than those elements confirmed in the report provided under subparagraph (i); and
- (b) for refinancing, confirmation by the First Nation that the project plan includes the elements set out in subsections 10.3 and 10.4.

10.7 A registered professional providing a certified report under subparagraph 10.6(a)(i) must provide the Commission with a letter confirming that he or she

- (a) is qualified as a registered professional in good standing; and
- (b) has and maintains professional errors and omissions liability insurance in an amount sufficient to cover the registered professional's potential liability arising out of the provision of the report, including in the performance or non-performance of the work required to provide the report.

10.8 The confirmation required under subparagraph 10.6(a)(ii) or paragraph 10.6(b) must be

- (a) made by an officer of the First Nation duly authorized by the Council to confirm the matters required on behalf of the First Nation; and
- (b) in writing and certified or sworn to be true by the authorized signatory of the First Nation.

PART VII

REVOCATION AND COMING INTO FORCE

Revocation

The *Standards Establishing Criteria for the Approval of Borrowing Laws* that were established and effective on September 17, 2008, are revoked.

Coming into Force

These Standards are established and in effect as of December 14, 2016.

**PART VIII
ENQUIRIES**

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

SCHEDULE
CAPITAL INFRASTRUCTURE CATEGORIES

General Government

- Administrative Building Design
- Administrative Building Construction
- Legislative Building Design
- Legislative Building Construction

Protection Services

- a. Police
 - Police Station Design
 - Police Station Construction
- b. Fire
 - Fire Hall Design
 - Fire Hall Construction
- c. Other Protection Services
 - Animal Control Building Construction

Health Services

- Community Health Buildings and related infrastructure

Transportation and Communication

- a. Roads and Streets
 - Ferries
 - Road Design
 - Road Construction
 - Bridge Design
 - Bridge Construction
 - Boulevard Design
 - Boulevard Construction
 - Overpass Design
 - Overpass Construction
 - Sidewalks and Curb Construction
 - Street Light Installation
 - Traffic Island Construction
 - Traffic Signal Installation
- b. Parking
 - Parkade Design
 - Parkade Construction
 - Parking Lot Design
 - Parking Lot Construction
 - Parking Meter Installation
- c. Communications
 - Telephone Services
 - Internet Access Services
 - Equipment used to move signals electronically over wires or through the air

- d. Other Transportation and Communication
 - Supply of Electricity or Natural Gas to area of land development

Recreation and Culture

- a. Recreation
 - Arena Design
 - Arena Construction
 - Ballpark Design
 - Ballpark Construction
 - Recreation Building Design
 - Recreation Building Construction
 - Park Design
 - Park Construction
 - Playground Design
 - Playground Construction
 - Swimming Pool Design
 - Swimming Pool Construction
- b. Culture
 - Museum Facility Design
 - Museum Facility Construction
 - Library Design
 - Library Construction
 - Community Hall Design
 - Community Hall Construction
 - Art Gallery Design
 - Art Gallery Construction

Environment

- a. Water Purification and Supply
 - Intake Facilities Design
 - Intake Facilities Construction
 - Storage Facilities Design
 - Storage Facilities Construction
 - Treatment Plant Design
 - Treatment Plant Construction
 - Pipe System Design
 - Pipe System Construction
 - Pump Stations Design
 - Pump Stations Construction
 - Pressure Reducing Stations Design
 - Pressure Reducing Stations Construction
- b. Sewage Collection and Disposal
 - Liquid Waste Disposal Planning
 - Sewage Collection System Design
 - Sewage Collection System Construction
 - Trunk Sewer System Design
 - Trunk Sewer System Construction
 - Treatment Plants Design

Treatment Plants Construction
Sewage Discharge Facilities Design
Sewage Discharge Facilities Construction

- c. Other Environmental Services
 - Dike Design
 - Dike Construction
 - Erosion Control Structures Design
 - Erosion Control Structures Construction
 - Retaining Walls Design
 - Retaining Walls Construction
 - Drainage Ditches Design
 - Drainage Ditches Construction
 - Flood Boxes Design
 - Flood Boxes Construction
 - Sea and Harbour Walls Design
 - Sea and Harbour Walls Construction
 - Waterfront Walkways Design
 - Waterfront Walkways Construction
 - Wharves and Floats Design
 - Wharves and Floats Construction

Acquisition of Interests in Land

The acquisition of interests in land required to complete a capital infrastructure project within any of the above categories.