

**STANDARDS FOR
FIRST NATION EXPENDITURE LAWS**

[Consolidated to 2012-12-12]

**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 form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. 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
- C. 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 requirements that must be met for First Nation expenditure laws enacted under paragraphs 5(1)(b) and 10(b) of the Act. These Standards are used by the Commission in its review and approval of First Nations' expenditure 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 expenditure law submitted to the Commission for approval under the Act.

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;

“annual budget” means a budget of a First Nation setting out its projected local revenues and its projected expenditure of those local revenues during a budget year;

“annual expenditure law” means a Law required under paragraph 10(b) of the Act;

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

“development cost charge reserve fund” means a reserve fund established under a law made under subparagraph 5(1)(a)(v) for development cost charges purposes;

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

“interim budget” means a budget of a First Nation setting out its projected local revenues and projected expenditures of those local revenues for part of a budget year, that ceases to have effect when replaced with the annual budget for that budget year;

“Law” means an expenditure law enacted under paragraph 5(1)(b) of the Act;

“local revenues” means money raised by a First Nation under a law enacted under subsection 5(1) of the Act;

“local service” means an activity, work or facility undertaken or provided by or on behalf of the First Nation that is funded partially or fully by local revenues, that is for a public purpose, and that falls within a category of expenditures listed in the Schedule;

“reserve fund” means a reserve fund established by the First Nation but does not include a development cost charge reserve fund or a debt reserve fund established by a borrowing member; and

“taxpayer” means a person liable for the payment of taxes to a First Nation.

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

[am. FNTC Resolution 2008-09-17; 2011-03-29; 2012-12-12.]

PART VI STANDARDS

1. Restrictions on Expenditures

1.1 The Law must provide for local revenues to be expended only on local services and, without limitation, must not provide for

- (a) per capita distributions; or
- (b) expenditures relating to any commercial, for-profit, enterprise undertaken by or on behalf of the First Nation, including without limitation by a corporation in which shares are held by or for the benefit of the First Nation.

1.2 Despite paragraph 1.1(b), the Law may provide for an expenditure to a corporation referred to in that paragraph that is a grant under a granting program established by the First Nation.

[am. FNTC Resolution 2008-05-15]

2. Annual Expenditure Laws

2.1 The annual expenditure law must include, as a schedule, the First Nation's

- (a) annual budget for the current budget year, and
- (b) interim budget for the following budget year,

using the categories of expenditures set out in the Schedule.

2.2 The annual budget and the interim budget must include a contingency amount for the provision of local services as part of each budget, which amount

- (a) must not exceed ten percent (10%) of the total local revenues in the current year, excluding any amounts transferred from local revenues into reserve funds in that year; and
- (b) must be at least one percent (1%) of the total local revenues in the current year, excluding any amounts transferred from local revenues into reserve funds in that year.

2.3 The annual budget must set out

- (a) the amounts payable by the First Nation in the budget period under each service agreement between the First Nation and a third-party service provider;

- (b) the amounts to be paid by the First Nation in the budget period under each granting program established by the First Nation;
- (c) in an appendix, each reserve fund and its opening balance, all transfers in and out of the reserve fund, and its closing balance; and
- (d) in an appendix, each development cost charge reserve fund and its opening balance, all transfers in and out of the reserve fund, and its closing balance.

[am. FNTC Resolution 2012-12-12.]

3. Contingency Amounts

The Law must provide that contingency amounts may be expended as necessary in any of the categories of expenditures set out in the Law.

4. Reserve Funds

4.1 Where a First Nation wishes to transfer money into or out of a reserve fund, the Law must

- (a) establish the reserve fund unless it has been previously established in an expenditure law; and
- (b) authorize all payments into a reserve fund and all expenditures from a reserve fund.

4.2 Where a First Nation wishes to transfer money into or out of a development cost charge reserve fund, the Law must authorize all payments into a development cost charge reserve fund and all expenditures from a development cost charge reserve fund.

[am. FNTC Resolution 2011-03-29.]

5. Establishing a Reserve Fund

Where a First Nation wishes to establish a reserve fund or use a reserve fund existing at the time the First Nation was added to the schedule to the Act, the reserve fund must

- (a) be established in an expenditure law and include a statement respecting the purposes of the reserve fund; and
- (b) comply with the requirements in the First Nation's taxation law.

[am. FNTC Resolution 2008-09-17; 2011-03-29; 2012-12-12.]

6. Reserve Fund Purposes

The Law may establish reserve funds only for one or more of the following purposes:

- (a) capital infrastructure replacement, provided its purposes are supported by a capital development plan;

- (b) capital infrastructure improvement, provided its purposes are supported by a capital development plan;
- (c) contingency reserves, provided it meets the requirements in section 7; and
- (d) other non-capital purposes, provided its purposes are supported by a capital development plan, contingent liability plan, land management plan, long-term economic plan or financial plan.

[am. FNTC Resolution 2008-09-17; 2011-03-29; 2012-12-12.]

7. Contingency Reserve Funds

7.1 Where the Law establishes a contingency reserve fund, the reserve fund must be established only for the purposes of funding unforeseen operating expenditures and stabilizing the temporary impacts of cyclical local revenue decreases.

7.2 Where a First Nation has established a contingency reserve fund, the Law may provide for a transfer of local revenues into that reserve fund, provided that

- (a) only unexpended contingency amounts from the previous budget year may be transferred into the reserve fund;
- (b) the amount transferred must not exceed ten percent (10%) of the total local revenues in the current budget year; and
- (c) the balance in the reserve fund must not at any time exceed the amount that is fifty percent (50%) of the current year's local revenues.

7.3 Despite subsection 7.2, where a First Nation's contingency reserve fund has a balance that exceeds the amount that is fifty percent (50%) of the current year's local revenues, the First Nation's annual expenditure law must

- (a) not authorize a transfer of money into the reserve fund; and
- (b) authorize a transfer of money from the reserve fund into the local revenue account, or into another reserve fund, in an amount sufficient to reduce the balance in the contingency reserve fund to not more than fifty percent (50%) of the current year's local revenues.

[am. FNTC Resolution 2012-12-12.]

8. Additional Requirements

8.1 Where a First Nation has a taxation law that has transitioned under section 145 of the Act and the First Nation wishes to transfer money into or out of a reserve fund, the Law must comply with this section.

8.2 The Law must not authorize an expenditure from a reserve fund unless the expenditure is

- (a) for the purpose for which the reserve fund was established;

(b) a transfer of money to another reserve fund or account as provided in subsection 8.3 or 8.4; or

(c) to borrow money from a reserve fund as provided in subsection 8.5.

8.3 If a First Nation wishes to authorize a transfer of money from a capital purpose reserve fund to another reserve fund or account, the Law must

(a) only authorize a transfer where all projects for which the reserve fund was established have been completed; and

(b) show the transfer as an expenditure from the originating reserve fund and as revenue into the receiving reserve fund or account.

8.4 If a First Nation wishes to authorize a transfer of money from a non-capital purpose reserve fund to another reserve fund or account, the Law must show the transfer as an expenditure from the originating reserve fund and as revenue into the receiving reserve fund or account.

8.5 If a First Nation wishes to authorize the borrowing of money from a reserve fund, the Law must

(a) authorize borrowing from a reserve fund only where the money is not immediately required for the purpose of the reserve fund, and on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation; and

(b) show the borrowing as an expenditure from the reserve fund and as local revenues.

8.6 As an exception to paragraph 8.5(a), the Law may permit the First Nation to borrow from a reserve fund where the First Nations Financial Management Board has assumed third-party management of the First Nation's local revenue account and, acting in the place of the Council, has determined that moneys must be borrowed from a reserve fund to meet the financial obligations of the First Nation.

[am. FNTC Resolution 2011-03-29.]

PART VII

COMING INTO FORCE

These Standards are established and in effect as of October 22, 2007.

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

LOCAL SERVICE EXPENDITURE CATEGORIES

1. General Government Expenditures
 - a. Executive and Legislative
 - b. General Administrative
 - c. Other General Government
2. Protection Services
 - a. Policing
 - b. Firefighting
 - c. Regulatory Measures
 - d. Other Protective Services
3. Transportation
 - a. Roads and Streets
 - b. Snow and Ice Removal
 - c. Parking
 - d. Public Transit
 - e. Other Transportation
4. Recreation and Cultural Services
 - a. Recreation
 - b. Culture
 - c. Heritage Protection
 - d. Other Recreation and Culture
5. Community Development
 - a. Housing
 - b. Planning and Zoning
 - c. Community Planning
 - d. Economic Development Program
 - e. Tourism
 - f. Trade and Industry
 - g. Land Rehabilitation and Beautification
 - h. Other Regional Planning and Development

6. Environment Health Services
 - a. Water Purification and Supply
 - b. Sewage Collection and Disposal
 - c. Garbage Waste Collection and Disposal
 - d. Recycling
 - e. Other Environmental Services
7. Fiscal Services
 - a. Long-term Borrowing Payments to the First Nations Finance Authority
 - b. Interim Financing Payments to the First Nations Finance Authority
 - c. Other Debt Payments
 - d. Accelerated Debt Payments
 - e. Other Fiscal Services
8. Other Services
 - a. Health
 - b. Social Programs and Assistance
 - c. Agriculture
 - d. Education
 - e. Other Service
9. Taxes Collected for Other Governments
[am. FNTC Resolution 2012-03-29.]