

**STANDARDS FOR THE FORM AND CONTENT OF
FIRST NATION BORROWING LAWS**

[Consolidated to 2008-12-16]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal and Statistical 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 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 and borrowing agreement 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 law made under paragraph 5(1)(d) of the Act submitted to the Commission for approval under the Act.

**PART V
DEFINITIONS**

In these Standards:

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

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

“borrowing agreement” means an agreement between the Authority and the First Nation that includes their contractual obligations respecting borrowing authorized under a borrowing law;

“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 and does not authorize borrowing by a First Nation;

“borrowing law” means a law made under paragraph 5(1)(d) of the Act, other than a borrowing agreement law;

“capital infrastructure project” means the project for which the First Nation wishes to undertake the borrowing to be authorized by a borrowing law;

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

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

“promissory note” means a contractual promise to pay that sets out a schedule of repayment of principal and interest; and

“security issuing council resolution” means a Council resolution containing the requirements set out in section 4.

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. Required Information

1.1 A borrowing law must

- (a) set out the estimated cost of undertaking the capital infrastructure project;
- (b) state the amount of the First Nation's existing obligations authorized as of the date of the borrowing law, and attach a certificate from an authorized officer of the First Nation in the form attached to these Standards as Schedule I;
- (c) state that the First Nation has sufficient unutilized borrowing capacity to undertake the borrowing authorized by the borrowing law;
- (d) state that the First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act that has been approved by the First Nations Financial Management Board as required under section 4 of the Act; and
- (e) state that the First Nation has obtained the required certificate under subsection 50(3) of the Act, and attach a copy of the certificate as a schedule to the borrowing law.

1.2 A borrowing agreement law must

- (a) state that the First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act that has been approved by the First Nations Financial Management Board as required under section 4 of the Act;
- (b) state that the First Nation has obtained the required certificate under subsection 50(3) of the Act, and attach a copy of the certificate as a schedule to the borrowing agreement law;
- (c) authorize the First Nation to enter into the borrowing agreement and authorize and direct specified authorized signatories to execute the borrowing agreement on behalf of the First Nation; and
- (d) attach the authorized form of the borrowing agreement as a schedule to the borrowing agreement law.

[am. FNTC Resolution 2008-12-16.]

2. Authorization to Borrow

A borrowing law must

- (a) provide a description of the capital infrastructure project for which the First Nation wishes to borrow from the Authority;
- (b) authorize the First Nation to borrow upon the credit of the First Nation for the capital infrastructure project and request and authorize the Authority to undertake the borrowing on behalf of and at the sole cost of the First Nation;

(c) set out the full amount of the borrowing authorized under the borrowing law; and

(d) provide that the borrowing will be at the sole cost and on behalf of the First Nation, and that the First Nation will pay the principal together with such interest and with such discounts or premiums and expenses as the Authority determines appropriate in consideration of the market and economic conditions.

3. Budgeting and Expenditures

A borrowing law must

(a) require the First Nation, in each budget year after the borrowing law comes into force, to provide for payments of all amounts payable to the Authority during that budget year and to reserve such local revenues as are required to ensure that all amounts authorized to be paid to the Authority are actually paid in that year;

(b) require the First Nation to pay its obligations to the Authority in priority to all other creditors of the First Nation in each budget year; and

(c) prohibit an expenditure law made under paragraph 5(1)(b) of the Act from authorizing the expenditure of moneys raised under a local revenue law unless the First Nation's budget provides for the payment of all amounts payable to the Authority during that budget year.

4. Security Issuing Council Resolution

A borrowing law must

(a) require the First Nation to pass a security issuing council resolution when it wishes to borrow all or a portion of the borrowing authorized under the borrowing law; and

(b) set out the form of security issuing council resolution that Council will use, which must include

(i) Council approval for a specified amount of borrowing from the Authority as part of the Authority's next issue;

(ii) the maximum term for which debentures may be issued to secure the debt authorized by the borrowing law;

(iii) a request by Council that the Authority undertake the borrowing of the specified amount on Council's behalf, together with such interest and with such discounts or premiums and expenses as the Authority determines appropriate in consideration of the market and economic conditions; and

(iv) Council authorization and direction for specified authorized signatories to execute one or more promissory notes, in the form attached to the security issuing council resolution, upon the completion of any borrowing undertaken by the Authority on behalf of the First Nation in accordance with the borrowing law and the resolution, which promissory notes shall be dated and payable in principal amount or amounts of moneys and in Canadian dollars and shall set out a schedule of repayment of the principal amount, together with interest on unpaid amounts accruing from the date specified by the Authority, and at rates determined by the Authority from time to time.

5. Term of Debentures

A borrowing law must set a maximum term for which debentures may be issued to secure the debt authorized by the borrowing law that is the lesser of

- (a) thirty (30) years; and
- (b) the reasonable life expectancy of the capital infrastructure project.

6. Term of Authorization

A borrowing law must provide that the authorization to borrow under the law ends on the earlier of

- (a) the date that the amount authorized by the borrowing law has been fully borrowed by the First Nation, as evidenced by security issuing council resolutions passed by the Council; and
- (b) five (5) years from the date that the borrowing law comes into force for any part of the amount authorized by the law that has not been used to secure borrowing through the Authority, as evidenced by security issuing council resolutions passed by the Council.

PART VII COMING INTO FORCE

These Standards are established and in effect as of September 17, 2008.

PART VIII ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Yellowhead Highway
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

SCHEDULE I CERTIFICATE OF OBLIGATIONS

The _____ [insert First Nation here] _____ (the "First Nation")
 In relation to _____ [insert the name and # of the long-term capital borrowing law to which this certificate relates]

The undersigned officer assigned responsibility as the senior financial officer under the authority of the First Nation Financial Administration Law hereby certifies as of _____ [insert date], as follows:

Calculation of previous year's local revenue _____ \$0.00 a
 (sections 4, 5 and 6 of the FNTC *Standards Establishing Criteria for Approval of Borrowing Laws*)
 Liability Servicing Limit (a x 25%) _____ \$0.00 b

Annual debt servicing cost for previous year _____ c
 (section 3 of the FNTC *Standards Establishing Criteria for the Approval of Borrowing Laws*)
 Plus: New local revenue liabilities incurred, other than the current borrowing request

Liability type and reference	Annual servicing cost	
_____	_____	d
_____	_____	e
_____	_____	f
_____	_____	g
_____	_____	h
_____	_____	i
_____	_____	j
_____	_____	k
_____	_____	l
Total of lines d through l		_____ \$0.00 m

Less: Liabilities which have matured

Liability type and reference	Annual servicing cost	
_____	_____	n
_____	_____	o
_____	_____	p
_____	_____	q
_____	_____	r
Total of lines n through r		_____ \$0.00 s

Amount of new liability _____ t
 (section 4 of First Nation borrowing law)
 Annual servicing cost of new liability _____ u

Total liability servicing cost including current request (lines c+m-s+u) _____ \$0.00 v

In accordance with section 5 of the FNTC *Standards for the Form and Content of Borrowing Laws*, the debt to be contracted under the long-term capital borrowing law will not exceed the lesser of thirty (30) years and the reasonable life expectancy of the capital asset for which the is to be contracted.

This Certificate is provided to the First Nation Tax Commission as required under subsection 1.1 of the Commission's *Standards for the Form and Content of Borrowing Laws*, and may be relied on by the Commission in its determination of the First Nation's unutilized borrowing capacity for the purposes of the review and approval of the long-term capital borrowing law referenced above.

DATED this _____ day of _____, 20__.

Senior Financial Officer

 (Please print full name)