



FINANCING CAPITAL PROJECTS USING PROPERTY TAXATION REVENUES

First Nations Tax Commission

March 2021

First Nations exercising property tax jurisdiction under the *First Nations Fiscal Management Act* (FMA) can use those revenues to obtain long-term, stable and affordable financing for capital projects through the First Nations Finance Authority (FNFA).

This Checklist sets out the steps the First Nation will need to take in order to become an FNFA borrowing member and obtain financing from the FNFA for specific projects. All three of the FMA Fiscal Institutions, the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB) and the FNFA play a role in the borrowing process, and will provide support to First Nations wanting to undertake property tax borrowing.

1. ELIGIBLE FIRST NATIONS

A) First Nation is on the Schedule to the FMA.

- ☐ If not on the FMA Schedule, contact FNTC, FNFA or FMB for form of Band Council Resolution required to request that the Minister add the First Nation to the Schedule (s. 2(3) FMA).

BCR to request that the Minister add the First Nation to the Schedule

B) First Nation is implementing property taxation.

- ☐ If taxing, contact FNTC and FNFA to assess viability and range of borrowing room available.
- ☐ If not taxing, contact FNTC respecting implementing taxation.

2. ELIGIBLE PROJECTS

A) First Nations can use property tax revenues to finance capital infrastructure for the provision of local services on reserve lands (s. 74(a)(i) FMA).

- ☐ First Nation can finance a new project or refinance an existing eligible project.
- ☐ Review FNTC Standards Establishing Criteria for the Approval of Borrowing Laws for a list of permitted capital infrastructure projects.

FNTC Standards Establishing Criteria for the Approval of Borrowing Laws

- ☐ The capital infrastructure project does not need to be located on the reserve lands provided it benefits the reserve lands (s. 2(4) FMA).

3. REQUIREMENTS FOR BORROWING

A) First Nation enacts a Financial Administration Law and that Law is approved by the FMB (s.9 FMA).

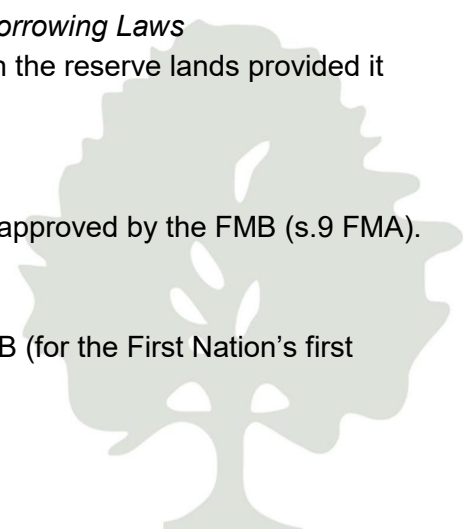
- ☐ Contact FMB for FAL development support and process.

FAL development support and process (FMB)

B) First Nation obtains a financial performance certificate from the FMB (for the First Nation's first borrowing) .

- ☐ Contact FMB for certification process and requirements.

Financial Performance certification (FMB)



- ☐ Obtain financial management system certificate within 36 months (required for subsequent borrowings).

FMS Certification (FMB)

C) First Nation applies to the FNFA to become a borrowing member.

- ☐ Contact FNFA for process and requirements to become a borrowing member.

Process to become a borrowing member (FNFA)

4. BORROWING AGREEMENT LAW DEVELOPMENT

A) First Nation enacts a Borrowing Agreement Law (BAL) (s. 5(1)(d) FMA) to approve entering into the Borrowing Agreement with the FNFA.

- ☐ Contact FNTC for the sample BAL.

Sample BAL

- ☐ First Nation reviews the sample BAL and the FNTC Standards for the Form and Content of Borrowing Laws with its legal counsel and discusses any issues with the FNTC. FNTC provides law development support.

FNTC Standards for the Form and Content of Borrowing Laws

- ☐ Contact FNFA to obtain the current form of borrowing agreement.
- ☐ First Nation reviews the form of borrowing agreement with its legal counsel and discusses any issues with the FNFA.
- ☐ First Nation Council enacts BAL and submits the enacted law to the FNTC for approval consideration.
- ☐ FNTC reviews and approves BAL. BAL comes into force day after FNTC approval.
- ☐ FNTC publishes approved BAL in the First Nations Gazette.

B) FNFA provides execution copies of borrowing agreement to First Nation. First Nation signs borrowing agreement and returns it to the FNFA.

5. CAPITAL PROJECT PLAN AND BORROWING ROOM

A) First Nation develops a Project Plan to support the Capital Infrastructure Project.

- ☐ Contact FNTC for Project Plan template.

LTCBL Project Plan Template

LTRBL Project Plan Template

- ☐ Review FNTC Standards Establishing Criteria for the Approval of Borrowing Laws for Project Plan requirements.

Standards Establishing Criteria for the Approval of Borrowing Laws

- ☐ FNTC provides Project Plan development support.

B) First Nation determines borrowing amount required, term of the borrowing, and amount required in each year to pay the FNFA.

- ☐ Contact FNFA to discuss borrowing requirements and resulting annual payments required.
- ☐ Contact FNTC to for preliminary determination of borrowing room.

6. LONG-TERM CAPITAL BORROWING LAW DEVELOPMENT

A) First Nation develops Long-term Capital Borrowing Law (LTCBL) or Long-term Refinancing Borrowing Law (LTRBL) (s. 5(1)(d) FMA) to authorize the loan.

- ☐ Contact FNTC for sample LTCBL or LTRBL.
Sample Long-term Capital Borrowing Law
Sample Long-term Refinancing Borrowing Law

- ☐ FNTC to provide law development support.
- B) First Nation completes the Certificate of Capital Liabilities and Calculation of Borrowing Capacity attached as a Schedule to the LTCBL or LTRBL.
☐ FNTC and FNFA provide support for completing Certificate.
- C) FNTC and FNFA review completed Certificate and advise First Nation of any concerns respecting the borrowing and the First Nation's borrowing capacity for the Project.
- D) First Nation discusses with the FNFA and FNTC the required timing for its annual expenditure law to ensure it has its law in place to make required payments. First Nation develops expenditure law if required.
☐ FNTC provides law development support.

7. PUBLIC INPUT

- A) First Nation Council approves LTCBL or LTRBL and Project Plan for public input purposes.
Sample Borrowing Law Notice
- B) First Nation undertakes public input requirements.
☐ Review FNTC Standards Establishing Criteria for the Approval of Borrowing Laws for public input requirements.
FNTC Standards Establishing Criteria for the Approval of Borrowing Laws

8. BORROWING LAW ENACTMENT

- A) First Nation considers any written representations received during public input period. Provides additional notices if written representations were received during the public input period.
- B) First Nation Council enacts LTCBL or LTRBL and submits law, Project Plan and additional submission documents to Commission.
☐ Review FNTC Standards Establishing Criteria for the Approval of Borrowing Laws for borrowing law submission requirements.
FNTC Standards Establishing Criteria for the Approval of Borrowing Laws
Sample Borrowing Law Submission Letter
- C) First Nation enacts expenditure law (if required) and submits law to FNTC for approval.

9. COMMISSION BORROWING LAW REVIEW AND APPROVAL

- A) FNTC reviews the LTCBL or LTRBL, Project Plan and additional documents. FNTC considers written representations, if any.
- B) FNTC confirms the First Nation has sufficient borrowing capacity for the borrowing.
- C) FNTC approves the LTCBL or LTRBL if it meets all legislative requirements.
- D) FNTC reviews and approves expenditure law (if required).

10. PUBLICATION, CERTIFICATION AND IMPLEMENTATION

- A) FNTC publishes approved LTCBL or LTRBL in the First Nations Gazette.
- B) FNTC provides to the FNFA a true copy of the approved LTCBL or LTRBL and a certificate under s. 32 (2)(b) FMA stating that the law meets all of the requirements of the FMA and the regulations.
- C) First Nation can borrow from the FNFA in accordance with the LTCBL or LTRBL.
☐ Contact FNFA for process and requirements to obtain funds.
Borrowing process (FNFA)

11. SERVICING AND RETIRING THE DEBT

A) The First Nation, in each year that it owes money to the FNFA, must:

- ☐ make its annual rates and expenditure laws in accordance with s.10 of the FMA;
- ☐ not authorize expenditures under an expenditure law unless the budget provides for the payment of all amounts payable to the FNFA during the budget period (s. 11(2) FMA);
- ☐ reserve such property tax revenues as are required to ensure that all amounts authorized to be paid to the FNFA are actually paid (s. 11(3) FMA); and
- ☐ not repeal its property taxation laws except as permitted by s. 11(1) of the FMA.



First Nations Tax Commission

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