

**STANDARDS FOR
FIRST NATION EXPENDITURE LAWS, 2017**

**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 paragraph 5(1)(b) and subsection 10(2) 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
CITATION**

These Standards may be cited as the *Standards for First Nation Expenditure Laws, 2017*.

**PART VI
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 First Nation's budget setting out its projected local revenues and its projected expenditure of those local revenues during a budget year, and its expenditures made under paragraph 13.1(a) of the Act;

“annual expenditure law” means a Law required under subsection 10(2) of the Act;

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

“development cost charges law” means a law enacted under subparagraph 5(1)(a)(v) of the Act;

“development cost charge reserve fund” means a reserve fund required by a development cost charges law for development cost charges purposes;

“fee law” means a law enacted under paragraph 5(1)(a.1) of the Act;

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

“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 local revenue law and payments made to a First Nation in lieu of a tax imposed by a law made under paragraph 5(1)(a) 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 local revenues reserve fund established by the First Nation, but does not include a development cost charge reserve fund;

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

“taxation law” means a law made under paragraphs 5(1)(a) and (e) of the Act, but does not include a property transfer tax law.

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

PART VII 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.

2. Annual Expenditure Laws

2.1 The annual expenditure law must include as a schedule the First Nation’s annual budget for the current budget year, using the categories of revenues and expenditures set out in the Schedule.

2.2 The annual budget must segregate and set out separately each of the following:

- (a) the revenues and expenditures from a development cost charges law;
- (b) the revenues and expenditures from each service tax law; and
- (c) the revenues and expenditures from each fee imposed under a fee law, shown separately for each service, facility or regulatory process for which a fee is imposed.

2.3 The annual budget must set out

- (a) the amounts to be paid by the First Nation under each service agreement between the First Nation

and a third-party service provider; and

(b) the amounts to be paid by the First Nation under each granting program established by the First Nation.

2.4 The annual budget must set out

(a) each reserve fund and its opening balance, all transfers in and out of that reserve fund, all interest earned, and its closing balance; and

(b) each development cost charge reserve fund and its opening balance, all transfers in and out of that development cost charge reserve fund, all interest earned, and its closing balance.

2.5 The annual budget must include the First Nation's expenditures made in accordance with paragraph 13.1(a) of the Act in the current budget year.

2.6 The annual budget must include a contingency amount for the provision of local services, which amount must be at least one percent (1%) and not more than ten percent (10%) of the total local revenues in the current budget year, excluding

(a) any amounts transferred from the current year's local revenues into a reserve fund or a development cost charge reserve fund;

(b) any amounts transferred from a capital reserve fund or a development cost charge reserve fund into the current year's revenues;

(c) any revenues from a service tax law;

(d) any revenues from a fee law; and

(e) any proceeds of borrowing from the First Nations Finance Authority.

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. 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 is added to the schedule to the Act, the reserve fund must

(a) be established in a 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.

5. Reserve Fund Purposes

5.1 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 the requirements in section 6 are met;

(d) service tax law purposes, as required under subsection 9.1;

(e) fee law purposes, as required under subsection 9.2; and

(f) 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.

5.2 The Law may establish a development cost charge reserve fund only for each development cost charge class established in the First Nation's development cost charges law.

6. Contingency Reserve Funds

6.1 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.

6.2 Where a First Nation has established a contingency reserve fund, the Law may provide for a transfer of the current year's local revenues into that reserve fund, provided that

(a) the amount transferred must not exceed ten percent (10%) of the current year's local revenues; and

(b) 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.

6.3 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 current year's local revenues, 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.

6.4 For the purposes of this section, "local revenues" excludes revenues from a service tax law, a fee law, and a development cost charges law, and any proceeds of borrowing from the First Nations Finance Authority.

7. Reserve Fund Transfers

7.1 The Law must authorize each transfer of money from the current year's local revenues into a reserve fund, and each transfer of money out of a reserve fund into the current year's local revenues.

7.2 The Law must authorize each transfer of money from the current year's revenues from a development cost charges law into a development cost charge reserve fund, and each transfer of money out of a development cost charge reserve fund into the current year's local revenues.

8. Restrictions on Reserve Fund Transfers and Borrowing

8.1 The Law must not authorize a transfer from a reserve fund unless the transfer is

(a) to expend the moneys for the purpose for which the reserve fund was established;

(b) to another reserve fund as provided in subsection 8.2 or 8.3; or

(c) to borrow money from the reserve fund as provided in subsection 8.4.

8.2 If a First Nation wishes to authorize a transfer of money from a capital purpose reserve fund to another reserve fund, 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 out from the originating reserve fund and the transfer into the receiving reserve fund.

8.3 If a First Nation wishes to authorize a transfer of money from a non-capital purpose reserve fund to another reserve fund, the Law must show the transfer out of the originating reserve fund and the transfer into the receiving reserve fund.

8.4 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 a transfer out from the reserve fund into the current year's local revenues.

8.5 As an exception to paragraph 8.4(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.

9. Required Reserve Funds

9.1 Where a First Nation has enacted a service tax law, the Law must

(a) establish a reserve fund for that service tax in the first year the service tax is levied; and

(b) in each year show a transfer into the reserve fund of all revenues from the service tax law that are not expended in the current budget year.

9.2 Where a First Nation has enacted a fee law, the Law must

(a) establish a reserve fund for each type of service, facility or regulatory process for which a fee is levied, in the first year the fee is levied; and

(b) in each year show a transfer into the applicable reserve fund of all revenues from that fee law that are not expended in the current budget year.

9.3 Despite section 8, a Law must not authorize

(a) a transfer of money from a reserve fund referenced in subsection 9.1 or 9.2 to another reserve fund; or

(b) borrowing from a reserve fund referenced in subsection 9.1 or 9.2, except as permitted by subsection 8.5.

PART VIII

REVOCATION AND COMING INTO FORCE

Revocation

The *Standards for First Nation Expenditure Laws* that were established and effective on October 22, 2007, are revoked.

Coming into Force

These Standards are established and in effect as of December 13, 2017.

PART IX

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