ENHANCEMENTS TO THE *FIRST NATIONS FISCAL MANAGEMENT ACT*

CONSULTATION GUIDE

FEBRUARY 2023

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# ENHANCEMENTS TO THE *FIRST NATIONS FISCAL MANAGEMENT ACT*: CLOSING THE GAPS

Enhancements to *First Nations Fiscal Management Act*

Closing the Gaps

**The Issue:**

* + The pandemic brought important lessons worldwide – exposing gaps and requiring extraordinary measures in response. In particular, this exposed the heightened vulnerability of Indigenous communities due to significant longstanding socio-economic, infrastructure, institutional and regulatory gaps compared to the rest of Canada, as well as gaps impacting the operations of theInstitutions under the *First Nations Fiscal Management Act* (FNFMA).

**Closing the Gaps:**

* + The Institutions are limited by outdated mandates in the services they are able to provide.
	+ First Nations are making significant investments in infrastructure and economic development without access to a national institution for infrastructure.
	+ First Nations would benefit from expanded and clearer law-making powers respecting First Nation services and related infrastructure.
	+ First Nations would benefit from additional enforcement measures for ensuring compliance with their laws under the Act.
	+ COVID-19 drew attention to the lack of timely and reliable data to monitor and forecast impacts of economic disruption on First Nations.

**To address these:**

* The existing Institutions under the FNFMA (the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority), the FNII Development Board, and CIRNAC have co-developed proposed enhancements to the Act to address some of these institutional and regulatory gaps that First Nations are facing and to improve the overall operation of the regime.

# MANDATES AND BOARD GOVERNANCE

Expanding and Modernizing the

First Nations Tax Commission’s Mandate

**Objective:**

* To continue expanding and modernizing the First Nations Tax Commission’s mandate to better support First Nations and other levels of government seeking advice and services.

**Proposed Changes to the First Nations Tax Commission’s Mandate**:

* Support First Nations in the creation of local revenue laws beyond real property taxation;
* Strengthen the education and capacity supports available, including through the Tulo Centre for Indigenous Economics;
* Collect data, publish statistical information and conduct research and analysis;
* Support local revenue-based service agreements; and,
* Provide services to Self-Governing and Treaty First Nations as well as other Indigenous groups participating in the Act
* Collaborate with First Nations, Indigenous institutions and organizations, and other levels of government to strengthen First Nations economies.

Expanding and Modernizing the

First Nations Financial Board’s Mandate

**Objective**:

* To continue expanding and modernizing the First Nations Financial Management Board’s services to meet the needs of First Nations and other Indigenous groups and entities.

**Proposed Changes to the First Nations Financial Management Board’s Mandate**:

* Expand services and certification standards to include new client segments such as Tribal Councils and Self-Governing and Treaty First Nations as well as other Indigenous groups;
* Provide monitoring and reporting services respecting implementation of financial administration laws and bylaws as well as financial management systems and financial performance;
* Collect data, publish statistical information and conduct research and analysis;
* Research, test and evaluate innovative proposals; and,
* Develop and implement fiscal and economic proposals that contribute to responding to the Truth and Reconciliation Commission’s Calls to Action and implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Board Governance – First Nations Financial Management Board

**Objective**:

* To update the Board Governance provisions for the First Nations Financial Management Board.

**Proposed Changes to the First Nations Financial Management Board Governance:**

* Change the position of the Chairperson of the First Nations Financial Management Board from a part-time to a full-time position and to adjust the remuneration accordingly; and,
* Ensure a strong and diversified Indigenous representation on the Board of Directors.

# THE FIRST NATIONS

# INFRASTRUCTURE INSTITUTE

Establishing the First Nations Infrastructure Institute

**Objective**:

* To establish a First Nations Infrastructure Institute – a national Indigenous-led organization under the FNFMA to support communities to achieve better and more sustainable infrastructure outcomes.
* Like the other institutions, working with the proposed First Nations Infrastructure Institute would be voluntary and based on the interests of First Nations, other Indigenous communities or organizations.

**Proposed First Nations Infrastructure Institute’s Mandate**:

* Serve as a centre of infrastructure excellence, information, research and innovation;
* Develop standards and tools adapted to the Indigenous context and support communities in the application of infrastructure best practices;
* Collect data, publish statistical information and conduct research and analysis;
* Build infrastructure planning, implementation and management capacity, transfer knowledge and provide certification and review services;
* Assist First Nations under the FNFMA in exercising jurisdiction through new regulatory powers respecting the provision of services and related infrastructure; and,
* Partner with, and complement, regional Indigenous infrastructure delivery organizations.

**Proposed Governance**:

* The proposed First Nations Infrastructure Institute Board would be comprised of 10 directors, including a Chair and a Vice-Chair. Their terms would not exceed five years, but would be eligible for reappointment.
* The first Board would be appointed by the Governor in Council.
* However, for all subsequent boards, it is proposed that the majority of the directors would be appointed by Indigenous bodies.
* The Board would be expected to have strong regional and Indigenous representation.
* The Head office would be located on reserve lands – but the exact location has yet to be determined.
* Similar to the First Nations Tax Commission, the Chairperson would also be the Chief Executive Officer of the Institute.

# NEW LAW-MAKING POWERS

# AND INSTITUTIONAL FUNCTIONS

**Expanded Law-Making Powers**

**Objective:**

* To include new First Nation law-making powers under the FNFMA to close regulatory gaps related to the provision of services on reserve lands, and infrastructure used in the provision of those services.
* The long-term goal is for these proposed new regulatory powers to protect how infrastructure is used on reserve and increase its sustainability.

**Proposed New Law-making Powers for First Nations Scheduled under the Act**:

* To establish powers respecting the provision of services provided on reserve lands by or on behalf of First Nations (I.e. service laws), including powers to regulate, prohibit and impose requirements in respect of those services; and
* These proposed service laws would not require approval from the First Nations Infrastructure Institute. However, First Nations may ask the First Nations Infrastructure Institute to review their service laws for compliance with the First Nations Infrastructure Institute standards.

Enforcement Powers

**Objective:**

* + To provide First Nations with additional powers under the FNFMA to better ensure compliance with their local revenue and laws respecting the provision of services.

**Proposed New Enforcement Powers:**

* + The proposed changes would expressly enable First Nations to apply to courts of competent jurisdiction for court orders directing persons or entities to comply with their local revenue and services laws and to collect amounts owing to the First Nations under their local revenue laws. These changes are expected to clarify First Nations’ enforcement powers under the Act and to facilitate their access to courts of competent jurisdiction.
	+ The proposed amendments will also broaden the scope of the Act’s existing enforcement provisions to allow First Nations to use these provisions to enforce all of their local revenue laws, not just laws in respect of taxes, charges, or fees.
	+ First Nations would be empowered to enforce their laws respecting the provision of services, including through the use of “stop work” and “do work” orders and the discontinuance of services.
	+ Finally, changes are proposed that would enable First Nations scheduled to the FNFMA who are also signatories to the Framework Agreement on First Nation Land Management (FNLM) to use civil enforcement measures included in their FNLM laws to enforce their FNFMA laws.

Data Collection Function

**Objective:**

* To enable the Institutions to collect data, publish statistical information and conduct research and analysis in order to be able to monitor growth and enhance their capacity to support evidence-based planning and decision-making on fiscal and economic objectives.

**Proposed New Functions:**

* New functions are proposed for the First Nations Financial Management Board and the First Nations Tax Commission, as well as for the First Nations Infrastructure Institute, to enable the institutions to collect data, publish statistical information and conduct research and analysis on matters related to their mandates.
* These proposed new responsibilities would also require the institutions to protect personal and private information. As such, the institutions would need to ensure that no First Nation, entity or individual could reasonably be identified, without their consent, in the statistical information that the Institutions would make publicly available.

# TECHNICAL AMENDMENTS

# AND INTERNAL OPERATIONS

Lifting the Financing Secured by Other Revenues Regulations (FSORR) into the Act

**Objective:**

* In order to decrease the risk of inconsistencies between the Act and the regulations, and to simplify the process through which First Nations can access capital through the FNFMA regime.

**Proposed Technical Amendments**:

* Technical amendments are proposed that would integrate the content of the Financing Secured by Other Revenues Regulations (FSORR) directly into the Act.
* The proposed changes are not expected to have any impact on existing loans from the First Nations Finance Authority that are secured by other revenues.

Combining existing funds into a single Debt Reserve Fund (and helping to clarify the replenishment formula)

**Objective:**

* To bring efficiencies that should reduce the costs of borrowing in the long run.

**Proposed Technical Amendments:**

• To combine the fund supported by Other Revenues with the fund supported by Local Revenues. Protections between local and other revenues would continue to remain in place. For instance, local revenues could not be called upon in the case of a default for a loan secured by other revenues. Similarly, the First Nations Financial Management Board intervention powers under co-management and third-party management would remain limited to the type of revenue involved.

* The proposed changes also seek to help clarify that only borrowing members with outstanding loans would be called upon to replenish the fund if it had to be used.

Virtual Meetings

**Objective:**

* To enable the First Nations Financial Management Board and the First Nations Tax Commission to conduct their annual meetings in a manner determined by their Board of Directors, including by electronic means.

**Proposed Changes to Internal Operations:**

* Some of the changes proposed are focused on providing greater flexibility to the institutions for their internal operations.
* As experienced broadly across Canada and the world during the pandemic, organizations everywhere have needed the ability to adapt to a virtual setting for meetings.
* As such, changes are proposed to enable the First Nations Tax Commission and the First Nations Financial Management Board to conduct their annual meetings in a manner determined by their Board of Directors, such as holding virtual meetings should that be necessary.
* The same flexibility is proposed for the First Nations Infrastructure Institute. The First Nations Finance Authority already has this option.