



Report to Parliament on the Legislative Review of the *First Nations Fiscal and Statistical Management Act*

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First Nations Fiscal and Statistical Management Act

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EXECUTIVE SUMMARY

The *First Nations Fiscal and Statistical Management Act* requires the Minister of Aboriginal Affairs and Northern Development, in consultation with the First Nations Tax Commission, the First Nations Financial Management Board, the First Nations Finance Authority, and the First Nations Statistical Institute, to review the provisions and operations of the *Act* and the operations of the institutions, and to submit a report on the results of that review to both houses of Parliament.

The *First Nations Fiscal and Statistical Management Act* came into force on April 1, 2006, with the support of all parties in Parliament. Since then, 70 First Nations have been scheduled to the *Act* at their request. The institutions are largely operational. A system of standards and procedures has been created that gives credibility to the form, content and approval process of financial administration laws, and certification of financial performance and financial management systems. First Nations taxing under the *Act* have local revenue laws that are clearer than those developed under the *Indian Act*, resulting in taxation systems with improved capacity, increased taxpayer representation and compliance with national standards.

A regulation developed under the *Act* has been proclaimed to allow the First Nations to securitize their own source revenues. This has the potential to greatly expand the opportunity for First Nations make investments from their own resources to fund their participation in the economic expansion occurring in their traditional territories. First Nations throughout Canada are asking to be scheduled to the *Act*.

First Nations' immediate access to debt is being supported through the establishment of a banking syndicate that is now available to First Nations as the borrowing pool is built and before the first debenture is issued. The rating agencies and investment banks have been consulted throughout the development phase and have vetted and understand the oversight framework created by the *Act*. Favourable market conditions for the first debenture issuance should be present in 2012.

During 2011 and 2012, Aboriginal Affairs and Northern Development Canada consulted the four national Aboriginal institutions above in fulfillment of this requirement. This report summarizes the results of that consultation, and identifies some challenges faced by First Nations and the institutions in implementing the *Act*, as well as opportunities to improve the operations of the *Act* and the institutions themselves.

CHAPTER 1: INTRODUCTION

1.1 Purpose and Objective of this Report

The Minister of Aboriginal Affairs and Northern Development is required under section 146 of the *First Nations Fiscal and Statistical Management Act* to conduct a review of the *Act*, after consultation with the four institutions created under the *Act*.

146. Within seven years after the day on which this Act receives royal assent, the Minister, after consultation with the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority, and First Nations Statistical Institute, shall review the provisions and operation of this Act and the operations of these institutions, and submit a report to each House of Parliament on that review, including any changes that the Minister recommends relating to the evolution of the mandate and operation of these institutions.

The following report is the result of over a year of consultation with the four institutions created under the *First Nations Fiscal and Statistical Management Act* - the First Nations Tax Commission, the First Nations Financial Management Board, the First Nations Finance Authority, and the First Nations Statistical Institute.

This report outlines key issues and challenges related to the operation of the *Act*, and is submitted for the consideration of Parliament.

1.2 The Institutions

The *First Nations Fiscal and Statistical Management Act* created the legislative framework to establish four national Aboriginal institutions – the First Nations Tax Commission, the First Nations Financial Management Board, the First Nations Finance Authority, and the First Nations Statistical Institute. Together, they work to improve the ability of First Nations governments to address the social and economic well-being of their communities, while providing the practical tools available to other governments for modern fiscal management.

- The **First Nations Tax Commission** is a shared-governance corporation that regulates and streamlines the approval of property tax and new local revenue laws of participating First Nations, builds administrative capacity through sample laws and accredited training, and reconciles First Nation government and taxpayer interests.
- The **First Nations Financial Management Board** is a shared-governance corporation which assists all First Nations in strengthening their local financial management regimes and provides independent certification to support borrowing from First Nations Finance Authority and for First Nation economic development.
- The **First Nations Finance Authority** is a non-profit corporation that permits qualifying First Nations to work co-operatively in raising long-term private capital at preferred rates through the issuance of debentures, and also provides investment services to First Nations and First Nation organizations.

- The **First Nations Statistical Institute** is an autonomous, First Nations-led Crown corporation established to increase the quality and accessibility of First Nations statistics to improve planning, decision-making, and investment for all First Nations as well as federal, provincial, and territorial governments.

1.3 How the First Nations Fiscal and Statistical Management Act Works

The *First Nations Fiscal and Statistical Management Act* was designed to improve certainty, confidence and infrastructure for participating First Nations, taxpayers and investors. It does this by strengthening First Nation real property tax systems and First Nations financial management systems, providing First Nations with increased revenue raising tools, a new standard for accountability and access to capital markets available to other governments, while providing greater representation for taxpayers. It encourages the use of appropriate financial standards, improves financial management, and assists in developing statistical management capacity while encouraging First Nation participation in national data collection activities.

Participation in the *Act* is optional. Individual First Nations choose whether they will participate in the taxing and borrowing regimes created under the *Act* and subsequent regulations. To participate in the *Act*, a First Nation must first request that they be added to the Schedule of the *Act*. Scheduled First Nations have the option to use the services from any or all of the four institutions. “Becoming scheduled” requires a Band Council Resolution from the First Nation, and a subsequent regulatory amendment managed by Aboriginal Affairs and Northern Development Canada.

Once a First Nation has been scheduled to the *Act*, it can begin working with any or all of the First Nations institutions.¹ Primarily, First Nations opt-into the *Act* in order to establish property tax jurisdiction under the *Act*'s authority, to access financial management advisory and capacity development services from the First Nations Financial Management Board, and/or to participate in pooled borrowing through the First Nations Finance Authority.

To exercise any of these authorities under the *Act*, First Nations work closely with the institutions. A First Nation wishing to establish property tax jurisdiction under the *Act* must pass a property taxation law, and have that law approved by the First Nations Tax Commission. This ensures that taxes are being collected and managed by the First Nation in compliance with requirements under the *Act*, and, for those First Nations leveraging revenues from property taxation to participate in a First Nations Finance Authority borrowing, it provides assurance and security to lenders that taxation systems are operating properly.

First Nations participating in First Nations Finance Authority pooled borrowing are referred to as “borrowing members”. First Nations can borrow against one (or both) of two streams - property taxation revenues or “other revenues” as defined under the *Financing Secured by Other Revenues Regulations*. To become a borrowing member, a

¹ A First Nation does not need to be scheduled to access all institutional services or all institutions. For example, any First Nation can participate in the investment services provided by the First Nations Finance Authority. As well, the First Nations Statistical Institute can work with any First Nation, not just those which are scheduled.

First Nation must pass financial performance tests and eventually receive certification that their financial management systems comply with First Nations Financial Management Board standards.

The approval of First Nation property taxation laws by the First Nations Tax Commission and the certification of First Nation financial management systems and performance by the First Nations Financial Management Board provide layers of assurance to lenders that systems are operating properly. The *Financing Secured by Other Revenues Regulations* establishes mechanisms for investor protection for First Nations using other revenues to support financing. These layers were created to allow First Nations to access financing at lower interest rates and longer terms than they could access when borrowing independently (i.e. apart from the pooled borrowing system of the *First Nations Fiscal and Statistical Management Act*).

1.4 Implementation of the Act to Date

The Evaluation of the Implementation of the *First Nations Fiscal and Statistical Management Act*², completed by Aboriginal Affairs and Northern Development Canada in 2011, confirms that the *Act*

addresses a continued need by providing a choice to First Nations wishing to improve capacity and to have access to financing tools used by governments to advance economic development. It also addresses longstanding issues related to the timeliness and completeness of Aboriginal statistics.

The Evaluation found that the First Nations Tax Commission and the First Nations Financial Management Board were each delivering on all their mandated services, but in the case of the First Nations Statistical Institute, did not find sufficient evidence to assess measurable progress towards the achievement of its outcomes. It also found that the First Nations Finance Authority was implementing its responsibilities under the *Act* as intended, but noted that the issuance of an inaugural debenture will determine the ultimate achievement of intended outcomes. With respect to delays in the institutions becoming operational, the Evaluation referenced delays in the appointment of members of the Boards for the First Nations Financial Management Board and the First Nations Statistical Institute as a mitigating factor.

Highlights in the implementation of the *Act* are summarized below.

Uptake by First Nations

At the end of 2011, 70 First Nations had been added to the *Act's* Schedule, representing six provinces across the country.³ An additional eleven First Nations have forwarded

² Aboriginal Affairs and Northern Development Canada. *Evaluation of the Implementation of the First Nations Fiscal and Statistical Management Act*. April 2011. Available: <http://www.aadnc-aandc.gc.ca/eng/1320691523906>. [February 1, 2012].

³ Of the 70 total First Nations included on the FSMA Schedule, fifty are located in British Columbia, one is located in Alberta, nine are located in Saskatchewan, two in Manitoba, four in Ontario and four in New Brunswick.

Band Council Resolutions requesting addition to the Schedule, and are in the process of being added⁴.

Transparency and accountability

The First Nations Financial Management Board has developed standards for First Nations financial administration laws, financial management systems, and financial performances. These standards assist First Nations to produce multi-dimensional accountability and transparency regimes that instill confidence in First Nations' financial administration and reporting systems for First Nations members, financial institutions and other investors. The *Act* has also meant increased transparency in property tax systems, through improved member and taxpayer notice provisions and the publication of standards, procedures and approved laws in the First Nations Gazette.

Clarity and consistency in First Nation laws

Compared to similar *Indian Act* by-laws enacted prior to 2007, local revenue laws enacted by First Nations exhibit greater clarity and consistency as a result of First Nations Tax Commission's standards and the publication requirements of the First Nations Gazette.

First Nation property taxation systems

First Nations collecting property taxes under the *First Nations Fiscal and Statistical Management Act* do so under a more rigorous, accountable, transparent, efficient and streamlined system than those collecting property taxes under the *Indian Act*. Further, the *Act* provides First Nations with new and expanded revenue options, clear and effective enforcement mechanisms, and the ability to access debenture financing. The *Act* also addresses a key gap in *Indian Act* taxation authorities by requiring public notice of local revenue laws and requiring an opportunity for taxpayer input before laws are enacted by the First Nation.

Number of First Nations collecting property tax

Since the *First Nations Fiscal and Statistical Management Act* has come into force, a total of 43 First Nations who had never collected property taxes before have begun doing so. 34 of these have done so through the *First Nations Fiscal and Statistical Management Act*, and nine have done so through the *Indian Act*.⁵ This increase in the number of First Nations collecting property taxes has led to a net increase in property tax revenues collected by First Nations. Supported by the First Nations Tax Commission, First Nations have collected \$99.8M to date in property taxation revenue under the *First Nations Fiscal and Statistical Management Act*.⁶

⁴ Accurate as at January 10, 2012.

⁵ Accurate as at January 10, 2012.

⁶ Source: The First Nations Tax Commission. Accurate as at December 31, 2011. The Evaluation of the Implementation of the *First Nations Fiscal and Statistical Management Act* notes that the First Nations Tax Commission has supported First Nations taxing under the *Indian Act* to collect approximately \$115 million in property taxation revenue over the same period.

Certification and professional training

The First Nations Tax Commission has worked with the Tulo Centre of Indigenous Economics and Thompson Rivers University to develop the first Canadian university-accredited certificate in First Nation Tax Administration. Students representing 42 First Nations from across Canada have earned 172 university credits in this unique program. In October 2011, eleven students graduated with a Certificate in First Nations Tax Administration. The First Nations Tax Commission has also developed the Tax Administration Software, a tool to assist First Nation tax administrators through the complete annual tax cycle: assessments, budgeting, rate approval, tax notices, collection and enforcement⁷. The First Nations Financial Management Board has developed a course titled “Navigating First Nations’ Financial Management Systems”, and has reached an agreement with the University of New Brunswick - College of Extended Learning and the Tulo Centre of Indigenous Economics and Thompson Rivers University to deliver the course.

Progress towards the issuance of a bond

On November 30, 2011, the First Nations Finance Authority successfully received its amended exemptions from provincial Securities Commissions, applicable to loans supported by both other revenues and property tax revenues⁸. This exemption by all provincial securities commissions across Canada relieves the Authority from the requirements under provincial Securities Acts to file prospectuses in relation to its issuance of securities, and provides assurance to potential debenture investors that proper safeguards are in place in both the *First Nations Fiscal and Statistical Management Act* and the *Financing Secured by Other Revenues Regulations*. This should translate into an investment-grade credit rating once the critical mass of certified First Nations looking to borrow on the capital markets is achieved.

The First Nations Finance Authority has also established its Interim Long Term Financing program, with lending rates to borrowing members competitive with lending rates available to other governments. These rates are better than those offered by banks to First Nations. This program will provide Interim bridge and construction loans to First Nations that have been certified by the First Nations Financial Management Board and have joined the Authority as a borrowing member. Once Interim loans grow to a critical mass attractive to debenture investors, the First Nations Finance Authority will issue a debenture to replace these Interim loans.

⁷ This new software addresses the administrative rules and requirements resulting from section 83 of the *Indian Act*, the *First Nations Fiscal and Statistical Management Act* and First Nation Tax Commission Standards and policies.

⁸ The First Nations Finance Authority received an exemption from provincial Securities Commissions on August 19, 2008 relieving the Authority from the requirements under provincial Securities Acts to file prospectuses in relation to the issuance of its securities. This exemption addressed financing through use by the borrowing member of property tax revenues. The making of the *Financing Secured by Other Revenues Regulations* expanded opportunities for borrowing members and necessitated the making of a new order to address financing through the Authority using either property tax revenues or both. This required the Authority to seek an amended exemption from provincial Securities Commissions for securities supported by either, or both, other revenues or property tax revenues of borrowing members.

The First Nations Finance Authority anticipates the issuance of an inaugural bond within the 2012/2013 fiscal year. For the bond to be issued, a sufficient number of First Nations must first be certified by the First Nations Financial Management Board and be ready to borrow from the Authority. The passage of the *Financing Secured by Other Revenues Regulations* in September 2011 expanded the opportunities for First Nations to raise capital through the Authority, as it permits them to leverage specific types of own-source revenues as a means to secure a First Nations Finance Authority bond. The First Nations Finance Authority estimates these revenues at over \$4.0 billion per year. A First Nation could choose to borrow against its portion of these revenues to participate in a First Nations Finance Authority bond.

Operationality of the First Nations Statistical Institute

The First Nations Statistical Institute's interim Corporate Plan, operating budget and capital budget were approved by Treasury Board in November 2008.⁹ The Institute's 2008-2009, 2009-2010 and 2010-2011 plans have been delayed pending completion of its audited financial statements by the Office of the Auditor General; as such, the Institute's authorized activities have been limited to those contained in their inaugural Corporate Plan (i.e. largely start-up activities). As a result, the Institute cannot directly access its Treasury Board Vote. Aboriginal Affairs and Northern Development Canada has been facilitating the Institute's access to funding for ongoing operations on an as-needed basis.

The Evaluation of the Implementation of the *First Nations Fiscal and Statistical Management Act*, conducted over January to March 2011, characterized the First Nations Statistical Institute as "becoming operational". However, the Institute is reporting that it is now delivering services and targeted products to First Nations as well as federal departments as allowed under its inaugural Corporate Plan from 2008, and has built the internal capacity, secured appropriate resources and established the partnerships and networks to achieve results.

⁹ Submission of these documents to Treasury Board each year is required of all Crown corporations under Part 5 of the *Financial Administration Act*. In the fall of 2011, the Institute provided Aboriginal Affairs and Northern Development Canada with draft Annual Reports and accompanying unaudited financial statements.

CHAPTER 2: RESULTS OF THE CONSULTATIONS: ISSUES RAISED AND OPPORTUNITIES FOR IMPROVING THE OPERATIONS OF THE ACT

2.1 Issues Identified During Consultation

In fulfillment of the legislative requirement under section 146 of the *Act*, Aboriginal Affairs and Northern Development Canada undertook consultation with the four institutions on the “provisions and operation of the *Act*...and the operations of [the] institutions”. This consultation took place during 2011 and 2012 and included written submissions by the institutions, all-institutions meetings and many additional teleconferences (including bilateral teleconferences with individual institutions and meetings of a legal advisory sub-committee). The institutions obtained input from First Nations participating in the regime, taxpayers and other stakeholders in support of this process.

During this consultation, the institutions raised issues arising from the *Act* as it currently operates, and identified opportunities for improving the regime. These issues and opportunities are summarized below. The First Nations Tax Commission, the First Nations Financial Management Board, and the First Nations Finance Authority all agree that these issues should be addressed in order to ensure the *Act* can operate effectively.¹⁰

Specific suggestions by the institutions to improve the operations of the *Act* and of the institutions can be found in Annex A.

Legislative Property Taxation Authorities

Of major concern for the institutions was the existence of overlapping legislative property taxation authorities. Currently, First Nations wishing to collect property taxes on reserve land have a choice of doing so under the authority of the *First Nations Fiscal and Statistical Management Act* or the *Indian Act*. The *First Nations Fiscal and Statistical Management Act* was originally intended to replace the property tax authority under the *Indian Act*. However, as the *Act* made its way through Parliament, a decision was made to retain the *Indian Act* property taxation authorities and make the *First Nations Fiscal and Statistical Management Act* an optional alternative authority.

The decision to maintain *Indian Act* property taxation authority in addition to the *First Nations Fiscal and Statistical Management Act* authority has created two separate systems for collecting property taxes on reserve, with differing levels of oversight and government involvement. The institutions have noted that property tax systems created under the *First Nations Fiscal and Statistical Management Act* have several advantages over systems created under the *Indian Act*. In particular, property tax systems created under the *First Nations Fiscal and Statistical Management Act* are more consistent, accountable and transparent, and provide a mechanism for taxpayer representation

¹⁰ The First Nations Statistical Institute does not advocate for specific policy measures to achieve the objectives of the *First Nations Fiscal and Statistical Management Act*. As such, the institute has taken a neutral position on all amendments not related directly to the Institute.

which is largely absent from tax systems developed under the *Indian Act*. They also note that the process to get property taxation laws approved under the *First Nations Fiscal and Statistical Management Act* is more efficient and streamlined than the process established for *Indian Act* by-laws, and removes the requirement that the Minister approve each law.

As such, the First Nations Tax Commission, the First Nations Financial Management Board, and the First Nations Finance Authority have advocated that the Government revisit the *First Nations Fiscal and Statistical Management Act*, and examine whether or not the maintenance of *Indian Act* taxation authority is required. The institutions have also noted that should the *Indian Act* property taxation authority be eliminated in favour of *First Nations Fiscal and Statistical Management Act* authorities, there would be no reason to maintain the Schedule and scheduling requirement.

Administrative and Legal Requirements

The *Act* contains a number of administrative and legal requirements that First Nations must meet in order to participate in certain aspects of the regime. These requirements act as safeguards within the pooled borrowing system, providing lenders with the confidence that bonds issued by the First Nations Finance Authority are a low-risk investment, and allowing financing to be provided at lower interest rates than most First Nations can access independently. The institutions have identified a number of instances in which the process can be made more efficient (see Annex A for specific examples). The institutions have suggested that this can be accomplished with minor amendments to the legislation or relevant regulation.

Jurisdiction

The checks and balances required to ensure the efficient and effective operation of the *Act* require differing levels of responsibility by differing parties. Given the *Act's* complexity, there are many layers of jurisdiction to navigate. In this context, the institutions identified a number of circumstances in which the jurisdiction provided for under the *Act* could be clarified or strengthened. Specific instances in which the *Act* provides unclear or inappropriate jurisdiction can be found in Annex A.

Administrative Burden

The institutions also noted that some First Nations have expressed concern regarding the amount of administrative burden associated with participation in the regime. In particular are the excessive requirements for how a First Nation will provide notice to its members and taxpayers of proposed local revenue laws, or amendments to existing local revenue laws. The First Nations Tax Commission has advised that the notice period of 60 days for most local revenue laws under the *Act* is longer than any equivalent requirement in municipalities across the country, and that First Nations have indicated that those lengthy notice requirements are a deterrent to joining the *Act*. The Commission has identified a need for more flexibility in the form of notices given, the length of the notice period and when notices are required.

Institutional Powers

The creation of the four Aboriginal institutions was a significant component of the *Act*. Two of the four – the First Nations Tax Commission and the First Nations Finance Authority – emerged from existing bodies. The other two institutions – the First Nations Financial Management Board and the First Nations Statistical Institute, were new institutions created to play a key role in the implementation and operation of the *First Nations Fiscal and Statistical Management Act*. In working to implement the *Act* over the past several years, a better understanding of the needs of First Nations – and, consequently, how the institutions can best respond to these needs – has evolved. Broadly, the institutions have indicated that they have little flexibility to respond to the individual needs of First Nations, that their mandates are too narrow to meet existing demand for services, and that they cannot currently work with a large contingent of First Nations (i.e. those who are not scheduled to the *Act*). Specific examples can be found in Annex A.

First Nation Powers

The institutions have identified a need for clarification around the authority of First Nations to collect fees and other charges with respect to the provision of local services, to recover the costs of enforcement proceedings in circumstances of property tax non-payment, and to borrow from sources other than the First Nations Finance Authority so long as they are scheduled but not yet a borrowing member. There is also a need to clearly indicate that a First Nation which has already received long-term financing from the First Nations Finance Authority secured by property taxes is still able to seek additional long-term financing secured by taxes and other revenues from an outside institution.

The First Nations Finance Authority Financing Model

The institutions – and in particular the First Nations Finance Authority – have noted a number of opportunities to modify the *Act* in support of a stronger First Nations Finance Authority financing model. For example, it would be beneficial to have further clarification on the timing that the First Nations Finance Authority assumes priority over other creditors, should a First Nation owing money to the Authority become insolvent. The Authority has also identified a need for clarification of the process for ceasing to be a borrowing member, and the authority to establish a general penalty provision for First Nations which default in an obligation to the Authority. Additional examples can be found in Annex A.

Transition from the Indian Act to the First Nations Fiscal and Statistical Management Act (and vice versa)

The institutions have identified two concerns with respect to the transition of First Nations from the *Indian Act* to the *First Nations Fiscal and Statistical Management Act*, and vice versa. The institutions note that some First Nations have raised the question of whether financial administration laws developed under section 83 of the *Indian Act* can be considered valid under the *First Nations Fiscal and Statistical Management Act* when a First Nation moves from taxing under the former to taxing under the latter. The

institutions have also identified the transactional and operational difficulties associated with scheduled First Nations deciding to opt-out of the *Act*. The *Act* does not provide for an orderly transition from the *First Nations Fiscal and Statistical Management Act* back to the *Indian Act*. This puts First Nations and their taxpayers at risk and creates instability in the taxation system. The institutions support a change to the *Act* to maintain a First Nation's position on the Schedule once it has been added, following the *First Nations Land Management Act* model.

Institutional Liability

The institutions perform functions which hold an inherent degree of risk. Where appropriate, the *Act* contains protection for the institutions in the exercise of these duties. However, the institutions have identified a number of instances where the existing protection is not sufficient. For example, the First Nations Financial Management Board has raised concerns that, as part of its intervention activities, it may be required to take on the management of businesses owned by a First Nation. The Board has stated that it lacks the required expertise to run a business, and does not wish to attract liability by taking on this role. Additional examples can be found in Annex A.

Integration with other Government of Canada Initiatives

The institutions have raised the need for greater integration with other Government of Canada initiatives and programs. This could include, for example, exploring the use of First Nations Financial Management Board certification as proxy for requirements under other opt-in initiatives, including the *First Nations Commercial and Industrial Development Act* and the *First Nations Land Management Act* and other requirements internal to the Department. It could also include application of the *First Nations Fiscal and Statistical Management Act* to self-governing First Nations, and support for federal First Nations infrastructure programs, pursuant to the Budget 2010 commitment to find "ways to more effectively support access by First Nations to alternative sources of financing" First Nations infrastructure¹¹.

¹¹ Budget 2010 included the following commitment: "[T]he Government will undertake a comprehensive review of its current approach to financing First Nations infrastructure. To be undertaken in partnership with First Nations representatives, the review will focus on ways to more effectively support access by First Nations to alternative sources of financing, and approaches to improve the life-cycle management of capital assets." [<http://www.budget.gc.ca/2010/pdf/budget-planbudgetaire-eng.pdf>]

ANNEX A: OPPORTUNITIES FOR IMPROVING THE *FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT ACT*

The following suggested improvements are being presented, in consensus by the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority to improve upon the operations of the *Act* and of the institutions.¹²

Administrative and Legal Requirements

- Clarifying that references in the *First Nations Fiscal and Statistical Management Act* to “local revenue account” refer to a financial institution account into which local revenues must be segregated and deposited, and clarifying that local revenues are to be reported on separately from other revenues and audited annually.
- Clarifying that the requirement to include an appeal mechanism applies only to First Nation assessment laws, not all property taxation laws as currently suggested under paragraph 5(1)(a).
- Distinguishing between different certificates offered by First Nations Financial Management Board (the financial management systems certificate and the financial performance certificate).
- Clarifying that a First Nation council may make their annual rates and budget laws at least once per year at or before a time prescribed by regulation.
- Requiring that an annual property taxation rate law be applied only to those laws which contemplate an annual rate, and to provide First Nations with the ability to set a tax rate that is not applied to an assessed value.
- Requiring that the reporting and annual audit of the local revenues account must be conducted in accordance with First Nations Financial Management Board financial reporting standards.
- Providing that all financial administration laws developed under section 9 of the *First Nations Fiscal and Statistical Management Act* must comply with First Nations Financial Management Board standards for financial administration laws.

Jurisdiction

- Providing that the Chief Commissioner of the First Nations Tax Commission may designate panels for section 31 law reviews and section 33 reviews.
- Allowing the First Nations Tax Commission to refer rates and expenditure laws to a Commission panel composed of one or more Commissioners, and to allow the Commission to refer other local revenue laws to a Commission panel composed of three or more Commissioners.
- Clarifying that First Nations Finance Authority financing can be provided for the purposes of building infrastructure on lands that benefit reserve land, not just reserve lands.

¹² The First Nations Statistical Institute does not advocate for specific policy measures to achieve the objectives of the *First Nations Fiscal and Statistical Management Act*. As such, the institute has taken a neutral position on all amendments not related directly to the Institute.

- Clarifying that judicial notice of local revenue laws is restricted to those which have been published in accordance with section 34, and to provide that judicial notice be allowed for financial administration laws.

Administrative Burden

- Repealing the requirement that First Nations submit to the First Nations Tax Commission any written representations received by Council during the public input process with respect to local revenue laws.
- Providing those First Nations transitioning from collecting property taxes under the *Indian Act* to collecting under the *First Nations Fiscal and Statistical Management Act* with an exemption from notice requirements to their own members under the *First Nations Fiscal and Statistical Management Act*.
- Shortening the length of minimum notice periods for First Nation local revenue laws, providing for flexibility in the methods of notices, and when notices are required.

Institutional Powers

- Providing the First Nations Financial Management Board with clear authority to revoke a First Nation's certificate if the First Nation did not provide the Board with correct and complete information when requesting their certificate, or if the First Nation is no longer in compliance with the standards upon which the certificate was issued.
- Allowing all First Nations to request the First Nations Financial Management Board to review their financial administration laws and if they were not made under section 9 of the *First Nations Fiscal and Statistical Management Act*, to certify that they meet the Board's financial administration law standards.
- Consolidating and clarifying First Nations Financial Management Board powers in circumstances of imposed co-management and third-party management under the *First Nations Fiscal and Statistical Management Act* and under the *Financing Secured by Other Revenues Regulations*.
- Specifying, in the *Act*, that the First Nations Statistical Institute works to assist the First Nations Tax Commission and the First Nations Finance Authority through the provision of data analysis, development and dissemination, related to their respective mandates.
- Providing that in addition to the seventeen other subject areas specified in the *Act*, the First Nations Statistical Institute may collect, compile, analyze and abstract data on housing for statistical purposes.
- Expanding the First Nations Financial Management Board's mandate to include non-scheduled First Nations.
- Expanding the First Nations Finance Authority's mandate to provide long-term financing to non-scheduled First Nations using other revenues and clarify its mandate for investment services to include non-scheduled First Nations, organizations of non-scheduled First Nations, self-governing First Nations and corporations controlled by one or more First Nations.
- Providing the First Nations Financial Management Board with the flexibility to approve a financial administration law or to certify a First Nation that meets its standards "in all material aspects".

First Nation Powers

- Broadening the definition of “local revenues” to capture a broader range of revenues that could be used as security against First Nations Finance Authority borrowing.
- Providing First Nations with a clear authority to collect fees and other charges with respect to the provision of local services.
- Providing the First Nation with the clear authority to recover the costs of enforcement proceedings in circumstances of property tax non-payment.
- Clarifying that the *First Nations Fiscal and Statistical Management Act* does not affect the borrowing powers of a First Nation that is scheduled to the *First Nations Fiscal and Statistical Management Act* but not yet in receipt of long-term financing from the First Nations Finance Authority.
- Clarifying that only those borrowing members who are already in receipt of long-term financing from the First Nations Finance Authority secured by property tax revenues are prohibited from obtaining additional long-term financing secured by property taxes from an outside institution.

The First Nations Finance Authority financing model

- Clarifying that the First Nations Finance Authority will not provide financing to a First Nation secured by property tax revenues unless it is satisfied that the loan will be paid out of the property tax revenues of the borrowing member in accordance with subsections 11(2) and (3).
- Clarifying that a First Nation may cease to be a borrowing member only with the consent of all other borrowing members using the same revenue stream (i.e. property tax or “other revenues” as defined under the *Financing Secured by Other Revenues Regulations*).
- Clarifying the mechanism for repayment to the Credit Enhancement Fund, following a payment from the Credit Enhancement Fund to a depleted Debt Reserve Fund.
- Clarifying how the Debt Reserve Fund balance is calculated under section 84.
- Allowing the First Nations Finance Authority to invest sinking fund moneys in its own securities as well as securities issued by the Municipal Financing Authority of British Columbia.
- Referencing separate Debt Reserve Funds and separate replenishment charges for property tax revenues and non-tax revenues.
- Allowing for a regulation to provide a general penalty for borrowing members defaulting on a payment to the First Nations Finance Authority.
- Stipulating that the First Nations Finance Authority has priority over all other creditors of an insolvent First Nation only for any debts owed to those other creditors which arise after the date on which the borrowing member receives First Nations Finance Authority financing.
- Stipulating that the First Nations Finance Authority will not, upon payment to a First Nation from the Debt Reserve Fund after satisfaction of their obligations to the Authority, be required to reimburse a member who has already been reimbursed by the Authority for replenishing the Debt Reserve Fund in the instance of a default by one or more members.

Transition from the Indian Act to the First Nations Fiscal and Statistical Management Act (and vice versa)

- Clearly providing for First Nation financial administration laws developed outside the *First Nations Fiscal and Statistical Management Act* (including under section 83 of the *Indian Act*) to transition under the *First Nations Fiscal and Statistical Management Act*, to the extent the financial administration law is not inconsistent with the requirements for financial administration laws made under section 9 of the *First Nations Fiscal and Statistical Management Act*.
- Providing that a First Nation who has been added to the Schedule of the *First Nations Fiscal and Statistical Management Act* cannot subsequently request removal.

Institutional Liability

- Repealing the current provision in the *Act* that contemplates the making of regulations requiring that the institutions maintain insurance coverage, as the marketplace will determine coverage availability.
- Repealing the provision stating that an opinion of the First Nations Financial Management Board referred to in section 50 is final and conclusive and is not subject to appeal, in light of the fact that no right of appeal exists.
- Limiting the obligation of the First Nations Financial Management Board to manage First Nation businesses in circumstances of a default of a borrowing member.

ANNEX B: EXPENDITURE SUMMARY

Funding provided to the *First Nations Fiscal and Statistical Management Act* institutions, 2006-2007 through 2011-2012*

Table 1: AANDC's Expenditures for the First Nations Tax Commission (\$000s)						
2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Total
3,530	5,492	5,775	5,477	5,918	6,728*	32,920
Table 2: AANDC's Expenditures for the First Nations Financial Management Board (\$000s)						
2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Total
1,919	2,790	4,059	3,963	3,799	4,193**	20,723
Table 3: AANDC's Expenditures for the First Nations Finance Authority (\$000s)						
2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Total
765	850	1,660	1,554	11,632***	1,548*	18,009
Table 4: First Nations Statistical Institute Expenditures (\$000s)						
2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Total
176	146	1,269	1,567	1,445	3,957	8,560

TOTAL FUNDING
\$80,212,000

* Accurate as at January 27, 2012.

**2011-2012 amounts are an estimate based on funds transferred to date and funds to be transferred as part of approved Funding Arrangements.

*** Includes \$10 million provided to the First Nations Finance Authority as part of the Credit Enhancement Fund Agreement. These funds were provided to increase the debt reserve capacity of the Authority, to secure the highest possible credit rating. It is a necessary condition for provision of a credit rating by the ratings agencies. The Credit Enhancement Fund Grant Agreement between Canada and First Nations Finance Authority allows the Minister to recover these funds, should the funds not be managed according to the terms and conditions of the Grant Agreement.