

**DEBT FINANCE FOR FIRST NATIONS:
REVISED EDITION**

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This paper is a revision of the discussion paper prepared for the Westband Indian Band – Taxation Workshop on Public Financing for First Nations Governments, Kelowna, British Columbia, January 12, 1993

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June 1993

PREFACE

For Phase I of a study of Public Financing for First Nations' Government, the Westbank Indian Band Steering Committee commissioned four related studies:

Legal Capacity for First Nation Public Financing in Canada by Tim Raybould and Michael J. Menczer

A Preliminary Evaluation of the Tax Base of the Westbank First Nation by Andre LeDressay

Public Financing for First Nations' Governments by RBC Dominion Securities

Tribal Debt Financing in the United States by William L Stringer, C. Eric Olsen, and Charles W. Blackwell

These studies provide the primary background for this analysis. The first draft of this analysis was prepared for the Westbank Indian Band – Taxation Workshop on Public Financing for First Nations Governments, Kelowna, British Columbia, January 12, 1993. It emphasizes some parts of the background analysis more than others and utilized additional information to move as far toward specific recommendations as possible. Following the Taxation Workshop the paper underwent further revision taking advantage of comments and discussion at the workshop and from Jack Woodward and Hamar Foster. It now provides a basis for considering additional implications and moving forward with appropriate legislation should First Nations so desire.

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I. INTRODUCTION

The introduction of taxing authority and other movements toward the recognition of the inherent rights of First Nations have led First-Nation governments to examine practical considerations in expanding their jurisdiction. One of these considerations is how to obtain capital funding for infrastructure and projects on reserve lands, especially capital funding necessary to expand economic activity and strengthen both the government's revenue base and opportunities for First-Nation members. The purpose of this analysis is to examine the problems and alternatives for First-Nation debt financing to accomplish such purposes.

This analysis covers the rationale for debt financing, First-Nation concerns, lender concerns, the role of third parties, deficiencies in current legislation, alternatives, contingencies and implementation. It draws heavily on four background studies commissioned by Westbank Indian Band Taxation, but it is not simply summary. Greater emphasis has been given to some issues and lesser emphasis to others with the objective being to systematically guide readers through the key issues surrounding **debt finance for government functions** and what steps are needed to make such financing practical. Less emphasis has been placed on debt finance for First-Nation business enterprises and on First-Nation tax sources beyond the property tax¹.

This has been done because the implementation of property taxation provides an opportunity to implement debt finance in a way similar to its use by municipalities. Once implemented in this way it will be relatively easy to expand to consider other First-Nation taxes and revenues (the analysis of which is in itself a major undertaking.) It is a larger step to move to a government model of debt finance to finance business enterprises. Both of these expansions in the use of debt finance, however, are examined in section VIII, Future Contingencies.

II. RATIONALE FOR DEBT FINANCE

Public services infrastructure (water, sewer, roads, public buildings, etc.) are long-term capital investments. The normal practice for governments to provide their infrastructure is to borrow funds through debt financing and to use user charges or taxes to repay the debt over a long time period. Such practice is currently not practically available to First Nations.

¹ Minimal information is provided in this analysis to Tribal Debt Financing in the United States. Much of the U.S. experience focuses on government lending, arranging to be sure debt is tax exempt, financing for business enterprises, and the regulatory environment within which lenders must operate. In anything, the U.S. analyses indicate the problems First Nations have when operating on their own, in contrast to the alternatives proposed in this summary.

Past practices for providing infrastructure on reserves has varied. For areas occupied by First-Nation citizens the Department of Indian and Northern Affairs was responsible for financing infrastructure and such financing was done within departmental budgeting processes. For other parts of a reserve, which often could be leased to non-Indians, bands utilized a variety of financing arrangements. Some entered into contracts with private developers who financed the infrastructure and were compensated with lower lease payments over time; others entered into contracts with municipalities where municipal government financed the infrastructure and was compensated by collecting property taxes from leaseholders over time. Others have used a combination of private developer and municipal financing. Now that First Nations possess their own property taxation jurisdiction, First-Nation governments themselves should be able to use their authority to enter into debt finance to develop reserve infrastructure and thus increase the value of those lands for economic development in order to strengthen both the band's tax base and opportunities for its citizens. Possession of debt finance authority is even more important now than in the past because First Nations can unilaterally terminate the property taxing authority of other governments on reserve lands. This may make municipalities reluctant to enter into contracts for the provision of infrastructure on reserve lands which are to be paid for from leasehold tax revenues.

III. FIRST NATION CONCERNS

There are two major concerns for First Nations considering debt finance. One is that the First Nation itself be assured that the purpose for which debt finance is undertaken is a good one and that the debt can be repaid. The second is that other First Nations do not default on their debts and create an environment where lenders do not want to lend to First Nations. To achieve the first objective requires that each First Nation contemplating debt finance undertakes its decision systematically and achieves the following objectives.

1. The First Nations must follow decision-making procedures which assure support is widespread for the project to be funded from debt finance. Once a debt is incurred, future and different elected leaders must support its repayment.
2. The First Nation must have the administrative capacity to do careful financial planning to be sure that the debt is a reasonable one.

3. The First Nation government must be sure that the project and requirement for debt repayment will not harm the reserve tax base. For example, one does not want major leaseholders to decide to leave the reserve because the taxes to repay the debt are greater than the benefits of the project that was financed.

If every First Nation government achieved these objectives it is unlikely there would be a default that would cause problems for other First Nations. The concern by all First nations that each First Nation achieves these objectives is essentially the same as the concerns lenders have when dealing with First Nations.

IV. LENDERS CONCERNS

Lenders have three major concerns:

1. To be paid on schedule
2. That the debt be easily sold in a secondary market in case lenders need the funds for something else.
3. That there be quick, clear, and inexpensive legal recourse for any default.

Lenders cannot, when making their lending decision, see the future perfectly. Instead they have to look at several criteria to determine the likelihood of meeting their concerns.

The criteria they are likely to examine include:

1. The debt repayment record of the applicant and other First Nations.
2. The First Nation's decision-making processes to be sure there is widespread support for the project (was there a popular referendum, for example).
3. The First-Nation's administrative capacity.
4. The strength of the tax base, including its diversity and stability.
5. The project's impact on the tax base. In the case of First Nations which rely on property taxes on leaseholders the lender may want to know how leaseholders were consulted.
6. The overall capacity to repayment, taking into account other expenditures, debts and revenue sources.
7. The legal recourse in case of default.

The lender will use such information to decide if purchasing such debt is prudent, and if so, what interest rate it needs to receive to compensate it for forgoing investment opportunities elsewhere and any risks it feels it would be taking.

V. ASYMMETRICAL INFORMATION

The First Nation wanting to borrow, other First Nations, and lenders have very similar information needs, albeit for different purposes. The First Nation wanting to borrow needs to be sure that the project is worthwhile and that it can be paid for without damaging other governmental activities. Other First Nations need to be sure there is not a default that would damage their own borrowing opportunities, and lenders need to be assured they have assessed the risks and costs of a default correctly.

A dilemma exists, however: it is that the borrowing government will have very good information about itself (and well run First Nations borrowing for excellent projects will feel they deserve low interest costs), but other First Nations and lenders will not have comparable information and will view information provided by the potential borrower with suspicion because of the potential for a conflict of interest, that is, the potential borrower has an incentive to distort information in its favour to obtain more favourable lending terms.

The result of this asymmetrical information dilemma is that lenders will see all borrowers as more risky than many actually are and lenders will want to charge high interest rates (or even not consider lending) to everyone because they lack good reliable information to distinguish the less risky from the more risky borrowers. Thus truly good well run borrowers will face higher costs for borrowing than they should. (In economic theory this is called the “Lemon problem”. An example is where sellers know much more about their used car than the buyer so that buyers tend to view all used cars with suspicion. The result is that sellers of truly good used cars cannot get as good a price as a buyer would be willing to pay if the buyer had the same information as the seller.). The solution to asymmetrical information (the lemon problem) is to bring in neutral third parties.

VI. THIRD PARTIES

Third parties can greatly improve borrowing process for borrowers (First Nations), parties that may be affected by other borrowers (Other First Nations), and lenders. The roles third parties may perform are: (1) the provision of reliable, unbiased information about borrowers; (2) the regulation of borrowers to protect other potential borrowers and lenders; and (3) preparing the debt issue and marketing.

Information

It is in the best interest of well run First Nations with good projects to arrange to have reliable unbiased information provided to potential lenders. This information is best provided by third parties whose professional standing, reputation, and business success is dependent on them being reliable and unbiased. For example, auditors can provide information on First-Nation fiscal management; a bond attorney can provide an opinion that all procedural and legal requirements have been met by the First-Nation government; a consulting engineer may provide an opinion on the appropriateness of the project for which the borrowed funds will be used; or a bond rating agency can evaluate the credit worthiness of the First Nation. Such a rating agency will in turn examine every item on the lenders concern list, and it may go on to consider anything else that is relevant to estimating the riskiness to the lender of the borrower.

First Nations should note that the potential borrower is expected to pay to have such information provided, but that once it is provided it can be distributed to many potential lenders. It is also worth noting that if professionals uncover problems that would be of concern to lenders, those problems should also result in a reevaluation of the borrowing itself by the First Nation.

Regulation

The provision of reliable unbiased information can alleviate many, but not all, of the concerns of lenders. The provision of information alone does not directly deal with the problem that a defaulting First Nation could make it much more difficult and costly for other First Nations to borrow, and also to reduce the secondary market to holders of First Nation debt. All First Nations and lenders have an interest in seeing that First Nation borrowers maintain good credit. And, in addition, it is clear that the Minister of Indian and Northern Affairs and the National government have fiduciary responsibilities to Indian bands. One can be assured that the Minister, Department and National government also want to be assured that First Nations do not default on any borrowing.

Where other relatively small governments utilize debt finance, and where the default of one could affect others, regulatory processes have been introduced to protect these other governments. Two basic kinds of regulations exist. One kind is simply information requirements, that is, the potential borrower must provide particular information before it may issue bonds. The second kind of regulation is substantive; that is, they

require that certain decision-making processes must be followed and that certain substantive conditions be met. Examples of processes include requirements for municipal council bylaws and popular referenda for municipal borrowing; an example of a substantive rule is that the total amount of general debt may not exceed a particular percentage of the government's tax base. Both process and substantive requirements are imposed on municipalities and other local governments in all provinces of Canada and in all states in the United States. One should note that while the regulations are imposed by provincial governments on local governments, **it is clearly in the interest of and to the benefit of the local governments to have such regulations** because the default of any one borrower could cause lenders to insist on higher interest rates for the rest. As First Nations consider debt financing they will need to consider the benefits of such compulsory regulation.

Debt Issue and Marketing

Another role where third parties are important in debt financing is in the technical preparation of debt instruments (bonds, debentures), the tailoring of the terms of the instrument to fit the market (denominations, maturities, discounts, method of interest payment, etc.) and the actual placement of the debt issue with one or more lenders. The technical skills to perform such functions and the knowledge of the market necessary for effective placement is best left to professionals. Such professionals are found in government ministries of finance, organizations such as Municipal Finance Authority (MFA) in British Columbia and in private firms such as RBC Dominion Securities. First Nations will have to draw on the expertise of these organizations when they undertake debt financing.

One should note that not only can government agencies or private firms provide technical debt issuing and marketing, but that these organizations will require the information that is of interest to lenders and that the **reputation of the organization handling the First Nation debt issue will influence the marketability of the debt and the terms of the First Nation will receive.**

Small Governments

The problems of information, regulation, debt issuance and marketing are all more severe the smaller the government. While detailed information may be provided on very small governments for small debt issues, the cost of getting such information to lenders may actually be quite high because lenders just do not have (or take) the time to analyze many small issues. The result is that the cost of effective marketing of the

borrowing by a small government is usually very high. The potential for negative spillovers from a default is also higher when there are many small governments. This is because information will be more limited, and thus lenders will tend to treat all of the small governments the same (the lemon problem). With many small governments it is likely some one of them will have a problem.

Given that First Nations are small and numerous, solutions to the information, regulation and marketing problems are much more important than for provincial or the national governments.

Because of their smallness First Nations are much more like local governments when it comes to undertaking debt finance. Thus it is useful to examine another aspect of debt finance for small governments – debt pooling.

Debt pooling is a process whereby a single organization undertakes borrowing on behalf of all its members. **The debt is not issued by the single member, but rather is issued by the organization, which in turn disburses the funds to the borrowing member and receives its payments over time.**

The prime example of such an organization in British Columbia is the Municipal Finance Authority, which borrows on behalf of municipalities, regional districts and hospital districts throughout the province. The Authority, while created by the provincial government, is governed by a board appointed by regional districts, through which municipalities and hospital district borrowing is processed on its way to the MFA. Thus the MFA is essentially a provincially sanctioned local government cooperative.

While it is not required that all local governments borrow through MFA, virtually all do so because it is able to offer better terms than any single local government would likely be able to receive on its own. Debt pooling also has the potential for providing net benefits to First Nations. Its use will be considered in the analysis of alternatives for First Nation debt finance.

VII. WHAT IS MISSING?

A First Nation can, within its own governing structure, develop decision-making and administrative processes to enable the careful consideration of and proper choices on the use of debt finance. There are also third parties available to provide reliable unbiased information on lenders concerns and to perform debt issuance and marketing functions. There are, however, two critical missing elements: one is the lack of any

regulatory framework to protect well-run First Nations and lenders concerned with secondary marketability from the consequences of some First Nation's default; second is the lack of clear, quick and inexpensive recourse by lenders to recover their loans in case of a default.

The lack of a regulatory structure is simply the absence of the explicit creation of such an institution. The absence of clear, quick and inexpensive recourse by lenders to recover loans in case of a default is a consequence of the ambiguous position of Indian Bands under the Indian Act (they are not clearly corporations with the authority of a natural person) and the protection given to Indian lands and property, also under the Indian Act. Any debt creation would also have to consider the court determined fiduciary trust position of the Minister. It does not really matter exactly what the "true" situation of First Nation's is vis-à-vis security for debt finance; all that matters is that there is sufficient legal ambiguity so that lender recourse for a default is perceived as not being clear, quick and inexpensive regardless of what commitments a First Nation government was willing to make. This perceived ambiguity is not likely to be removed by further court decisions; it will require some kind of regulatory or legislative change.

VIII. ALTERNATIVES

There is a range of alternatives to resolve the two missing elements, a regulatory structure, and clear, quick, inexpensive recourse in case of a default, in facilitating debt finance for Indian Bands.

Regulatory Structures

Regulation to reduce the chance of a defaulting First Nation negatively impacting other First Nations and the secondary bond market could be introduced in three different ways. It is likely that whichever way was undertaken in content of regulations would be similar. They would require compliance with appropriate decision-making procedures, appropriate administrative practices, fiscal capacity (perhaps, expressed as debt limits) and probably provide for a limited list of projects for which debt finance was allowed. These regulations will parallel the regulations the British Columbia government (and all other provincial and state governments) imposes on local governments.

The key question is not the content of the regulations, the content will be dictated by lenders requirements and the concerns of all First Nations. The real question is who does the regulating. It is here where alternatives exist.

1. A First-Nation Cooperative Agency.

One approach would be for the First Nations interested in debt finance to form a co-op, where in order to be a member debt creation regulations would have to be followed. The major limitation of this approach is that the voluntary nature of the co-op does not really resolve the problem of negative spillover from non-member First Nations defaulting on debt. Such a voluntary co-op would need considerable prestige (and a successful record) to overcome such negative spillovers.

2. An Indian Taxation Advisory Board (ITAB) equivalent.

Bill C-115 amended the Indian Act to facilitate property taxation by Indian Bands. Indian and Northern Affairs then, by regulation, created the Indian Taxation Advisory Board.

While operation under the Indian Act and INAC regulations are repugnant to many First Nations, there would be significant benefits from the creation of an ITAB equivalent (or use of ITAB itself) for debt finance. Such a board could have both First Nation and knowledgeable representatives from the financial community as members and it could serve both an advisory and regulatory role. Its main advantages are:

- It would be compulsory, protecting all First Nations and lenders, and
- It would satisfy fiduciary care responsibilities of the Minister.

Furthermore, such a board could be created now and it could develop a record which would provide it with the reputation to carry on its role with voluntary membership after First Nations are freed from compulsory Indian Act constraints.

3. Indian District status

The third regulatory structure bands could bring themselves under in British Columbia would be Municipal Act Regulations as an Indian District. The Sechelt Band has exercised this option, and Provincial Bill 64 provides such an option for all other bands in British Columbia. Currently to become an Indian District requires incorporation, but it is an option some bands may be interested in. In addition, incorporation may not always be a requirement when the inherent nature of self-government is recognized.

The main advantage of Indian District provisions is not only the ability to incur debt, but the option of using the Municipal Finance Authority for the actual debt process. The MFA has very low costs and this would be the least costly method for First Nations to enter into debt finance.

Of the three regulatory options, on balance, the ITAB equivalent option is probably most acceptable to most First Nations. Any single First Nation, however, could become an Indian District and utilize the MFA with virtually no likelihood of default and damage to other First Nation.

Clear, Quick and Inexpensive Recourse for Default

The second problem First Nations must overcome is the confusion (perceived or actual makes no difference) over debt collection enforcement. One potential solution to this dilemma is to parallel the delegation of taxation authority to the MFA for guaranteeing local government debt in British Columbia by providing in Band Taxation bylaws that the **ITAB equivalent board would have the authority to levy its own property taxes² directly on reserve leaseholds to guarantee the repayment of debts incurred either by a specific band or by all bands utilizing debt finance under the board's authority.** This would appear to be an expedient approach to providing debt finance capability to those First Nations utilizing property taxation that would not require incorporation as an Indian District, new legislation, or the unraveling of Indian Act provisions protecting reserve land and property because the ITAB equivalent board would be levying its own taxes on leasehold interest and not attaching Indian funds³. The principle of securing debt by a third party possessing taxing authority could also be extended to other tax sources as they become utilized by First-Nation governments.⁴

If Federal regulations created an ITAB equivalent regulatory board and member Band taxation bylaws authorized that board to levy its own property taxes to guarantee the debt of participating First Nations the two missing elements of debt creation capacity for First Nations would be overcome. One must recognize

² It is likely that this tax would technically be a tax on the person holding the leasehold with the amount calculated as if it were a property tax, as are current "property taxes" levied on crown leaseholds.

³ Section 29 of the Indian Act protects reserve lands from seizure under legal process although this is not an authority provided to lenders. However, Section 89 protects Indian and Indian Band real and personal property from seizure. This section makes it impossible to enforce a pledge of Indian Band Tax (or other) revenues in contrast to revenues collected directly by an ITAB equivalent, as security for borrowing.

⁴ Currently transfers from the Department of Indian and Northern Affairs to First Nations are grants subject to departmental and National government budgetary decisions. Lenders cannot secure debt repayment to such First-Nation financial sources and the revenues are also protected by Section 89 of the Indian Act. In contrast, if First Nation jurisdiction to levy additional taxes (income, sales, etc.) is recognized, then, even if such taxes are collected by another government and returned to the First Nation on

that initially the regulations would be tied to the property tax base and debt finance would be available for public service infrastructure (not band businesses) by those bands utilizing property taxation. The creation of an ITAB equivalent board does not require that the board also market the debt itself. The ITAB equivalent board would be analogous to the Inspector of Municipalities in British Columbia - providing and enforcing the regulatory structure – plus having the authority to implement its own delegated taxation authority to guarantee debt repayment. The marketing of debt could still be undertaken by a different third party: MFA, for example, could manage a First-Nation debt pool in British Columbia (or Canada-wide for that matter) or a private firm could be used. In summary, while the proposed ITAB equivalent model is similar to the B.C. municipal/MFA model, there is a different assignment of authority for regulation and the taxation authority. These differences are summarized below:

	<u>Municipal/MFA Model</u>	<u>ITAB Equiv. Model</u>
1. Regulatory authority	Inspector of Municipalities	ITAB equivalent
2. Taxation authority w/default	MFA	ITAB equivalent
3. Debt issuance	MFA	MFA or equivalent

In the long run it is likely that the small size of First Nations would make a debt pooling organization most efficient, especially if the quality of borrowing is carefully regulated. It should be noted that the creation of this ITAB equivalent would not prevent First Nations from utilizing the British Columbia Indian District model and MFA directly if they so desired.

IX. FUTURE CONTINGENCIES

The initial debt creation process proposed is a very limited one. It would emerge from Federal regulations and Band taxation bylaw amendments, be based on property taxes levied on leaseholds, and be for government public service infrastructure. Three future contingencies must be recognized:

a formula basis, those revenues could provide security for First-Nation borrowing if a guaranteeing organization such as an ITAB-equivalent board also was granted its own authority to collect those taxes.

Inherent Self-Government

At some time inherent self-government will be recognized. Such a recognition of 600+ First Nations would, however, create severe problems for debt creation because there would be **no method to impose a regulatory structure** on all First Nations. This would disadvantage all First Nations and lenders because of the spillover from the inevitable defaults by weaker First Nations. This, combined with the very small size of First Nations, would pose information problems that could be overcome at reasonable cost.

The solution to this contingency is to get started with a Federally regulated debt process **now**, so it is well enough established to survive on its own as a voluntary co-op at such time as the compulsory nature such Federal regulation is replaced by the recognition of inherent self-government.

Readers will note that one approach to providing clear, quick and inexpensive recourse for default – Federal government guarantees – has not been recommended. In order to provide such guarantees the Department of Indian and Northern Affairs would have to develop and implement extensive regulations that would be applicable for at least the next 20 years. It would appear better to utilize a process whereby First Nations guarantee one another so as not to impose a barrier in the momentum to recognize their inherent self-government authority rather than create a new long-term program based explicitly on Indian and Northern Affairs approval and control.

Additional Taxing Jurisdiction

The taxation jurisdiction of First Nations will eventually go beyond property taxation. This expansion could involve the development of taxation bylaws and tax administration at the single First Nation level, but more likely it will develop as a tax sharing process whereby taxes collected by the Federal or provincial government are shared by First Nations on a formula basis.

U.S. experience in the use of local sales and income taxes indicates that this is the most feasible way for small governments to utilize such taxes. While the details of these sharing arrangements are beyond the scope of this analysis⁵, the important point is that such tax revenues (they would not be discretionary grants – but actual tax revenues) could also be used to set limits on debt financing and be available to guarantee debt

repayment. Thus the debt creation model proposed in this paper can account for the expansions of tax jurisdiction in the future.

Enterprise Debt

The model proposed begins with the use of property-tax secured debt for public service infrastructure. The use of debt can be expanded from this narrow base and usage with experience and acceptance of First Nation debt by lenders.

The first kind of expansion is to debt to be repaid (partially or fully) from revenues from the financed project. This could include debt for water systems, sewage systems or recreation centers where user charge revenues can be used to pay for both capital and operating costs. In some cases First Nations may want to move toward debt guaranteed only by such charges, issuing revenue bonds instead of tax secured general obligation bonds. As revenue bonds usually carry a higher interest rate they may not be a first choice, but where the user charge revenue is sufficient and the property tax base weak such bonds may be appropriate. It should not be difficult to move to include revenue guaranteed bonds as experience and acceptance of First Nation debt is realized. Again, however, it will still be necessary to utilize a third party such as an ITAB equivalent board which has its own legal authority to collect the taxes or revenues directly from taxpayers or users to avoid those revenues becoming protected by Section 89 of the Indian Act, until such time as the Indian Act is amended or eliminated.

To move on from government public service infrastructure to First Nation business enterprises is a very large step. Local governments in British Columbia (and most other places) are not permitted to engage in private business-type activities and there is a very different lending framework for businesses than for governments. Because of the much greater risks involved in the debt finance of business enterprise, business enterprise financing should not be combined with debt finance for government infrastructure under the ITAB equivalent board until some future date, if ever.

⁵ Andre LeDressay provides some alternatives in his [A Preliminary Evaluation of the Tax Base of the Westbank First Nation](#). The U.S. experience in local government levying of income and sales taxes should be examined when pursuing this expansion of First-Nation jurisdiction.

X. IMPLEMENTATION

Federal Regulations

To implement the debt finance recommended in this analysis new Federal regulations are required. These regulations would:

1. Create an ITAB equivalent board or amend regulations to provide ITAB with the authority to regulate debt finance by bands, issue debt instruments under its own name, and directly levy property taxes (via orders to the Band Surveyor of Taxes) to cover defaults of either the single band or all bands together.
2. Require that bands wishing to use debt-finance based on the property taxation of leaseholds obtain approval of the board and include in their taxation bylaw provisions for the ITAB equivalent board to prompt Band taxation to avoid debt default.
3. Be open-ended enough to allow eventual borrowing and guarantees to be based on additional revenue sources.
4. Authorize contracting with third parties (i.e. MFA) to manage the debt issuance process.

The regulation could be as simple as expanding the authority of ITAB.

First Nation Participation

This proposal involves First Nation reinsuring one another and is based on the MFA model in B.C. where **all** municipalities participate and have pledged their tax bases to reinsure one another. In contrast, only a few First Nations currently utilize property taxation.

In order to get started it would be very important for at least three of the five First Nations with significant current property tax bases to participate. These First Nations are Cowichan, Kamloops, Musqueam, Squamish and Westbank. Participation by a majority of these First Nations – which are already recognized as being well run – would provide assurance to lenders that the process was a widely supported one. Without participation by a majority of these First Nations such a debt finance process would be much more difficult. Because of their importance any development of appropriate regulations should involve their consultation.

XI. CONCLUSIONS

This analysis has drawn heavily on selected aspects of four reports commissioned by Westbank Indian Band Taxation. Only the most relevant aspects of those reports can be included in a single summary and the conclusions go beyond any of the reports.

It would appear that the introduction of First Nation property taxation through Bill C-115 provides both the opportunity and a model for First Nation debt finance. The opportunity is to initially tie debt finance to property taxation, probably for determining limits and for providing a guarantee to overcome problems with the Indian Act on recourse for defaults. The model is to utilize an ITAB equivalent board with compulsory regulatory authority to protect all First Nations and lenders from problems that could arise from even a few failures in the debt finance process. This board would also acquire actual property-tax jurisdiction over leaseholds within participating First Nations to provide MFA-like guarantees. With experience, First Nations could then base debt on broader tax jurisdiction and user charge project revenues instead of just property tax revenues.

Other aspects of the debt finance process can be fulfilled by other third parties. These professionals can provide relevant unbiased information and the MFA or a private firm can provide for debt marketing. Thus, First Nations will have access to long term financing to enable them to develop the public service infrastructure on reserves and increase both their own revenues and opportunities for their citizens.

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and

Robert L. Bish, **Aboriginal Government Taxation and Service Responsibility: Implementing Self-Government in a Federal System.** University of Victoria Center for Public Sector Studies, March 1992.