

Submission to Standing Committee

on

Bill 10 – Northwest Territories Heritage Fund Act

□ Alternatives North

May 2011

Alternatives North is pleased to have the opportunity to provide feedback on *Bill 10 – The Northwest Territories Heritage Fund Act*. We are an NWT-based social justice coalition including representatives of church, labour, environmental, anti-poverty and women's organizations, as well as individual volunteers.

To begin, we would like to congratulate the Government of the Northwest Territories for taking steps towards creating a Heritage Fund. We have long encouraged resource managers to think of our non-renewable resources as a form of natural capital that should be managed wisely - once they are gone, we will not have a second chance to derive economic benefits or build a more sustainable society. A Heritage Fund is essential because non-renewable resource extraction will end at some point. Unless measures are taken now, increased unemployment and out-migration, and reduced capacity to fund needed public service programs will result. A Heritage Fund is a wise economic measure and a tool that will provide some intergenerational equity into the future.

Unfortunately, as drafted, the *Act* fails to address several issues that are key to the success of a Heritage Fund.

The *Act* should:

- Specify the source of its funds, as well as the amount or percentage of revenues to be transferred annually into the Fund;
- Ensure that the Fund is operated such that it is protected from inflation;
- Protect the Fund from premature withdrawal of its capital;
- Outline standards for maximizing returns from revenues while following ethical/responsible investment (RI) standards; and
- Establish an arms-length agency to manage the Fund that reflects the broad interests of the peoples of the NWT.

Sources of Revenue and Amounts Transferred into Heritage Fund

The *Act* states that

“excess funds will be received into the Heritage Fund but nothing can be transferred from it for ten years in order to build up the principal, which is to be retained and invested.”

In terms of a process for transferring funds into the Heritage Fund, the *Act* states:

“Subject to an appropriation under subsection (2), the Minister of Finance shall, each fiscal year, transfer funds into the Heritage Fund as required by the regulations.”

The *Act* also specifies, “The Legislative Assembly may appropriate money to be transferred into the Heritage Fund.”

There is no discussion of the annual amount or percentage of funds to be transferred, indeed no mention of the actual source of funds. Leaving all of this to regulations places the Heritage Fund at risk of not accumulating a significant principal. We are very concerned that this regulation-making power is vested in Cabinet and thus subject to change at any time without any obligation to consult with the Legislative Assembly. It also increases the danger that the Fund will be used for short-term political priorities rather than managed in the best interest of future generations. We believe that the details of the transfer of monies into the Fund should be specified in the *Act* itself, not in future regulations.

1. Recommendation

The source for revenues and procedures for the transfer of monies into the Fund should be specified in the *Act* and not left to future regulations.

Alternatives North and other organizations have repeatedly emphasized the low economic rent (combined taxes and royalties) that governments (federal and territorial) collect from non-renewable resource development. In at least two recent studies of economic rent derived from oil and gas development in the NWT, it was proven that there is room for additional returns to the public purse (see the Pembina Institute report “When the Government is Landlord” at <http://www.pembina.org/pub/171> and the INAC study submitted to the Joint Review Panel at http://www.ngps.nt.ca/Upload/Interveners/Indian%20and%20Northern%20Affairs%20Canada/070220_INAC_CovLtr_&_Comp_Anal_of_Fiscal%20Reg.pdf). The NWT mineral industry enjoys a very low rate of royalties and taxes in Canada and the world (see <http://www.ainc-inac.gc.ca/nth/mm/pubs/discpap/discpap-eng.asp> and the attached report “Plundering the North for hyper-profits: Non-renewable resource extraction and royalties in the Northwest Territories 1998–2004,” by Cizek, P. (2005). While it may be important to promote economic development and remain competitive, it is equally important to ensure that we secure a fair share of revenues from the extraction of public resources. This is simply not happening. If we cannot rely on the federal government to do this, we must insist that the GNWT ensures a fair return to the public purse using its authority.

It would be our preference to see improvements in the fiscal regime completed prior to passage of *Bill 10*. Failing this, there should be a clear commitment to amend the *Act* based on the outcome of these needed changes to ensure a secure and sustainable revenue flow into the Fund.

2. Recommendation

That, on a priority basis, the GNWT conduct an open and public review of the appropriate economic rent to be earned from NWT resource development considering both competitiveness issues and what would be a fair return to the public purse. The results of the review should form the basis for future fiscal policy and determine revenues for the Fund.

Northerners have heard many times about the need to move forward with devolution but very little about exactly what the GNWT would do with such authority. We are told that GNWT would ensure that we would keep more of the benefits of resource development in the North despite there having been little meaningful action to ensure we achieve a fair return now using the GNWT's existing authority. We have also heard that our fiscal position will be 'fixed' with or through devolution. It is hard to believe any of this when our territorial government has not managed resources well using its current authority. We should not and cannot wait for devolution to improve our fiscal position. We must raise a fairer share of revenues from resource development now.

Our two largest diamond mines are now past the mid-point of their mine lives and we have very little long-lasting benefits to show for it. There will be little beyond the current generation's affluence. In retrospect it would have been much better to have properly taxed these enterprises than to rely on the 'trickle-down' from the secondary diamond industry that has not yielded the anticipated benefits. With the Mackenzie Gas Project we have a second and perhaps final chance to get it right in terms of managing public resources for future generations. With the federal and territorial governments' rejection of virtually all of the significant sustainability recommendations from the Joint Review Panel, there is unfortunately little room for optimism.

We continue to support the dedication of income from all sources of revenue earned from the extraction of resources to a Heritage Fund. This would include revenues as listed in the Heritage Fund consultation report: royalties; property, commodity and corporate income taxes; and land, permitting and licensing fees. To this list we would add other new sources of income such as a resource tax, capital tax, carbon tax and income from cash bids. If all sources are not included we might see a drift of corporate earnings towards sources that don't pay into the

fund, away from ones that do. This would create distortion and result in lower Fund revenues.

3. Recommendation

Revenues flowing into the Fund should be based on all fees, taxes, and related GNWT income derived from resource development and this should be specified in the Act.

As discussed above, we are playing catch-up as significant amounts of non-renewable resources have already been extracted and exported with little investment in the future of the NWT. Therefore we support establishing a “long-term savings fund with no portion of funds used for current expenditures or capital investment”. On the order of 30 to 50% of revenues from resource extraction should go into this fund.

4. Recommendation

A fixed amount of government revenues from resource development should be dedicated to the Heritage Fund and this amount should be specified in the Act.

Protection of Capital from Premature Withdrawal

We note that the *Act* prohibits transfers from the Heritage Fund for the first ten years and that any transfer out of the Fund must not “exceed 5% of the fiscal year-end balance”. Ten years is a relatively short period of time to accumulate the principal of the Fund. Furthermore, the structure proposed by the *Act* does not adequately protect the capital of the Fund.

It takes commitment to achieve a successful Heritage Fund. Alberta’s example shows how a substantial principal can accumulate and then quickly disappear. Alberta stopped contributing to its fund and subsequently let the capital value of its fund decrease. The Alberta example shows that withdrawal of capital from a Fund must be closely regulated. Placing the transfer of funds essentially under the purview of the Minister of Finance exposes it to the demands of political expediency. Furthermore, if the value of the fund decreases because of investment losses or inflation, those losses should be compensated for by temporarily stopping disbursements and by putting more revenues into the fund until the shortfall is made up. Investment of the Heritage Fund capital should be outside of the NWT in order to avoid inflating or overheating the territorial economy.

5. The length of time before any possible withdrawals from the Fund should be lengthened to at least 20 years. Conditions for

withdrawals should be set in the Act and reflect a conservative approach to Fund management that makes protection of capital a priority. The authority for extraordinary withdrawals should not rest with Cabinet except for extreme emergencies.

Ethical/Responsible Investment (RI)

The *Northwest Territories Heritage Fund Act* should require that ethical/responsible investment (RI) standards be followed with regard to environmental practices, human rights, labour standards, and controversial products such as weapons and tobacco. This would not only align the Fund with important values held by northerners; responsible investment (RI) has also been shown to provide long-term financial risk protection. Such standards are common practice in other jurisdictions. For example, the Norwegian Pension Fund is mandated to play a role as a shareholder activist on environmental issues, pushing climate change onto the agenda of the energy and utility companies in which it holds shares. It divested itself of investments in the Canadian mining company Barrick Gold Corporation based on its poor environmental track record (see <http://www.regjeringen.no/en/dep/fin/press-center/Press-releases/2009/mining-company-excluded-from-the-governm.html?id=543107>) and its investment in Walmart due to its human rights violations (see <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/Recommendations-and-Letters-from-the-Advisory-Council-on-Ethics/Recommendation-of-15-November-2005.html?id=450120>).

Expenditure of the income earned on fund investments and other revenues from resource extraction should be targeted towards increasing the NWT's environmental, economic and social sustainability. This can be done through infrastructure development projects aimed at energy conservation initiatives, the development of renewable energy sources, fostering community based economic diversification and investing in long term social benefits such as the building of early childhood centers. Clear standards should be established for project approval. The rules should strive to protect against short-term political opportunism or interference. Performance measures should be established. Examples include reduction in GHG emissions and set levels of production from renewable energy sources. Regulations could also include the number and types of jobs created through direct investment in community economic diversification and the number of spaces created in early childhood programs.

- 6. The Act should specify objectives and principles for the Fund that support ethical and responsible investment and sustainability. Public reporting on performance of the Fund against objectives and principles should be regular and mandatory.**

Heritage Fund Management

The *Act* states that the Financial Management Board will be the trustee of the Heritage Fund. This is a very narrow approach to governance of the Fund and does not offer sufficient public involvement. Alberta's Heritage Fund offers an example of how to increase transparency in the governance of the Fund.

"The Alberta Heritage Savings Trust Fund Act requires there to be a Standing Committee on the Alberta Heritage Savings Trust Fund which has representation from the major parties of the Legislature. The Standing Committee reviews quarterly reports and approves the business plan and annual report of the Heritage Fund. The Committee reviews the performance of the Heritage Fund after each fiscal year and reports to the Legislature whether the mission of the Heritage Fund is being fulfilled. An annual public meeting of the Standing Committee is held in different locations throughout the province. The purpose of the annual public meeting is to update Albertans on the management of the Heritage Fund, answer questions and solicit input on its objectives."

Alternatives North believes the NWT Heritage Fund should be managed by an arms-length agency that reports to the Legislative Assembly. It should also be subject to audit by an independent and public body, for example the federal Auditor General. Appointments to the group that manages the fund should reflect principles of gender equity, geographic representation of the NWT, a variety of experiences and backgrounds, and commitment to public service. As discussed above, there should be ethical standards developed and implemented to guide the investment of fund capital and the spending of revenue from resource extraction. There should be complete disclosure and public reporting of the performance of the fund at least annually.

- 7. The Act should specify that the Fund will be managed by an arms-length body that is representative of the broad interests of residents, and that reflects the principles of gender equity, regional interests, a variety of experiences and backgrounds and commitment to public service. The management of the Fund should be subject to oversight by the Legislative Assembly with opportunities for public involvement.**

Final Comment

With the creation of a Heritage Fund, the people of the Northwest Territories have an opportunity to recognize the right of our children to benefit from the exploitation today of the Territories' non-renewable resources. We support the concept of a Heritage Fund but there are fundamental flaws in the current Bill that need to be fixed first. We owe it to future generations to do this well.