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TESTIMONY OF JEFF SEIDEL BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

HEARING ON S. 2580 (Tribal school bonding bill) September 6, 2000

Mr. Chairman and Members of the Committee, my name is Jeff Seidel and I am the president of Parkway Muni Resources, a firm located in Minneapolis, Minnesota. Our firm specializes in obtaining financing for non-profit, governmental and commercial enterprises, particularly those that do not easily qualify for conventional financing in either the commercial banking or the investment banking markets. Currently, many of my clients are American Indians, who as we all know, often have a difficult time financing non-gaming activities in the conventional markets.

Today, I welcome the opportunity to comment on the unenviable task of financing the construction and capital improvements of BIA School Facilities throughout the nation. While most public schools are funded through locally generated taxes, based primarily on property values within a particular school district, the same does not hold true for almost all Indian School Districts. For the most part, as many of us know, the responsibility for funding new construction or capital improvements to BIA Schools rests entirely with the federal government.

For a number of years now, many proposals have been brought forth in an attempt to reduce the nearly \$1.0 billion backlog in BIA School construction and improvements. Some of these proposals included the concept of leveraging existing appropriations, which would have raised money through the issuance of debt, with the repayment source being future appropriations from the New Construction and the Facility Improvement and Repair accounts of the Bureau. The issuance of bonds supported by tax revenues (or moneys derived from taxes) has been used for years in public schools and also on the county and state levels. Many of us on today's witness panel have sought the same solution on the federal level, only to find tremendous resistance from both the Department of Treasury and from those in the budgeting process. Other financing vehicles, such as

contracting with the General Services Administration to lease schools over a period of time, and leveraging those lease payments (as has been done for many federal buildings), or utilizing the capital reimbursement program authorized by PL93-638, as amended, have each met with opposition from both the capital markets and the federal agencies involved. Direct appropriations are, of course, the simplest solution, but appropriations are obviously quite limited given the gargantuan need that continues to grow exponentially. Even in these prosperous times, only two to three schools are funded each year. At that pace it is doubtful that the federal government will ever reduce the backlog. We have looked at all of the alternatives we could think of, and the solution contained in S. 2580 is the culmination of that effort.

Specifics for the Tribal School Bonding Bill – S. 2580

S. 2580 represents efforts by both the public and private sectors to find at least a partial solution to the backlog for Tribal Schools. The program created by S. 2580 would provide tax credits to pay interest and a cash escrow account to pay principal on bonds, which are issued for the purpose of funding building renovation and new school construction at BIA and grant schools.

In order to receive a bond allocation under S. 2580, a Tribe would submit a plan of construction to the Secretary of the Department of the Interior. The necessary plan would demonstrate that a comprehensive survey has been undertaken of the construction and renovation needs and would describe how the Tribe would ensure that proceeds from the bond issue are used for the purpose intended by the proposal. After reviewing the proposal, the Secretary of the Interior will allocate a designated amount of bonds to the Tribe, and the Tribe will access the public markets for the purpose of raising funds for the project. It should be noted that those projects on the BIA's prioritization list shall be given first priority to qualify, and then other projects can be qualified on a first-come, first-served basis. (This should not be construed as an endorsement of the current priority list. We believe there are inequities in the current list, but these should be addressed separately.)

Under existing public laws, Tribes may contract with local architects, engineers and construction firms, among others, for the purpose of determining the physical plant needs of the Tribal school and for the design and engineering of such facility(ies). Under this bill, the Tribe will also have the authority, once the Secretary of the Interior has provided a bond allocation, to contract with a financial advisor, underwriter, attorney, trustee, and any other professional who would be able to assist the Tribe in issuing bonds to the public sector.

Under S. 2580, individual Tribes will be allowed to issue taxable bonds for the purpose of new construction or facility improvement and repair, with the following collateral provided by the bill. As you know, Tribes already have the statutory right to issue both taxable and tax-exempt bonds, but this collateral is for the benefit of the bondholders.

The Principal portion of these taxable bonds would be set aside up front in an escrow account. The bill authorizes an annual appropriation of \$30 million for this purpose. Once a tribal plan has been approved, the Tribe would be able to issue bonds on an “interest only” basis for a period of 15 years, at which time the entire balance of principal would become due and payable. The funds in the escrow account would be invested in very secure investments (such as SLGS, Treasuries, and Agencies), that would ensure funds would be available at that time to pay bondholders. It is also common practice to have a national accounting firm confirm that the funds would be available.

Under current market conditions, \$30 million invested for 15 years could grow to about \$75 million. Thus, the effect of this bill would be to allow the Secretary to approve up to \$75 million in projects in the first year of the project. Leveraging federal funds in this way would help to reduce the backlog more quickly than simply appropriating funds directly without increasing the cost to the federal government.

The Interest portion of these taxable bonds will be paid in the form of a “tax-credit” to be provided by the federal government through this bill. The total amount of tax-credits to be extended to new and future bondholders will depend on the amount of bonds issued, and the prevailing market rate on the bonds. For each of FY 2001 and FY 2002, the sum of \$200 million in bonds would be authorized for issuance. It is not expected that the program, using the principal escrow account, will utilize all of this bonding authority. But there may be alternative uses for this authority among Tribes which may have some cash to pledge to a separate escrow account, with that cash building in value over the 15 years as described above. Thus, some Tribes could take advantage of the interest portion of this program, even if no additional funds are available to pay the principal on the bonds.

For the bondholders, instead of receiving interest in the form of cash, they will receive a tax credit against their federal income tax liability. If \$75 million in bonding allocation is approved, the investors will receive about \$95 million in tax credits over 15 years, at current market conditions. And the remaining tax credits may be used for future financing if more money is funded in the escrow account.

The bill also provides detailed definitions of the roles of bond trustees, needed to successfully issue these bonds. The bond trustee would act as a gatekeeper of funds transfers, both from investors to contractors, and from the federal government to the investors (the escrow funds and the tax credits). While not specifically mentioned, the method of transfer of funds is provided through industry standard, and can be written in the bond indenture to avoid timing issues.

It is made very clear that under NO circumstances will the issuing Tribe or the federal government have an ongoing obligation to repay the bonds, either the principal or the interest (other than the federal government providing the tax credits on an annual basis), and that the sovereign immunity offered to the Tribes, through treaties and the like shall remain in place. Furthermore, neither the education facility(ies) nor the land the

facility(ies) are on shall be mortgaged or used as collateral for the bonds. In the unlikely event of a default, the bondholders shall not have any recourse to the Tribe nor its assets.

We do not think any of these arrangements, or the lack of a federal “guarantee,” will scare off investors. To the contrary, our experience in this field tells us that the appropriated escrow, with the statutory conditions on its management and use, will attract eager investors from the private markets. The bonds issued under S. 2580 will be seen as good, safe, and sound investments.

Other Benefits: The proposed bonding process would greatly assist Tribal Schools in obtaining timely funds for their projects. This bill will also help connect Tribal communities to investment banking markets. Granted, the source of repayment for these bonds does not come from the Tribes. However, having worked in Indian Country this past decade, I see the hesitancy many investment banking firms have in doing business with Tribes, and also the relative distrust Tribes have for the capital markets. Many abuses have happened. This bonding bill will assist in breaking these barriers down, which is essential if the Tribes are to pursue economic development successfully.

The other benefit for Tribes is that this program would finally allow for the design and construction process for Tribal Schools to proceed locally, using bonded architects, engineers and construction companies. It would permit use of the trust departments of private financial institutions to maintain control over disbursement and re-investment of the funds. It would allow Tribal Schools to raise “seed” money for professional services such as architects and engineers, through the issuance of debt guaranteed by the eventual issuance of these bonds. And it would involve federal oversight but without the tremendous delay in the design, engineering and most importantly, the funding of the projects.

Because local architects will be used, the designs should take into account the local environment and other considerations unique to the area and culture. Also, local contractors would use Indians and other minorities to help build the school, providing employment and developing job skills. But most importantly, local firms which are familiar with designing and building public facilities would complete the project in an accelerated manner, as compared to the current system, and thus remove the added costs of construction-delay inflation. Under S. 2580, we could give them a budget, provide them with mandatory deadlines for this pilot program, and let them work with the local Tribal School District to complete the project on a timely basis.

Thank you for this opportunity to testify today in support of S. 2580. I understand there are some technical amendments which are under consideration by the sponsors, and having had an opportunity to review them, I believe the bill would be greatly improved if those changes were made. I would be pleased to respond to any questions you may have.

Points of Interest:

Some of what has been written about the Tribal School situation in the past is as follows:

- There exists a unique political and legal relationship between the government of the United States and governments of Indian Tribes. Indian Tribes have a legal relationship with the United States government which is set forth in the Constitution of the United States, Treaties, federal statutes and judicial decisions.
- The Constitution of the United States gives the Congress plenary (full) powers over Indian affairs, and through treaties, statutes, executive orders, course of dealing and custom, the United States has undertaken a trust obligation to protect Indian Tribes and tribal resources.
- The trust responsibility includes the duty to protect, preserve and enhance tribal assets and resources, and to assist Indian Tribes in improving the socio-economic status of Tribes and their members in an effort to encourage economic development and strengthen powers of self-government.
- By fostering the development of accommodative financial markets and tribal access to capital, the federal government can assist in providing fundamental tools to greater economic development and powers of self-government.
- The need for financial capital by Indian Tribal governments is acute, and the federal government should work to facilitate capital creation and those mechanisms that will permit the tribes, with the assistance of the federal government, to issue debt instruments as a means of financing Tribal government needs.
- For the benefit of Indian people across the United States to increase their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and develop their intellectual and mental capacities.
- It is essential that institutions of education be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities.
- Institutions should be enabled to finance indebtedness to preserve and enhance the facilities for the purposes of education.
- There is approximately 16,600,000 square feet of space in Indian schools nationwide.
- There exists a backlog in Grant Schools and Bureau of Indian Affairs School facility improvement, repair and new construction needs of \$754 million as of March, 1998. It is estimated that the cost of the \$754 million in deferred

maintenance grows by \$22.6 million per year due to inflation , and approximately \$33.9 million per year due to natural aging and deterioration, for an annual total of \$56.5 million per year in growing needs.

- The replacement value for Tribal schools is estimated to be \$1.83 billion.
- The magnitude of the dollars and number of projects has risen to a level where these projects cannot be funded by current Facility Improvement and Repair and New Construction program funds.
- With the physical condition of Grant and Bureau schools deteriorating, and with the population within these schools increasing, there is an immediate need for funding of these projects.
- It is the purpose of this bill to provide a measure of assistance and an alternative method of financing to enable the tribal institutions of education to provide the facilities and structures which are sorely needed to accomplish the purposes of this bill.
- True self-determination in any society of people is dependent upon an educational process which will ensure the development of qualified people to fulfill meaningful leadership roles. This bill will incorporate the commitment of the federal government to guarantee payments of principal (through a direct appropriation of an escrow fund) and of interest (through the allowance for future tax-credits to investors), so that Tribes with negligible resources may issue bonds to fund school improvements and/or new construction.
- This bill will also incorporate the commitment and support of Tribal self-determination by utilizing PL93-638, Section 102 and PL100-297 to allow tribes to manage their own construction projects.