Testimony of
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on
S. 2580, the Indian School Construction Act
before the
Committee on Indian Affairs
United States Senate

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Good morning, Mr. Chairman and members of the Committee. My name is William Mehojah. I am the Director for the Office of Indian Education Programs at the Bureau of Indian Affairs (Bureau). I am pleased to appear before you today to present the Department's position on S.2580, the Indian School Construction Act.

Before I explain some of the Department's concerns, I'd like to share background information regarding the Bureau's education facilities.

The Bureau is the primary agency of the Federal Government charged with the responsibility to administer policy and operation for the Indian education programs at 185 federally recognized Tribal or Bureau-managed schools. A critical part of the education program is school facilities, which Indian students attend.

The Bureau's facilities inventory is large, over 6,000 buildings, of which nearly 4,500 serve the Bureau's education program. The 185 Bureau-funded schools consist of over 20 million square feet of space and include dormitories, employee housing quarters, and other buildings providing educational opportunities to over 50,000 students. The Bureau operates or provides education opportunities to Indian students in 23 states through Self-Determination contracts, compacts and education grants. The education program is critical to Indian communities as pointed out by the President in Executive Order 13096, which calls for creating educational opportunities in our nation for Native Indian students.

More than half of the school facilities inventory has exceeded its useful building life of 30 years and, as a result, numerous deficiencies exist regarding health, safety, disability access, classroom size, computer and communications technology, and administrative office space. Extensive repair or total replacements are needed for these deteriorated structures, which no longer meet national building codes and standards. The existing backlog of education facility repair needs is over $800 million.

National studies of public schools have shown that the condition of education facilities have a definite influence on a student's ability to learn. The majority of the Bureau's schools are old and

in poor condition, and the physical environment has adversely impacted the education of Indian students who must attend these institutions.

It is against this backdrop that the urgency and necessity to upgrade and modernize the Bureau's aging educational facilities becomes apparent. The President has proposed the use of School Modernization Bonds in support of the renovation and construction of public and Native American schools throughout the U.S. School Modernization Bonds pay interest in the form of federal tax credits to investors, making the bonds interest-free for school districts. Under the President's proposal, $200 million of such bonds would be authorized for BIA-funded schools in both FY 2001 and FY 2002. Of this $300 million, up to$30 million may be used to defease the principal on school modernization bonds. Using $30 million to create sinking funds to repay the principal of the School Modernization Bonds will allow about $60 million of the proceeds from these bonds to be used for construction and repair of BIA-funded schools.

S. 2580 would allow tax credit bonds to be issued only in those cases where sinking funds had been created out of the $30 million. Tribal governments should have the opportunity to use the remainder of the $200 million in bonding authority even without these sinking funds to leverage their resources and issue bonds. We would recommend a provision to allow for the use of the remainder of the bonding authority.

If the discretionary program is funded at the requested level, the three remaining schools of the total 16 school projects published in the Federal Register priority list of December 1993 will receive full construction funding. In addition, the first three schools on the new priority list published in January 2000 would also receive full funding. Another round of applications and selections is being contemplated to keep pace with Congressional appropriations at an anticipated rate of 4-6 school projects per year. We are also exploring possibilities for sharing costs with tribal partners in an effort to obtain non-Federal resources and speed construction of replacement schools.

The Bureau has made good progress in the management and administration of its school construction program during the last several years. The long-range 5-year Capital Improvement Plan addresses our backlog of code and standard deficiencies, but the need is great and will require massive outlays of resources if measurable results are to be made in stopping further deterioration and eliminating the backlog. The Bureau is placing strong emphasis on capital asset planning and investment control. The Bureau's construction processes were re-engineered several years ago with a resultant success in reducing the time to complete a school from an average of 6-7 years down to 2-3 years. This achievement was recognized in February 1999, when the Bureau facilities construction program received the Vice President's Hammer Award for excellence in re-engineering the new school construction process.

We support the concept within S.2580, the Indian School Construction Act. The Administration has endorsed a separate bipartisan proposal sponsored by Reps. Nancy Johnson and Charles Rangel, introduced as H.R.4094. This legislation includes all the components of the national School Modernization Bonding Initiative including the authority for tribal governments to issue $200

million of tax credit bonds in both FY 2001 and FY 2002 for BIA-funded schools. While we can support separate legislation for BIA-funded schools that is consistent with the goals of the national Initiative, we have several concerns with S. 2580. The following provides a list of the Department's concerns with the current language in S. 2580:

- **Section 2 (4) Definition of Tribal Schools**
  The definition of tribal schools should be expanded to include BIA operated schools. As written, the language would extend bonding authority to only those tribes with schools operated under contracts, grants, and by cooperative agreement.

- **Section 2 (5) Definition of Tribe**
  The bonds should be issued by Indian Tribal Governments as defined in section 7701 of the Internal Revenue Code.

- **Section 3 Issuance of Bonds (a) In General**
  The phrase "new construction" may be interpreted to connote the establishment and building of a new school, instead of replacement or rehabilitation of BIA's current 185 elementary and secondary schools.

- **Section 3 Issuance of Bonds (b) Eligibility** needs to be clarified as to how the comprehensive survey mentioned in the legislation would relate to the current BIA backlog of code and standard deficiencies, space guidelines and or education specifications, which currently regulate school facilities. Further, we ask that the phrase "and cost" and "critical health and safety related" be inserted to language in Sec.3. (b) (2) (A) as follows: "contains a description ***and cost*** of the ***critical health and safety related*** improvements, repairs, or new construction..."

- **Sec. 3. (b)(3) Priority**
  The Department agrees with the language that says the priority will be given to projects described in the Replacement School Construction priority list, however, we are concerned that the current language makes no reference to how priorities will be established for Facilities Improvement and Repair (FI&R) projects.
  Concern: We have a concern about whether these projects will also be based on a BIA National FI&R Ranking List, and if this list will be established based on need relating to health and safety code and standard deficiencies.

- **Sec. 3. (b) (4) Approval**
  The language currently reads "... approved plans of construction will be based on the order in which the plans are received by the Secretary..."
  Concern: We are concerned that this might give (1) tribes that have financial resources an advantage over poor tribes; (2) not correspond to the National Priority List order for Replacement Schools by allowing more of a first come first served basis on consideration; and (3) not correspond to the National FI&R lists established based upon need as shown in

backlog of code and standard deficiencies.

- **Sec. 3. (c) Permissible Activities (1)**
  (1) enter into contracts with A/E's, contractors, ... in order to determine needs of Tribal schools.
  Concern: We are concerned that there is no language provided on the qualifications of the people listed, i.e., professional engineers. We suggest more accountability with reference to the inspection of the final product. We advocate that the facilities should be inspected by those knowledgeable of space requirements, safety codes, etc.

- **Sec. 3. (d) Bond Trustee (4) (A)**
  The language "..the tribe shall require the trustee, ... to inspect the project ... or provide for an inspection of that project by a local financial institution to ensure completion of the project"
  Concern: The current state of the language here provides no provision for BIA inspection and clearance by the Office of Facilities Management and Construction. The BIA should have review and inspection of oversight of education specifications, planning, design and the final inspection authority.

- **Sec. 3. (f) Bond Guarantees (2)(A)**
  The language here states "...notwithstanding any other provision of law, subject to the availability of amounts made available under any appropriations Act, beginning in fiscal year 2001, the Secretary may deposit not more than $30,000,000 of unobligated funds into a tribal school modernization escrow account." Neither the House nor the Senate appropriated FY 2001 funds for the School Bonding Initiative.
  Concern: The Department has serious concerns with this section of the proposed bill that is broadly worded and authorizes the use of unobligated funds from any account under any appropriations Act to be made available for the Bonding Initiative. This could result in displacement of funding for high priority projects within the same appropriation or within any appropriations Act.

- **Sec. 3. (g) Limitations (1)**
  Concern: As drafted, this language creates a new loan guarantee program that would be subject to the Federal Credit Reform Act of 1990, as amended. In addition to implementation issues, we are concerned that the Federal Government would ultimately be responsible for repayment on the bonds if the tribes are absolved of the responsibility to repay principal in the event that something goes wrong. We would recommend a clear statement in the bill that "Neither BIA nor any other Federal agency will be liable for repayment should the tribes fail to repay principal on the bonds."

- **Sec. 4. Expansion of Incentives for Schools**

Subchapter X ---- Tribal School Modernization Provisions. The Department is not in a

position to comment on this section as we recognize that this is within the purview of the Treasury Department and should be evaluated by them.

We understand that Treasury has additional concerns with S. 2580 and will be submitting a letter to the Committee shortly.

We look forward to working with you and Committee staff to support a bill that is consistent with the goals of the Administration's proposal for School Modernization, and to accomplish our mutual goal of providing quality educational opportunities to American Indian youth in a contemporary setting conducive to productive learning.

This concludes my statement. I will be happy to answer any questions you may have.