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Building on the Installment Plan

*Faced with rapid growth and decaying schools, a school district embarks
on an ambitious—and controversial—construction plan*

By William Herlong



Can we finish building the schools our community needs? Can we focus on the issues that really matter, like teacher quality and bridging the gap? Or are we doomed to build forever, to never reach our goal, to lose whole generations of students to portables and decrepit buildings?

These were some of my thoughts in November 1998, when I was elected to the Greenville, S.C., school board. At the time, our district's facilities needs were staggering, with more than 9,000 of our 61,000 students spending their days in more than 440 "permanent" portables.

Most of our 83 schools were old and falling apart, and the construction to address these problems was projected to cost \$784 million. Practically speaking, our board can borrow only about \$60 million a year for construction, which means it would take at least until 2023 to finish the building plan. By that time, construction costs are projected to escalate to about \$1.5 billion. If the scope and costs of our projects continue to increase at the rates we've experienced over the past 10 years—more than 15 percent a year in some cases—costs could exceed \$2 billion.

Conventional wisdom says it can't be done. But we've found a way that it can.

A new approach

Through the use of a nonprofit corporation and what bond at-

torneys refer to as "63-20 bonds," we have discovered a new approach to financing school construction that will enable us to build or renovate 86 schools by April 2006 without a tax increase or any compromises. The school district will still control the design, location, construction, and quality of our schools and have exclusive use of them once they are built.

No qualified architect or contractor will be excluded, and minority participation will increase because of the project's scope and the management company we have hired to oversee the project.

On top of all that, by building the schools in four years and thus avoiding the wicked inflation we've seen in the past, we might save \$100 million or more. Indeed, one projection is that we'll save as much as \$600 million.

This is not snake oil. Pieces of this financing mechanism have been used on a smaller scale by a few charter schools in Florida and by some public school districts in Texas, including Houston. But the key part of the plan—the "installment purchase" component—has never been used to build schools on this or any other scale.

Janet Corcoran, a New York bond attorney and consultant with 20 years of experience in school finance, describes it as "one of the most innovative deal structures ever done by a school district." This is the story of how we did it.



How it is set up

The “installment purchase” arrangement, when coupled with the nonprofit corporation, safely avoids the 8 percent debt limit set on school districts by the South Carolina Constitution and our state’s law against lease purchase arrangements. The constitutional debt limit does not apply because the nonprofit is an independent legal entity. The bond holders that will finance construction of our schools have no right of recourse against the school district if we default on the bonds, even though we would lose the right to use the facilities. As a practical matter, we can’t default because we need these schools, and the bond holders know that.

A nonprofit corporation can borrow the entire amount necessary to complete the building plan, and, because the payback is viewed as nearly certain, can negotiate a loan almost as cheaply as the district itself. With the money in hand, the nonprofit can complete our building plan in approximately four years.

The anti-lease purchase law, which was designed to prevent financing mechanisms like certificates of participation, does not apply because our district will not be leasing the schools. Instead, we will purchase the schools from the nonprofit in 25 yearly installments of approximately \$60 million each (roughly the same amount we currently spend each year on construction).

This difference is not just a matter of semantics. Each payment to the nonprofit will actually buy exclusive use of all the schools for that year and a 1/25th undivided and unforfeitable interest in all the schools. Unlike a lease, each installment purchase payment actually buys equity. This might make this approach preferable even for those school districts not barred from lease-purchase arrangements.

When the school board first heard this financing plan, it seemed too good to be true. How could it possibly be legal? How could the numbers possibly work? How could schools be built that fast? Were there enough craftsmen in our area? What would happen to local contractors? Would the school board have to give up control? Would the schools be cheap boxes? Could we do it ourselves? Had anyone else ever done this before? If not, why not? What were our alternatives?

Board members and our consultants spent hundreds of hours focusing on these and other issues. Our construction consultant, Gilbane Building Co., validated the four-year building schedule and the proposed project management plans. Our financial adviser, Diane McNabb of the A.G. Edwards investment bank, validated the financing arrangement and the cash flow numbers. And our bond attorney, Brent Jeffcoat of Parker Poe Adams & Bernstein in Columbia, confirmed the plan was legal and the nonprofit could be structured so that the school

board maintained effective control.

Based on this advice, the board voted on Dec. 15, 1999, to begin negotiations with Institutional Resources (InRe), the consortium that conceived and proposed the financing plan. InRe is a joint venture of four companies, one of which (Hanscomb Ltd.) oversaw the nearly flawless construction of the \$450 million BMW plant outside Greenville in 1993.

Subsequently, the South Carolina attorney general's office and our Court of Common Pleas both found the school district's plan legal. Moreover, Moody's Investor Services and Standard & Poor's—two leading bond rating agencies—raised our debt rating *because* the plan resulted in a manageable debt burden while addressing the district's long-term capital needs.

Challenges and delays

Given all of the positives, one might think that adopting such an ideal plan would be a no-brainer. But that has not been the case, as our district has faced a challenge from a disappointed bidder, a taxpayer lawsuit, and a board that was divided on the issue. It has taken more than two years for all of the pieces to fall into place.

In August 1999, the district sent out a request for proposals and received seven bids. Four bids proposed to take over the management of our construction program and did not address our financial conundrum. The other three included construction management services and, even more important, also included finance plans that would help build the schools in the shortest time frame. After several months of analysis by the board and our advisers, InRe was selected.

With the lack of any model to follow, it took another eight months to negotiate the contract with InRe. The challenge from the disappointed bidder took five months to resolve, then InRe spent several months physically inspecting all our facilities, reconfirming the budget and construction schedule, and obtaining final approval from the school board. Once that was complete, the district worked for two months to finalize the nonprofit corporation at the center of the plan, and then spent six months fighting the taxpayer's lawsuit.

Despite the lingering delays, a majority of our board was eager to go forward, believing that this might be the solution to our building problems. But three of the 12 board members fought the plan, which further gummed up the process as the majority allowed questions and analyses almost *ad nauseum*. While the public at large was overwhelmingly supportive, the board's dissent also stirred up the hard-core knot of folks who question almost anything the public schools do, as well as some local contractors and others who were worried that the new plan would negatively impact them or their businesses.

The vigorous dissent was healthy, up to a point. Indeed, if the plan could not withstand microscopic scrutiny and the dissenters' search for "gotchas," it should not have been adopted.

Even a diverse, publicly elected board can deal with complex and contentious issues.

But ultimately the effect of the unending dissent was, in my opinion, quite detrimental. It might have even contributed to the challenge by the disappointed bidder, who thought his proposal should have been accepted.

Concerned about our own objectivity regarding the challenge, the board called in an independent arbitrator to handle the matter. On Feb. 7, 2001, Judge Alex Sanders, then president of the College of Charleston and an adjunct member of the faculty at Harvard Law School, overruled the bidder's challenge and allowed us to proceed with InRe.

Further obstacles

The bidder's challenge was not the only legal obstacle we had to overcome. In August 2001, taxpayer Edward Sloan filed a lawsuit against the board, claiming our plan violated the state's constitutional debt limit and the anti-lease purchase law. At least two of the dissenting board members supported Sloan's lawsuit.

It was time for the administration to take the lead. Bill Harnner, our new superintendent, and Robert Morales, our chief financial officer at the time, handled the lawsuit from that point. On Dec. 7, 2001, the court granted summary judgment against Sloan. He appealed, but withdrew his lawsuit after the board agreed to pay his attorney's fees.

Our path was finally clear. And, at last, our nonprofit organization—BEST (Building Equity Sooner for Tomorrow)—sold \$800 million of bonds in March 2002. The sum includes an \$80 million reserve that makes bond insurance unnecessary and saves us an additional \$7 million. The fastest-paced educational construction project in the nation was finally on track.

I am immensely proud of the board majority. The new financing plan and the InRe proposal had so many enemies—from the dissenting trustees to local contractors to the naysayers who could not believe our building program could be completed in four years without a tax increase or a change in state law. The board majority stayed focused and committed for almost three years.

For me, there are many messages in this success, but two stand out. The first is that when a board is open to suggestions and solutions from all corners and won't take "no" for an answer, it might just find an answer that works. The second, and frankly even more inspiring, is that even a diverse, publicly elected board can deal with complex and contentious issues that span elections and take years to resolve.

With courage and commitment, and working together openly and in good faith, it can be done. The impossible is possible, and this project will prove that.

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