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# ROBERT WITTKE

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STATE REPRESENTATIVE • 62<sup>nd</sup> ASSEMBLY DISTRICT

**Testimony on Assembly Bill 73**  
**Assembly Committee on Ways and Means, March 28, 2019**

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Mr. Chairman and Members,

Thank you for holding a public hearing on Assembly Bill 73 which seeks to end the Professional Baseball Stadium tax on December 31, 2019.

Putting the final punctuation on a tax collected from five counties surrounding Miller Park Stadium is very important to my assembly district in Racine County. As you may know, residents of Racine County have never been happy they were included in the stadium tax. Increasingly, residents in the other surrounding counties have asked why the sales tax has not yet ended. With the end of the sales tax for the Packers' stadium in Green Bay and the recent completion of the new Bucks arena, the Miller Park tax issue is again in the spotlight.

First authorized in 1995, the .1% sales tax to pay for the construction of the Miller Park baseball stadium is collected in Milwaukee County as well as its four neighboring counties: Racine, Waukesha, Ozaukee, and Washington. At the time, estimates predicted the tax collected would satisfy the District's obligation by the end of 2014. That timeframe to satisfy the obligation has gone well beyond 2014 and is now forecasted to finish by 2020.

From the Legislative Fiscal Bureau we have learned the original intent of the District was to satisfy the \$259.1 million borrowed for the construction of Miller Park and related equipment. Funds collected through the sales tax also meet the District's administration, insurance, and lease obligations relating to the maintenance and operation of the Stadium. The District has other obligations and responsibilities for the operation of the Stadium in accordance with the lease agreement which could go as far into the future as 2040 with lease extensions to the Milwaukee Brewers. We believe these obligations will be met by the date provided in Assembly Bill 73.

To date, the District has collected \$577.5 million in sales tax revenue averaging about \$30 million annually. It is estimated that after the District pays its debt service for 2019, the remaining debt will be approximately \$38.8 million. Forecasted fund balances indicate the District's debt and future lease obligations will be satisfied. The end of the sales tax appears to be in sight.

Assembly Bill 73 provides assurance the Stadium sales tax will conclude. For 23 years, taxpayers in my county along with the other four counties have paid the .1% tax to fund the stadium many Wisconsin residents and visitors have enjoyed. The Brewers are a valuable and much appreciated enterprise for Wisconsin, but it is time to close the roof on the stadium tax.

Thank you again for holding this hearing on Assembly Bill 73. I will be happy to answer any questions.



# Van H. Wanggaard

Wisconsin State Senator

## TESTIMONY ON ASSEMBLY BILL 73

Thank you Mr. Chairman and committee members for today's hearing on Assembly Bill 73, which ends the 5-county Miller Park tax on December 31, 2019.

Since no member of this committee was elected, and one wasn't even born when the Miller Park tax was enacted, let me provide some background.

The construction of Miller Park was funded through a "public-private partnership" with the Milwaukee Brewers. Roughly speaking, the state would pay two-thirds of the construction costs of Miller Park, and Brewers one-third. In the case of Miller Park, the "state" meant Milwaukee County and the four surrounding counties: Racine, Waukesha, Ozaukee and Washington. These counties collectively became known as the Southeast Wisconsin Professional Baseball Park District. The state imposed a one-tenth of one percent (0.1%) sales tax in those counties to come up with the state's share of the \$250 million Miller Park construction. The state's contribution was capped at \$160 million in bonds. The Brewers made up the \$90 million difference. That law was enacted in 1995, and the tax began on January 1, 1996.

Fast forward to today – 23 years, 2 months and 28 days later, over \$577 million has been collected from Southeastern Wisconsin taxpayers to pay for that initial \$160 million debt. Let me say that a different way, because it gets to the heart of the matter. Southeastern Wisconsin taxpayers have paid for their share of Miller Park three times over.

Making this matter worse, I am told that representations were made at the time that the Miller Park tax would sunset in 2014, if not before.

Now, I'm not naïve. I know that bonds have principals and interest and therefore the actual amount that needed to be paid for Miller Park was greater than \$160 million. But importantly, taxpayers were also put on the hook for \$42 million for infrastructure costs, another \$45 million for leased equipment like the scoreboard, seating, drive mechanism for the roof, etc. and an additional \$12 million. The total bonding paid for by taxpayers \$259 million – over \$100 million than initially promised.

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But wait, there's more. In addition to creating a fund to pay back the bonds, which was and is a very sound idea on the Miller Park Board's part, the lease between Miller Park and the Brewers requires additional spending by taxpayers to maintain Miller Park. An "Asset-liability" fund was also created to cover a variety of costs. Some are to be expected, like property insurance, operating expenses, repairs, and maintenance. But this fund will also serve as the money for improvements to Miller Park, for example, another new scoreboard in 2020 or 2021. Fiscal Bureau estimates these costs to exceed \$80 million over the NEXT 20 years.

A final fund, and for those counting along this is the THIRD Miller Park fund is a stabilization fund to cover unexpected and inflationary pressures over the next 20 years. The board anticipates funding this contingency fund with between \$14 and \$20 million.

So, please let that sink in. Voters in Southeastern Wisconsin were promised they'd be taxed for \$160 million in stadium costs, but it ended up being \$260 million. They've paid \$577 million - either 3 times that or double the initial amount depending on the number used. Taxpayers are on the hook for another \$100 million that most people don't even know about. They were promised the tax would end 5 years ago. It hasn't. And, importantly, they were taxed without having a vote on the subject, which cost one of my predecessors his seat in the Senate.

That broken trust is why we are here today. The taxpayers in southeastern Wisconsin do not trust that the stadium tax will end in 2019 or 2020 as the District says it will. They do not trust that the tax will actually go away. It's been promised before. They believe the tax will either continue to fund Miller Park, or will be repurposed for another use. And trust me, there are local officials with wide eyes looking to take the money from this tax. They've seen Lambeau Field expanded, and the Lambeau Field tax retired in less time than they've spent paying for Miller Park. Taxpayers are skeptical, fed up and frankly, angry. I don't blame them.

I want to add that I do not want to re-litigate the stadium debate of 23 years ago. We can't undo the tax or the lease the District and Brewers entered into, We can't change the past. It is what it is. This isn't about the Brewers. I'm glad the Brewers are in Milwaukee and Wisconsin, and I want them to do well.

This bill is about moving forward as a state and region. After 23 years, \$577 million, and countless broken promises, perceived and real, it is time to end the Miller Park tax and put this sad subject behind us, so we can focus on the product on the field rather than who's paying for the field.



## Legislative Fiscal Bureau

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March 22, 2019

**TO:** Senator Van Wanggaard  
Room 313 South, State Capitol

**FROM:** Ryan Horton, Fiscal Analyst

**SUBJECT:** Baseball Park District Funds

As requested, this memorandum provides information on the balance of certain funds held by the Southeast Wisconsin Professional Baseball Park District ("District").

A local professional baseball park district for the construction and operation of a new baseball stadium for the Milwaukee Brewers was created by 1995 Wisconsin Act 56. The District includes five counties: Milwaukee, Ozaukee, Racine, Washington, and Waukesha. The District borrowed a total of \$259.1 million in principal for the construction of Miller Park and related equipment. The debt service (the payment of principal and interest) on these debt instruments is paid from the 0.1% sales and use taxes imposed by the District in the five-county area and meet the District's administration, insurance, and lease obligations relating to the maintenance and operations of the facility.

The District has established multiple escrow accounts containing U.S. government securities to defease future debt payments. Following scheduled debt service payments in 2019, the District will have an estimated \$38,756,600 in debt remaining to be defeased. The District indicates that the securities for the final defeasance will be purchased as part of a competitive bid process to occur prior to the District's Board certifying the retirement of the sales tax. The exact amount required for the final debt defeasance will depend on the interest rates achieved during the bid and, therefore, the District does not have a specific amount set aside for the final debt defeasance escrow. The District plans to pay the defeasance from the District's operating fund, which had a balance of \$29.3 million on 1/31/19. The share of the \$29.3 million balance that will be put toward the District's final defeasance is unknown since the District's unrestricted operating fund is used for several significant District obligations including debt service payments, operating expenses, and the District's annual contribution to the segregated reserve fund, as required under terms of lease agreement between the District and the Milwaukee Brewers.

According to terms of the lease agreement, which is binding through the year 2030 (through 2040 if all five, 2-year lease extensions are exercised by the Brewers), the District is responsible for

certain future obligations, including property insurance costs, major capital repairs and necessary improvements related to the stadium, and maintenance and repairs associated with Miller Park's retractable roof, among other obligations. For this reason, the District created an asset-liability matching fund and a stabilization fund to provide for all reasonably anticipated future contractual responsibilities of the District related to the stadium facility prior to the termination of the 0.1% sales tax.

The asset-liability matching fund holds securities that are matched to, and committed for, the purpose of paying future contractual obligations, as determined by the lease between the District and the Brewers. These obligations include annual contributions to the segregated reserve fund, property insurance payments, and District operating expenses. Estimated future contractual obligations between 2020 and 2040 total to \$80.2 million. This amount is to be partially offset by \$25.3 million in future Brewers rent payments. Therefore, the required asset-liability matching fund balance is estimated at \$54.9 million. As of January 2019, the fund had a balance of \$50.3 million.

The stabilization fund serves as a contingency for inflationary impacts and any unforeseen contractual obligations of the District for the calendar years 2020 through 2040, as determined by the lease. This is a separately committed fund to be used in the event that there is a difference between the estimated and actual liability of the District and is not included in the \$80.2 million contractual obligations to be paid from the asset-liability matching fund. As of January, 2019, the stabilization fund held a total of \$5.5 million. In March, 2019, the District Board was presented with outside opinions from Sikich LLP (an accounting firm) and M.A. Mortenson Company (a construction firm) regarding an estimate of the amount of funding needed for the stabilization fund to meet lease obligations through 2040. In its report to the District Board, Sikich recommended between \$3.4 and \$6.8 million as a contingency for estimated future operating and property insurance expenses of the District. Sikich stated that "the District may want to be conservative and choose toward the higher end of the range for the projections." In its report to the District Board, Mortenson recommended between \$10.7 and \$14.3 million as a contingency for estimated future expenses required from the segregated reserve fund. Together, the two reports recommend that the District's stabilization fund have between \$14.1 and \$21.1 million held in contingency prior to the Board certifying to the Department of Revenue (DOR) to the end of the tax.

Under current law, the state pledges to and agrees with the bondholders, and persons that enter into contracts with a District, that the state will not limit or alter the rights and powers vested in the District, before the District has fully met and discharged the bonds, and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with a District. Given the state pledge, any legislation that would alter the District's rights and powers prior to its obligations being fully-funded could be found to be in violation of the state pledge included in the enabling legislation for the Miller Park District.

Once all outstanding debt is defeased and the District's asset-liability matching fund and stabilization fund are funded at a level determined by the District Board to adequately meet estimated future obligations, the Board can certify to DOR the retirement of the 0.1% Miller Park sales tax. The Board stated at its March 12, 2019 meeting that barring any severe unforeseen circumstances,

all indications are that the District would be able to certify the end of the tax at its March, 2020 meeting. Due to the timing needed to notify retailers, taxes would continue to be collected for a period of time after certification, resulting in excess sales tax revenues being distributed to the District. Unless directed to refund excess sales tax revenues to underlying jurisdictions through legislation, excess revenues would remain with the District until the District is dissolved, at which time the property of the District would be transferred to the five underlying counties, based on the tax revenues derived from each county, as determined by the Secretary of the Department of Administration.

I hope that this information is helpful. Please contact me if you have any questions.

RH/lb

Wanggaard/Wittke  
3.28.19

### MILLER PARK DOLLAR AMOUNTS

Amount expressly authorized in 1995 Act 56 (Miller Park Bill)	\$160,000,000
Initial Additional Infrastructure spending	\$42,000,000
Capital Equipment Leasing (seats, scoreboard, food equipment, roof equipment)	\$45,000,000
Refinanced Debt	\$12,000,000
<b>TOTAL BONDING</b>	<b>\$259,000,000</b>
*Amount remaining to be defeased as of 12/31/19	*\$38,756,000 (est.)

### COLLECTIONS

Annual Amount Collected from Taxpayers	\$31,000,000 (approx.)
<b>Total Amount Collected from Taxpayers</b>	<b>\$526,000,000</b>

### CURRENT MILLER PARK FUND BALANCES

Operating Funds (1/31/19) (Used to pay for bond debt, operating expenses, contribution to segregated reserve fund as required by lease with the Brewers)	\$29,300,000
Asset-Liability Fund (1/31/19) (For future segregated reserve fund payments (stadium improvements over the next 20 years), property insurance, operating expenses)	\$50,300,000 +\$25,300,000 (Brewers rent)
*Estimated Future Obligations for Asset-Liability Fund	*\$80,200,000
Stabilization Fund (1/31/19) (Contingency Funds)	\$5,500,000
*Experts suggest fund between \$14-\$21 million	

## MILLER PARK Q&A

### *Is the bill constitutional?*

- We believe it either is, or the so-called “constitutional” hurdles can be overcome.
- The district argues that the bill violates the contracts clauses of the Wisconsin and US Constitutions. :
  - WI Constitution Article 1, Section 12: “No Law impairing the obligations of contracts shall ever be passed”.
  - US Constitution Article 1, Section 10: “No State shall...pass any... law impairing the obligation of contracts.”
  - Because the District is allowed under law and their contracts with bondholders to certify the end of the debt, they argue that this is state interference with their contracts, and that the bill is therefore unconstitutional.
    - In addition, the district has a lease (i.e. contract) with the Brewers for certain obligations.
  - Rebuttal
    - By the end of the year, the district will have ample funds to pay off the bond debt and lease obligations.
    - The district COULD certify the funds to pay the bond debt, but instead is funding their three segregated funds.

### *Does this violate the Statute authorizing the construction of Miller Park?*

- The district argues that Wis. Stat §229.76 prohibits the state from interfering with its powers.
  - Section 229.76
    - a. *“State Pledge. The state pledges to and agrees with the bondholders, and persons that enter into contracts with a district under this subchapter, that the state will not limit or alter the rights and powers vested in a district by this subchapter, including the rights and powers under s.229.68(15), before the district has fully met and discharged the bonds, and any interest due on the bonds and has fully performed its contracts, unless adequate provision is made by law for the protection of the bond holders or those entering into contracts with a district.”*
- Rebuttal
  - First, this assumes that the district will not have enough money by the end of 2019 to perform its contractual obligations.
    - We will have to disagree on that subject. The authors believe it will have enough by December 31.
  - Second, this argument ignores the last part of the statute:



- “Adequate protections [can be} made by law for the protection of bond holders and those entering into contracts with a district.”
  - I am open to a friendly amendment to ensure that bond holders are satisfied and contractual agreements are met, as long as the tax expires on December 31.

*Why does it take 4 months to “wind down” the tax?*

- First, we need to be clear – Four months’ notice must be given to end the tax- not that the tax needs to exist four months after the tax is ended.
  - In essence, this means that the bill has to pass by September.
  - The reason for this is to provide notice to retailers to back out the 0.1% sales tax that it is applying on sales.
    - This is because of the streamlined sales tax system
    - We will be working with Dept. of Revenue to see what we can do to shorten this time period.
  - If we wait until the board thinks it will act on its own in March 2020, that means taxpayers will be on the hook until July at the earliest- possibly longer
    - And that assumes we trust the district, and frankly, I don’t.

*How will excess funds be distributed?*

- Our intention is that there will be no excess funds.
- However, Senator Carpenter suggested a model yesterday based on the surplus Lambeau Field funds, and I am open to that.

Wanggaard/Withe  
3.20.19

**SUMMARY OF AMENDMENT 1**  
(Ask from Department of Revenue)

There is no reimbursement provision for baseball stadium tax. Currently, DOR may reduce the amount of football stadium tax it pays to the district by the amount of football stadium tax, including interest, refunded to taxpayers in the same period. This will not work after the tax terminates if DOR has to pay refunds to taxpayers (e.g., refund claims).

**Propose to amend sec. 77.76(3m) to authorize DOR to seek reimbursement from the district for baseball stadium tax refunded to taxpayers but not offset by stadium tax reported to or assessed by DOR:**

**(3m)** From the appropriation under s. 20.835 (4) (gb) the department, for the first 2 years of collection, shall distribute 97 percent of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discounts, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. From the appropriation under s. 20.835 (4) (gb) the department, after the first 2 years of collection, shall distribute 98.5 percent of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discount, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the department shall indicate the taxes reported by each taxpayer. In this subsection, the "district portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross local professional baseball park district sales and use taxes payable and the denominator of which is the sum of the gross state and local professional baseball park district sales and use taxes payable. The local professional baseball park district taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the local professional baseball park district taxes previously distributed. Interest paid on refunds of local professional baseball park district sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state under s. 77.60 (1) (a). After receiving notice from the department of revenue, a local professional baseball park district shall reimburse the department for the amount by which any refunds, including interest, of the local professional baseball park district sales and use taxes that the department pays or allows in a reporting period exceeds the amount of the local baseball stadium district's sales and use taxes otherwise payable to the local baseball stadium district under this subsection for the same or subsequent reporting period. Any local professional baseball park district receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**Propose to amend sec. 229.685(1) as follows:**

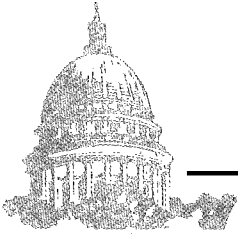
**(1)** The district board shall maintain a special fund into which it deposits only the revenue received from the department of revenue, that is derived from the taxes imposed under subch. V of ch. 77, and may use

this revenue only for purposes related to baseball park facilities and for the purposes specified in s. 77.76(3m).

The bill does not provide a date by which all assessments and claims for refund must be made for the terminated tax. As a result DOR will need to continue to devote resources to administering the tax indefinitely. For efficient administration and to allow for a simplified sales tax return in the future:

**Amend sec. 77.707(1) in Section 1 to read:**

77.707 (1) Retailers and the department of revenue may not collect a tax under s. 77.705 for any local professional baseball park district created under subch. III of ch. 229 after the last day of the calendar quarter ~~that is at least 120 days from the date on which the local professional baseball park district board makes a certification to the department of revenue under s. 229.685 (2) ending on December 31, 2019,~~ except that the department of revenue may collect from retailers taxes that accrued before the day after the last day of that calendar quarter and fees, interest and penalties that relate to those taxes. Except as provided under s. 77.60(9), the department of revenue may not issue any assessment nor act on any claim for a refund or any claim for an adjustment under s. 77.585, after the end of the calendar year that is 4 years after the year in which a baseball stadium park district tax has terminated.



WISCONSIN STATE SENATE

**TIM CARPENTER**

SENATOR – 3RD DISTRICT

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State Capitol • PO Box 7882 • Madison, WI 53707-7882 • Phone: (608) 266-8535

March 28, 2019

Chairman Macco and members of the Assembly Ways and Means Committee, I am sorry I couldn't attend today's public hearing on AB 73, which calls for sunseting the Miller Park five county sales tax.

Today, I'm asking you to join me in over a decade's long battle to finally sunset the sales tax in Milwaukee, Racine, Ozaukee, Washington and Waukesha counties used to fund the construction of Miller Park.

I believe no one currently serving in the Assembly was in the state legislature in 1995, when the Miller Park bill was passed. My memory of the contentious debate is one that caused much consternation when I voted for the Miller Park Bill after promises were made by Governor Thompson's DOA Secretary James Klauser to legislators to get their votes.

At several times, it certainly appeared the passage of the Miller Park Bill was dead and the Milwaukee Brewers would be packing up and moving out of Wisconsin like the Milwaukee Braves did in 1965.

One of the biggest points of contention was the enactment of the five county sales tax to pay for the ballpark's construction and specifically when the sales tax would end. A promise made to legislators back then was the sales tax would end in 2014. I firmly believe that without negotiated compromises that were made, the bill would not have passed.

My mission since 2003, as the first warning signs arose that the Miller Park tax wouldn't sunset in 2014, was to try to pass legislation protecting the taxpayers in the five counties. Unfortunately, over the past thirteen out of fifteen years I have served in the minority and ran into roadblocks that blocked passage of a bill to sunset the Miller Park sales tax.

Whatever the political reasons for that not happening is all in the past, but lessons learned from the Miller Park tax are important to remember.

The public's skeptical view of politician's promises that a certain tax will end as promised has been reinforced. It will make it more difficult to ask taxpayers for more money to fund quasi-public private businesses in the future.

Another example of false advertising to taxpayers is part of the public funding mechanism of the brand new Firserve Forum for the Milwaukee Bucks. The public funding mechanism promised to taxpayers for building the mid 1980's downtown Milwaukee convention center was a local tax on food and beverages, hotel tax and car rental fee. It will be another 12 years before the original bonds are paid off for the current convention center.

Originally, that local tax was dedicated to funding the cost of two additional expansions of the current convention center. Now with the revenue stream stolen, the necessary convention expansions won't happen.

There is roughly \$93 million of taxpayer's money from the convention center now being used for bonds to help pay for the Firserve Forum. The biggest problem is that the stolen \$93 million in bonds aren't going begin being paid off for a dozen years, ballooning the true cost to taxpayers to \$214 million.

Hopefully, this will give you a better understanding as to why I have felt so strongly that the sunset of Miller Park sales tax should have happened in 2014 as promised. Fighting to end the Miller Park sales tax by continually introducing bills and amendments was one of the few options left to try to force the sale taxes expiration.

Now that the light at the end of the tunnel to finally end the Miller Park sales tax is here, this session's AB 73 is now merely symbolic.


A logical next step is to review Miller Park's financial records to ensure that taxpayer's money was and is wisely spent. Finally, it's important to guarantee the Miller Park sales tax is ended and not extended to pay for a different purpose. Remember, a promise is a promise to taxpayers.

The excess tax revenues which have been collected by the Miller Park Board must be returned back to the five counties that have paid the tax, after the bonds have been certified as having been paid in full.

I am introducing a bill modeled after the Brown County Lambeau Field sales tax which returned excess revenues to their taxpayers. This legislation will formalize the final steps to close the chapter on funding Miller Park, home of our soon to be World Series Champion Milwaukee Brewers!

Thank you for considering my written comments.

Sincerely,



**TIM CARPENTER**  
State Senator  
3<sup>rd</sup> Senate District

As the Executive Director of the Southeast Wisconsin Professional Baseball Park District (Miller Park District), I'm sorry that I am not able to join the March 28, 2019 Public Hearing of the Assembly Ways and Means committee in person due to prior commitments. However, I would like to submit the following comments related to 2019 AB 73 on behalf of the Miller Park District.

First of all, please understand that the Miller Park District does not oppose the "intent" of the proposed legislation (2019 AB 73). The legislation clearly "intends" to protect the taxpayers of the five county District and end the 0.1% Miller Park sales tax as quickly as possible. That has always been, and will always be, the goal and objective of the Board of Directors of the Miller Park District. However, 2019 AB 73, as currently written, may have the exact opposite effect. Rather than protecting the taxpayers of the five county District, it may, in fact, place the taxpayers at significant risk.

For background, please consider the current status of the projected sunset date for the 0.1% Miller Park sales tax. At its meeting on March 12, 2019, independent experts for the Miller Park District Board of Directors were able to provide an increased level of certainty in the sales tax sunset date projection for the 0.1% Miller Park sales tax. The Miller Park District Board accepted the independent experts' reports and intends to adhere to the recommendations of the independent experts. At the close of the Board meeting, the District Board publicly announced that, *"Based on the District's independent expert reports that we heard earlier today, all indications are that by March of 2020 the District will have fully retired all of its initial construction debt and will have adequate funds placed in escrow to meet all of the District's future contractual needs. Therefore, barring severe unforeseen circumstances, all indications are that the District will be in a position to certify the end of the 0.1% Miller Park sales tax at its meeting in March of 2020."*

For further background, please recall that the District issued sales tax revenue bonds in the late 1990's for the construction of Miller Park. The bonds were issued with the backing of three significant guarantees: (1) the guarantee by the District that the bonds would be repaid, (2) the state pledge from the enabling legislation that stated the State of Wisconsin wouldn't interfere in the District's ability to repay the bonds, and (3) bond insurance from the Municipal Bond Insurance Association (MBIA).

It is important to note that following the issuance of sales tax revenue bonds in the late 1990's for the construction of Miller Park, the District has never issued any additional debt, nor does it have any intention of doing so. Furthermore, since Miller Park opened in 2001, the District has not incurred any increase in financial impacts of the District's contractual obligations within the Miller Park lease agreement with the Milwaukee Brewers.

Please also consider an additional background note regarding the legislatively mandated process the Miller Park District must follow in order to certify the end of the 0.1% Miller Park sales tax. When the District has accumulated enough funds in early 2020 to retire all

of its remaining debt and to fund its future contractual obligations, the District will initiate the final economic and legal defeasance of the bonds. This process entails the preparation and distribution of a competitive Request for Offers of Securities to appropriate bond market partners. Once offers are received, an analysis is performed and an acceptance of a securities package for the final defeasance will be determined. These steps are followed by verification of the securities and their adequacy in funding the bonds and, finally, a closing process. Following the closing of the final defeasance escrow, the District's bond counsel, Quarles & Brady, will be asked to issue their legal opinion regarding the final retirement of all bonds. The final defeasance process may take four to six weeks to complete. All indications are that the District will be in a position to certify the end of the 0.1% Miller Park sales tax at its meeting in March of 2020.

Why are we here today discussing the need to place a firm sunset date on the 0.1% Miller Park sales tax? Simply stated, there was a broad expectation that the Miller Park sales tax would sunset in 2014, which clearly has not happened. In 1995, before the Miller Park District had even been formed, the original projections from the state of Wisconsin indicated that sales tax revenues for the Miller Park District were anticipated to increase at an annual growth rate of 5.5%. Due to internet sales and the economic recession, actual sales tax growth between 2003 and 2014 averaged less than 1.1% growth annually. The "shortfall" between the originally projected 5.5% growth rate and the actual 1.1% growth rate was more than \$132 million over the 2003-2014 decade. To cover the "shortfall" from the state's original sales tax projection, the Miller Park District was forced to continue to collect sales tax revenues for a longer period of time. However, it is important to note that the Miller Park District is not collecting more money from the sales tax, it is simply taking longer to collect the same amount of money needed for the original debt retirement and the original contractual commitments for the Miller Park District.

How could the imposition of a firm Miller Park sales tax sunset date place the five county tax payers at risk? The bond insurer, bond purchasers and subsequent bond purchasers on the secondary bond market all relied upon the three guarantees mentioned above, including the state pledge that was included in the Miller Park District's enabling legislation (1995 Wisconsin Act 56). The state pledge within the enabling legislation stated:

**Section 229.76**

1. *"State Pledge. The state pledges to and agrees with the bondholders, and persons that enter into contracts with a district under this subchapter, that the state will not limit or alter the rights and powers vested in a district by this subchapter, including the rights and powers under s.229.68(15), before the district has fully met and discharged the bonds, and any interest due on the bonds and has fully performed its contracts, unless adequate provision is made by law for the protection of the bond holders or those entering into contracts with a district."*

Clearly, the mandated, firm sunset date of December 31, 2019 will limit the District's ability to collect enough revenue to pay its outstanding debt obligations, or to place enough funds in escrow to meet future debt payments. In fact, given the independent experts' reports at the recent meeting of the Board of Directors of the Miller Park District, the District will be short of funds to fully retire all remaining construction debt and to create escrow accounts for future District contractual obligations.

The enactment of such a legislatively mandated, firm sales tax sunset date would violate the District's contracts with bondholders and the bond insurer. Furthermore, the mere threat of a funding shortfall to meet future bond payments may result in changes in the valuation of the bonds in the secondary bond market.

The enactment of 2019 AB 73 would require the District to notify bondholders through the Municipal Securities Rulemaking Board's Electronic Municipal Message Access (EMMA) website and its bond insurer of the fact that the State of Wisconsin has reneged on its State Pledge. The state's reneging on its pledge would likely render the District's bond insurance policy invalid. The impacts in the secondary bond market of the state reneging on the state pledge and the subsequent loss of bond insurance protection are uncertain, but the magnitude of the remaining non-callable bonds on the secondary market is significant (more than \$160 million). The Miller Park sales tax revenue bonds are currently exchanged on the secondary bond market at a premium due to the fact that the bonds were issued with the three solid guarantees mentioned above. If the state legislature's action would diminish the value of those bonds on the secondary market, the consequences could be very costly and dramatic – with claims or lawsuits against the District (the bond issuer under contract with bondholders) a distinct possibility. The District could possibly be in the unenviable position of being sued for damages that have been caused by the State of Wisconsin legislature. The District would likely be forced to incur significant attorney fees and would be unable to effectively argue that the state's action did not result in damages to bondholders, when in fact, the state's action clearly would cause probable damages to the bondholders.

If the District would be unable to pay the magnitude of such damages and/or attorney fees it may be forced to declare insolvency and/or be forced to dissolve. The court's judgment would likely then be directly assigned to the five counties of the District – with the responsibility for payment being passed on to the taxpayers of those five counties.

On an additional note, the mandated extension of the term of the Miller Park lease within 2019 AB 73 would also modify the existing legal agreement by and between the District and the Brewers, without the consent of either party.

Thus, the initiatives of the proposed 2019 AB 73, as currently written, would not only violate the state pledge included within the enabling legislation, but would also impair the



obligations of the District's contracts with bondholders, the bond insurer and the Milwaukee Brewers.

The U.S. Constitution states, in part, that "No state shall pass any law impairing the obligations of contracts." Similarly, the Wisconsin Constitution provides, in part, that "No law impairing the obligations of contracts shall ever be passed." Under the proposed 2019 AB 73, both the mandating of a fixed sales tax sunset date and the mandating of a lease term extension would clearly violate the U.S. Constitution and the Wisconsin Constitution. Legislation similar to the proposed 2019 AB 73 has been introduced several times in past years. In each instance, such legislation has ultimately been found to be "unconstitutional impairments of a contract," and subsequently has been dropped from further consideration. For the committee's reference, I've included legal opinions of law firms Davis & Kuelthau and Foley & Lardner, as related to earlier versions of legislation, similar to the proposed 2019 AB 73. Also attached is a cover letter for the Foley & Lardner legal opinion from the Wisconsin Department of Administration. In the cover letter, the WisDOA concurs with the Foley & Lardner opinion that such legislation is "unconstitutional in violation of both the Wisconsin Constitution and the United States Constitution."

In summary, while the Miller Park District fully supports the "intent" of any legislation that would protect the taxpayers and end the 0.1% Miller Park sales tax as quickly as possible, the District cannot support the current version of 2019 AB 73 because of the risk to taxpayers and the unconstitutionality of the bill.