



ROBERT WITTKÉ

STATE REPRESENTATIVE • 62nd ASSEMBLY DISTRICT

Testimony on Senate Bill 67
Senate Committee on Agriculture, Revenue and Financial Institutions
May 30, 2019

Mr. Chairman and Members,

Thank you for holding a public hearing on Senate Bill 67 which seeks to end the Professional Baseball Stadium tax on December 31, 2019.

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.

Closing the roof 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

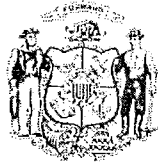
The Assembly Committee on Ways and Means unanimously passed a substitute amendment to AB 73 the companion to SB 67 following its public hearing. Changes were a result of lengthy conversations with Stadium District Board members, Executive Director Miller Park District Mike Duckett, as well as assembly members of the Ways and Means Committee. Key changes include:

- End date of March 31, 2020 with the option for the District to certify earlier
- Prohibits the District from incurring new debt specific to signage
- Calls for disbursement to each of the five counties any funds collected beyond what is expected to be needed to fulfill financial obligations
- Oversight reporting to the Joint Committee on Finance with and audit by the Legislative Audit Bureau

Following the last meeting of the Miller Park District Board of Directors on March 12, 2019, the Board Chairman, Don Smiley, issued the following statement: *“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.”*

Senate Bill 67 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 Senate Bill 67.



Van H. Wanggaard

Wisconsin State Senator

TESTIMONY ON SENATE BILL 67

Thank you Mr. Chairman and committee members for today's hearing on Senate Bill 67, and its substitute amendment. The substitute amendment will end the 5-county Miller Park tax on March 31, 2020.

Since only one member of this committee was elected 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, 5 months and 30 days later, over \$580 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. The Recession of 2008 and 9/11 played a role in the delay in tax collections.

The District has three separate accounts which are funded by the stadium tax. 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. The "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. 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. Again, this is prudent planning on the board's part. The board anticipates funding this contingency fund with between \$14 and \$20 million.

The substitute amendment changes the bill in the following important ways:

First, the tax would end on March 31, 2020 instead of December 31, 2019. This three month difference helps ensure the bonds and other funds are paid off in full without leaving any liability.

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Next, the bill incorporates technical changes required by the Department of Revenue and an audit next year to ensure debts are paid off.

As you may know, Miller Park will undergo a name change next year. The amendment also prohibits spending taxpayer dollars on that name change, and that the district does not incur any debts that it cannot pay off prior to the end of the tax.

Finally, the amendment also specifies that any surplus funds from the tax after the district certifies the end of the tax, which is scheduled on March 10 of next year, be distributed to the five counties based on the counties' contributions to the district. Those surplus funds must be spent on property tax relief, public safety, parks and recreation, and economic development. Based on past revenue collections, there should be about \$1.5 million in surplus.

Someone may ask why end the tax via legislation when the District will end it in March 2020 anyway. It's a fair question.

First, the taxpayers in southeastern Wisconsin do not believe that the stadium tax will end in 2020 as the District says it will. They do not believe the tax will actually go away. It's been promised before. In fact, literally every single one of my predecessors has promised to end the tax and failed. Residents 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.

More importantly, if the Legislature does not take action to end the tax and lets the district end the tax by itself in March of next year, the tax does not end. Because of the Streamlined Sales Tax agreement with other states, the tax must continue for a minimum of four months to notify tax collectors. That would put the end of the tax in July of 2020. And because the Streamline Sales Tax requires that taxes stop being collected at the end of a fiscal quarter, the tax would continue until October of 2020. Six and a half months of taxes – approximately \$17 and a half million - would be taken from taxpayers for a purpose that even the stadium owners say is unneeded. Why would we allow that to happen if we can stop it?

I want to add that I do not want to re-litigate the stadium debate of 23 years ago. I'm not here to cast doubt or make accusations about the tax, the Brewers, or the District. What has happened, happened. It is what it is.

This bill is about moving forward as a state and region. After 23 years, \$580 million, it is time to end the Miller Park tax and put this subject behind us, so we can focus on the product on the field rather than who's paying for the field.

Senate Committee on Agriculture, Revenue and Financial Institutions
Public Hearing – SB 67
May 30, 2019

Written Testimony

Michael R. Duckett, P.E.
Executive Director
Miller Park District

As the Executive Director of the Southeast Wisconsin Professional Baseball Park District (Miller Park District), I'm sorry that I was not able to join the Public Hearing of the Senate Committee on Agriculture, Revenue and Financial Institutions in person due to prior commitments. However, I would like to submit the following comments related to 2019 SB 67 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 SB 67). 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 SB 67, 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.

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 SB 67 would require the District to notify bondholders 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 SB 67 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 SB 67, 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 SB 67, 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 SB 67 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 SB 67. 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 SB 67 because of the risk to taxpayers and the unconstitutionality of the bill.

Michael R. Duckett, P.E.
Executive Director
Miller Park District
Miller Park
One Brewers Way
Milwaukee, WI 53214
414-902-4040
mduckett@millerparkdistrict.com