
Wisconsin Legislative Council

ACT MEMO



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2023 Wisconsin Act 40 [2023 Assembly Bill 438]

Baseball Park District Administration and Funding

2023 Wisconsin Act 40 (Act 40) makes numerous changes to state law regarding local professional baseball park districts and authorizes long-term funding to assist those districts in the development, construction, improvement, repair, and maintenance of baseball park facilities. A complementary measure, 2023 Assembly Act 41 (Act 41), appropriates the state funds authorized by Act 40, and makes assorted other changes to state law regarding local sales and use taxes.¹

There is currently one district in existence, which is known as the Southeast Wisconsin Professional Baseball Park District (District). The District was created to acquire, construct, equip, maintain, improve, operate, and manage the baseball park facility now known as American Family Field (stadium), which is the home of the Milwaukee Brewers Baseball Club (Brewers).

Very generally, Act 40 reduces the jurisdiction of the District to include only Milwaukee County (instead of also the four contiguous counties) and allows the District to obtain long-term state and local funding to assist in development, construction, improvement, repair, and maintenance of the stadium, provided that the District enters into lease and nonrelocation agreements with the Brewers. These agreements must satisfy parameters specified in the act. The act also requires Milwaukee County to make annual contributions to a fund that supports stadium operations. Finally, the act makes numerous other changes to the District and its governance.

BACKGROUND

1995 Wisconsin Act 56 (Act 56) authorized the creation, operation, and financing of local professional baseball park districts in any county with a population of more than 600,000 and all counties contiguous to that county that are not located within a different district. Shortly after enactment of Act 56, the District was organized. Very generally, the District and the Brewers jointly own the stadium, the state owns most of the land on which the stadium sits and leases the land to the District, and the Brewers play in the stadium pursuant to a lease agreement with the District.

The District is a local governmental unit that is separate and distinct from, and independent of, the state. Under Act 56, it consisted of Milwaukee County and its four contiguous counties (Ozaukee, Racine, Washington, and Waukesha). Previously, it was governed by a District board made up of representatives from those five counties and it had certain powers specified by statute, such as acquiring, constructing, maintaining, improving, operating, and managing baseball park facilities and issuing revenue bonds for the construction of baseball park facilities. The District was allowed to impose, by resolution, a 0.1 percent sales and use tax in the five counties of the District. Revenue from that tax was deposited into a special fund that could only be used for purposes related to baseball park facilities. The District was directed to certify to the Department of Revenue (DOR) once the board

¹ For more information on 2023 Wisconsin Act 41, see Legislative Council, 2023 Wisconsin Act 41, Act Memo.

determined that the revenues in the special fund were sufficient to retire the District's bonds and sufficiently fund a reserve for maintenance and improvement costs. The tax was sunset in 2020.

STATE FUNDING

The District financed the original construction of the stadium using a combination of team contributions and revenue bonds backed by the five-county sales and use tax, described above. The act finances the continued maintenance and improvement of the stadium with a combination of state grants and loans, local contributions, and team funds.

Once the District has contracted with a third-party negotiator approved by two-thirds of eligible board members and entered into lease and nonrelocation agreements with the Brewers, described below, the act directs the Department of Administration (DOA) to provide certain grants to the District to assist in the development, construction, improvement, repair, and maintenance of baseball park facilities. Additionally, upon a majority vote of board members, DOA may issue loans to the District. Loan proceeds may be expended for more limited purposes, described below.

The District may obtain the following grants from DOA related to the stadium:

- A gap payment of \$35.8 million, upon execution of the lease and nonrelocation agreements.
- A payment of \$25 million, upon execution of the lease and nonrelocation agreements, which may only be used for winterizing the baseball park facilities. The District must maintain this funding in a separate account in the Baseball Park Facilities Improvement Segregated Fund (Segregated Fund), which is discussed in more detail below.
- Twenty consecutive annual payments beginning with a payment of \$13.4 million in 2024. After 2024, the annual payment increases from the initial payment at the rate of four percent per year, compounded annually, except that: (1) no annual payment may exceed \$20 million; (2) beginning on July 1, 2041, no annual payment may exceed \$10 million; (3) no annual payment may be made after expiration or termination of the lease; and (4) beginning with the 20th annual payment and working backward, the state's annual contribution is reduced by an amount equal to the amount that the District certifies as having been collected from the ticket surcharge, described below.

Additionally, the District may obtain up to a total of \$35 million in loans from DOA. If the District obtains a loan, it must maintain all loan proceeds in a separate account in the Segregated Fund, and may only expend the loan proceeds for major capital repairs, retractable roof maintenance and repairs, and necessary improvements to the baseball park facilities. The District must pay all interest² on a quarterly basis to DOA for deposit in the general fund and the outstanding balance of each loan must be paid within 15 years after the date of issuance or upon the expiration or termination of the lease, whichever is earlier. DOA may not issue a loan after December 31, 2045, and must report to the Joint Committee on Finance at least quarterly specifying the outstanding principal and interest owed by the District on each loan.

The complementary measure, Act 41, creates two appropriations, each to assist in the development, construction, improvement, repair, and maintenance of baseball park facilities. First, Act 41 appropriates a sum sufficient to fund grants to the District up to specified statutory amounts, detailed above. Those statutory amounts vary by year, but total \$391.7 million between the fiscal years of 2023-24 and 2043-44, reduced by the receipts of a ticket surcharge on non-team events, as described in

² Under the act, interest on each loan accrues monthly at a rate equal to the state investment fund earnings rate during the immediately preceding month.

further detail below. Second, Act 41 appropriates a sum sufficient to provide the District with loans of up to \$35 million.

TICKET SURCHARGE ON NON-TEAM EVENTS

Act 40 requires the imposition of a ticket surcharge on non-baseball events at the stadium. The board must require that the sponsor of an event impose the following ticket surcharges and deliver the surcharge moneys to the board:

- From 2024 to 2032, a surcharge of \$8 on each ticket that entitles the holder to access a stadium luxury box or suite, and a surcharge of \$2 on all other tickets.
- From 2033 to 2041, a surcharge of \$9 on each ticket that entitles the holder to access a stadium luxury box or suite, and a surcharge of \$3 on all other tickets.
- From 2042 to 2050, a surcharge of \$10 on each ticket that entitles the holder to access a stadium luxury box or suite, and a surcharge of \$4 on all other tickets.

The surcharge may not be imposed for any of the following events:

- An exhibition, All-Star game, or similar event involving Major League Baseball teams or players.
- Events for which the sponsor is the team.
- Events that are not ticketed.
- Events for which tickets are provided at no charge.
- Events held to benefit or honor military or law enforcement or other emergency response personnel.
- Political conventions.
- Charitable events.
- Events for which tickets were made available for presale or sale before the act's effective date.

The board must deposit all surcharge moneys into the Segregated Fund and certify to DOA the amount received. As mentioned above, beginning with the 20th annual payment and working backward, the state's annual contribution is reduced by an amount equal to the amount that the District certifies as having been collected from the ticket surcharge. Once DOA has determined that the state's annual payment for that year will be the final annual payment, it must notify the District; after receiving this notification, the District must annually pay to DOA for deposit in the state's general fund an amount equal to the amount of ticket surcharge moneys received in the preceding year.

MILWAUKEE COUNTY OBLIGATIONS AND USE OF SALES TAX REVENUES

The act requires Milwaukee County to contribute \$2.5 million to the District annually through December 31, 2050. The county is not required to contribute after its contributions total \$67.5 million. In the event that the county does not meet these obligations, it will face a reduction in its shared revenue payments otherwise payable under 2023 Wisconsin Act 12 (Act 12). DOR must reduce the county's total amount of shared revenue for that year by the difference between the amount of the deposit required and the amount of the deposit made. DOR must then direct DOA to pay the amount of the reduction into the Segregated Fund.

Act 40 also alters how the county may spend the revenue from its temporary 0.4 percent sales and use tax under Act 12.³ Under Act 41, after the county first makes its contribution to the existing county retirement system's unfunded accrued liability, the county may use remaining revenue for any of the following purposes, in any order of priority:

- Payments for the county's pension bond obligations.
- Additional payments for the existing county retirement system's unfunded accrued liability.
- Payments for its employer contribution to the county's retirement system.

Act 40 also requires the county to repeal the 0.4 percent tax after the county's retirement system is first fully funded, or December 31, 2050, whichever occurs first.⁴ Finally, it requires Milwaukee County to retire its pension bond obligations, and any debt incurred to refund its pension bond obligations, by December 31, 2030.

LEASE AND NONRELOCATION AGREEMENTS

As mentioned above, state funding under the act may not be awarded unless the District contracts with a third-party negotiator to represent the District in lease and nonrelocation agreements with the Brewers, and the Brewers and the District enter into those agreements. The third-party negotiator must be approved by a two-thirds vote of all members appointed to the board who are eligible to vote.

Lease Agreement and Brewers' Financial Contributions

The lease agreement between the District and the Brewers must include three requirements.

First, the lease must last until at least December 31, 2050.

Second, the lease must require the Brewers to make the following financial contributions:

- At least 27 annual deposits of \$300,000 into the Segregated Fund beginning in 2024.
- At least 27 annual deposits of \$1,851,852 into the Segregated Fund beginning in 2024.
- At least 22 annual rent payments of \$1,208,401 to the District beginning in 2024. Beginning in 2046 (the 23rd year), these rental payments increase to \$3,208,401, and the District must deposit at least \$2 million of each of those payments into the Segregated Fund.
- \$50 million in financial contributions in connection with the development, construction, improvement, repair, and maintenance of the ballpark facilities during the term of the lease. Of this funding, at least \$25 million must be contributed before January 1, 2037. The Brewers must regularly report to the District on all such expenditures.

Third, the lease must require the Brewers, upon expiration of the lease or termination of the lease as a result of a breach by the Brewers, to disclaim any interest in moneys of the Segregated Fund and, upon request of the District, to convey and transfer to the District all of the team's right and title to the

³ Under Act 12, the county may use the revenue from the 0.4 percent sales tax only for the following purposes, and only in the following order of priority: (1) for the existing county retirement system's unfunded accrued liability; (2) the required payment for the county's pension bond obligations; and (3) an additional payment to the existing county retirement system's unfunded accrued liability.

⁴ Act 12 required the county to repeal the 0.4 percent sales tax after the county's retirement system is first fully funded or 30 years after the tax is imposed, whichever occurs first.

facilities (excluding ancillary improvements constructed or developed by the Brewers after the effective date) for consideration not to exceed \$1.

Nonrelocation Agreement

The nonrelocation agreement must require the Brewers to play all of the team's home games at the baseball park facilities and prohibit the Brewers from relocating until expiration or termination of the lease according to its terms, except as required by Major League Baseball.

DISTRICT BOARD

The board is a local governmental unit with specified powers related to the District. The act makes numerous changes to the board's governance and powers, establishes that the District is responsible for facility maintenance, and generally prohibits capital spending after 2045.

Governance

The act shrinks the District's jurisdiction to only Milwaukee County and retains the size of the board at 13 members, but modifies the board's composition.

The act modifies the District's jurisdiction to include only any county with a population of more than 750,000 that is the site of baseball park facilities that are home to a professional baseball team, even if the population of that county subsequently decreases below 750,001.⁵ Milwaukee County is the only county that satisfies these criteria. Thus, the District's jurisdiction is Milwaukee County.

Under the act, the Board consists of the following 13 members:

- A chairperson and five other members appointed by the Governor. One of those members must be appointed from a list of at least three names provided by the Milwaukee county executive, and one must be appointed from a list of at least three names provided by the mayor of the City of Milwaukee.
- Three members appointed by the Senate majority leader.
- Three members appointed by the Assembly speaker.
- One member appointed by the Governor from a list provided by the Brewers. This appointee may not be an employee of the state or of the Brewers, and may not participate any nonpublic meeting of the board or vote on the following topics:
 - Approving or amending the lease or nonrelocation agreement or any other lease or sublease between the Brewers and the District.
 - Obtaining or accepting a loan from DOA.
 - Retaining a third-party negotiator on behalf of the District for the lease and nonrelocation agreements.
 - Any dispute between the District and the Brewers.

⁵ Under Act 56, a local professional baseball park district was any county with a population of more than 600,000 and all counties that were contiguous to that county, as long as those contiguous counties were not already included in a different district.

All board members must be state residents. Each board member serves a four-year term, except that the initial chairperson appointee and one each of the initial appointees by the Governor, Senate majority leader, and Assembly speaker serves a two-year term.

The act provides that the terms of all existing board members expire on the act's effective date, and each appointing authority must appoint new members within 30 days of the effective date. Until a majority of the board members are appointed and qualified, the DOA secretary or secretary's designee serves as the board for the purposes of approving regular disbursements of the District.

Powers

The board has several powers specified under prior law. For example, in connection with baseball park facilities, the board's powers include the authority to do the following: (1) acquire, construct, equip, maintain, improve, operate, and manage the baseball park facilities as a revenue-generating enterprise, or engage other persons to do those activities; (2) improve real property; (3) grant concessions; and (4) enter into contracts, subject to standards established by the board.

Act 40 does the following:

- Gives the board the power to authorize the sublease of District property, in addition to the power to acquire, lease, use, and transfer property, and allows the board to exercise these powers on a majority vote of all board members eligible to vote, rather than a supermajority of the board as required under Act 56.
- Changes the board's existing power to enter into contracts to specify that the board's standards may include approval by the Brewers pursuant to the terms of a lease with the District. Contracts that exceed an estimated cost of \$200,000 require the board to issue a request for proposals or other procurement document to solicit proposals. The board must determine the most advantageous proposal from a responsible and responsive offer or taking into account only the following considerations: price; time for completion of work; qualifications and past performance of a contractor; contractor responsiveness; contractor eligibility in accordance with any requests for proposal or other procurement document; the results of applicable inspection and tests; and performance standards established by the board, including with respect to quality and workmanship.
- Allows the board to obtain loans from DOA, as described above.
- Prohibits the board from issuing bonds after the act's effective date.
- Requires the board to contract with the State of Wisconsin Investment Board to invest any funds held in trust.
- Repeals a requirement that the board promote, advertise, and publicize its baseball park facilities and related activities.
- Allows the board to accept grants.
- Repeals the ability of the board to impose a 0.1 percent sales and use tax.
- Prohibits the board from borrowing money except from DOA. However, this provision does not preclude the District from entering into long-term performance or service contracts, capital leases, lease purchase agreements utilizing third-party financing, or similar arrangements with respect to equipping, repairing, maintaining, or improving baseball park facilities.

Facility Management

The act establishes that the District is responsible for managing the baseball park facilities. Specifically, at the District's expense, the District must either contract with a facility management company or employ an executive director with expertise in managing and operating professional sports facilities and venues similar to the baseball park facilities. The contract must require that the facility management company or executive director has primary responsibility to manage and supervise the development, construction, improvement, repair, and maintenance of the baseball park facilities.

Capital Spending Limitations

The act generally prohibits the District, after 2045, from initiating any capital spending projects with a lifespan longer than the lease term. The District may, however, initiate projects of an amount up to the Brewers' deposits after 2045 into the Segregated Fund, and projects related to maintaining the safety of the ballpark or improving, repairing, maintaining, or replacing any components and systems necessary to operate the ballpark or comply with applicable law, insurance requirements, or Major League Baseball standards.

SEGREGATED FUND

The act creates a Baseball Park Facilities Improvement Segregated Fund that may be used for the following purposes:

- Developing, constructing, improving, repairing, and maintaining baseball park facilities.
- The District's performance of obligations under any lease with the Brewers with respect to baseball park facilities.
- Repayment of loans or moneys accepted by the board from DOA.
- The District's retention of a third-party negotiator, as required to represent the District in negotiations for the lease and nonrelocation agreements.
- After 2030, the payment of annual insurance premiums with respect to the ballpark facilities upon the affirmative vote of the board and solely to the extent that the board determines that funds held by the District in accounts (other than the Segregated Fund) are insufficient to pay the premium in full.

The District may not use moneys deposited into the Segregated Fund for the development, construction, improvement, repair, or maintenance of any physical structure that was not owned in whole or in part, operated, or leased by the District on the act's effective date.

The Segregated Fund consists of the following:⁶

- Moneys received from annual DOA grants.
- Moneys borrowed and deposited from DOA loans.
- Moneys deposited by Milwaukee County and any payments made by DOA funded from a reduction in the county's shared revenue payments.
- Payments required to be deposited by the Brewers under the specified lease agreement.

⁶ Under Act 41, this fund also includes DOR's annual deposits of its administrative fee of 1.75 percent for the administration of the City of Milwaukee's sales and use tax, less any part of the fee needed to cover DOR's expenses in administering the tax, to a cumulative deposit of \$67.5 million.

- Income or interest earned from fund investments.
- Moneys transferred into the fund from the District. Specifically, the board must annually deposit into the Fund not less than the following amounts: (1) through 2039, \$2.2 million; and (2) the amount deposited from the sale of special Milwaukee Brewers license plates.
- Ticket surcharge receipts, as described above.

Additionally, if, for any reason, the Brewers notify the District that they intend to terminate the lease agreement or the lease is otherwise terminated, no moneys from the fund may be expended with respect to the baseball park facilities, except for the following:

- Moneys encumbered before the District received the notice of termination.
- Moneys expended to maintain the safety of the baseball park facilities or for the improvement, repair, maintenance, or replacement of the components and systems necessary to operate the facilities or comply with applicable law, insurance requirements, or standards imposed by Major League Baseball.
- Moneys expended to make interest payments and principal repayments of loans accepted from DOA.
- An amount of moneys up to the amount of the Brewers' deposits between the date of the notice of lease termination and the effective date of the termination.

SALES TAX EXEMPTIONS

The act provides two sales tax exemptions related to the stadium and the District. Those exemptions include: (1) an expansion of the current sales and use tax exemption on building materials, supplies, and equipment purchased by a tax-exempt sports and entertainment home stadium; and (2) the creation of a new sales and use tax exemption for sales to a professional baseball park district.

Prior law included a sales and use tax exemption for the sales price, storage, and other costs of building materials, supplies, and equipment for the construction, renovation, or development of property of a tax-exempt sports and entertainment home stadium. The act expands this exemption so that, in addition to applying to construction, renovation, and development of a tax-exempt sports and entertainment home stadium, the exemption also applies to purchases for improvement, repair, and maintenance of such facilities and structures.

Prior law also included a sales and use tax exemption for the sales price, storage, and other costs of tangible personal property and taxable services used by certain entities, such as governmental units, hospitals, and local cultural arts districts. The act adds a local professional baseball park district to the list of entities to which sales of tangible personal property and taxable services are sales and use tax exempt.

REPORTING REQUIREMENTS AND AUDIT

The act requires the District to provide reports relating to all baseball park facilities on an ongoing basis to DOA, the Legislative Fiscal Bureau (LFB), and the Legislative Audit Bureau (LAB), and must provide those entities with all financial reports of the District.

LAB also must conduct a financial audit of the District at the end of each fiscal biennium. The audit must be filed with the chief clerk of each house of the Legislature, the Governor, DOA, the Legislative

Reference Bureau, the Joint Committee on Finance, LFB, and the District. LAB may charge the District for the cost of the audit.

REDEVELOPMENT STUDY

The District—in consultation with the City of Milwaukee, Milwaukee County, and the Brewers—must study the feasibility of, and options for, the redevelopment of District facilities other than the stadium. The District must prepare a report within two years summarizing the findings of the study. The report on the redevelopment study must include a recommendation supporting or opposing a potential payment in lieu of general property taxes for any development of the baseball park facilities of the district other than a baseball stadium.⁷

STATE PLEDGE

Under Act 56, the state pledged to and agreed with the bondholders, and persons that entered into contracts with the District, that the state would not limit or alter the rights and powers vested in the District before the District had fully met and discharged the bonds and any interest due on the bonds and had fully performed its contracts.

The act specifies that the District's rights and powers include the power to obtain a loan from DOA and that the performance of contracts includes any lease agreement with a professional baseball team with respect to baseball park facilities.

OTHER PROVISIONS

The act also does the following:

- Eliminates the requirement that the Brewers annually designate at least one home game as a discount ticket day for residents of the five counties that formerly comprised the District; instead, it requires the Brewers to designate at least one home game in each of April, May, June, July, August, and September as a discount ticket day for state residents.
- Deletes provisions related to the District's authority to impose a sales and use tax. Even though the 0.1 percent sales and use tax sunset in 2020 and the Board is prohibited from reinstating the tax under 2019 Wisconsin Act 28, certain references to the tax had remained in the statutes.
- Increases the Brewers' required annual contribution to Wisconsin-based youth sports organizations from \$20,000 to \$40,000.
- Modifies the outcome upon the dissolution of the District. Upon the dissolution of the District or expiration or termination of all lease agreements between the District and the Brewers, all property of the District shall be transferred to the state, rather than to the five counties that created the District. Additionally, as was noted, upon expiration of the lease or termination of the lease as a result of a breach by the Brewers, the Brewers must, upon request of the District, convey and transfer to the District all of the team's right and title to the facilities (excluding ancillary improvements constructed or developed by the team after the act's effective date) for consideration not to exceed \$1.

⁷ Current law, unaffected by the act, provides a property tax exemption for property consisting of or contained in a sports and entertainment home stadium, including parking lots, garages, restaurants, parks, concessions facilities, entertainment facilities, transportation facilities, and other functionally related or auxiliary facilities and structures.

- Allows the board to vote to rename the District at its first meeting after the new board members are appointed as provided under the act.
- Requires the board to affirmatively determine whether to continue or discontinue the employment of each District employee within 90 days of the board's first meeting after the act's effective date.

Effective date: The act generally takes effect on December 7, 2023. Provisions related to a reduction in shared revenue payments take effect on July 1, 2024. Provisions related to the expired sunset of the sales and use tax take effect on January 1, 2025.

For a full history of the act, visit the Legislature's [bill history page](#).

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