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Green Sports Facilities: Why Adopting New Green-Building Policies Will Improve the Environment and the Community

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COMMENTS

GREEN SPORTS FACILITIES: WHY ADOPTING NEW GREEN-BUILDING POLICIES WILL IMPROVE THE ENVIRONMENT AND THE COMMUNITY

I. INTRODUCTION

The interests of sports enthusiasts, economic experts, state and local governments, and citizens are often at odds when the construction or the renovation of a sports facility is discussed. The business enterprise needs of the team and its ownership is balanced with the public's concerns in the city and state where the sports facility is located. Each competing interest vies for the outcome most favorable to its individual needs and concerns. Favorable financing and stadium location are important, but teams and cities should also consider the natural environment. This Comment will show that building and renovating sports facilities while considering the environmental impact of these actions is beneficial to almost all interested parties.

This Comment will explore the current green-building regulatory structure and why this structure does not prevent conventional sports facilities[1] from negatively impacting the environment. Next, it will briefly examine the continued public subsidization of sports facilities, specifically in Major League Baseball (MLB).[2] The Comment will then analyze and discuss the regulatory structure that is needed to ensure that sports facilities go green, how

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1. For the purposes of this Comment, conventional sports facilities are those facilities that are built without consideration of the environment, resulting in little or no actual implementation of green design.

2. This Comment will primarily focus on Major League Baseball (MLB) facilities because the new Nationals Park serves as one of the best examples of a green sports facility, and because MLB has already shown its interest in going green through its partnership with the Natural Resource Defense Council (NRDC).

this will improve the environment, and how the public subsidization of green sports facilities is best for the team and the community. Finally, it will highlight added financial bonuses for teams who build and renovate green.

II. CURRENT LAWS DO NOT REQUIRE THAT SPORTS FACILITIES GO GREEN

Currently, there is no regulatory structure in place that forces team owners and cities to build green sports facilities. Some state environmental policy acts (SEPAs) do require a state governing body to complete an environmental impact statement (EIS) before a state action is implemented. An EIS details the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided, alternatives to the proposed action, the relationship between local short-term uses of the natural environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources.[3] This seems to force states subsidizing sports facility costs to address negative environmental impacts; however, this is not the case. This review process requires only that state actors make an informed-decision after weighing the environmental impacts of their action; it does not force the actor to actually implement any green decisions.

A. State Environmental Policy Acts

There are very few substantive requirements that force new builders to implement green practices. Numerous states have passed environmental laws, SEPAs that address climate change and require state agencies to examine environmental impacts of various projects.[4] California modeled its state environmental act, the California Environmental Quality Act (CEQA), after the National Environmental Policy Act (NEPA), but has since passed stricter regulations that ensure that projects will not be approved if they significantly impact the environment.[5] Under CEQA, when a public agency proposes a project, it must first perform an initial study to determine whether the project negatively impacts the environment, also known as an environmental impact report (EIR).[6] In addition, the agency must identify alternatives to the

3. The National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (2003).

4. Conor O'Brien, Note, *I Wish They All Could be California Environmental Quality Acts: Rethinking NEPA in Light of Climate Change*, 36 B.C. ENVTL. AFF. L. REV. 239, 240 (2009). Most SEPAs are modeled after the National Environmental Policy Act (NEPA). *Id.* at 240.

5. *Id.* at 256, 259.

6. *Id.* at 259-60; *see also* D.C. CODE ANN. § 8-109.02 (2008). This code defines "action" as "a new project directly undertaken by the Mayor, or a board, commission, or authority of the District government or . . . a project or activity that involves the issuance of a lease, permit, license,

proposed action and mitigation measures capable of combating any negative effects.[7]

Unfortunately, most SEPAs only require that environmental review is completed before a "state action" is carried out.[8] When preparing to build or renovate a sports facility, a grant of money in the form of bonds or the issuance of a lease, permit, license, or certificate are "state actions" that would trigger the preparation of an EIR or EIS.[9] After preparing an EIR or an EIS, the state agency does not have to implement any particular action so long as it has considered the impacts on the environment and any alternatives.[10] Once the state agency decides what project plan to implement, judicial review of any substantive decision is extremely limited, and decisions are upheld if the evaluation of the evidence was reasonable.[11]

B. Current Progressive Green-Building Laws

Substantive local green-building policies could resolve this by setting out specific mandatory green-building requirements. Some cities have successfully implemented these types of building policies. These cities have primarily utilized the LEED Green-Building Rating System (the "System"),

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certificate, . . . or permission to act by an agency of the District government." *Id.* Most SEPAs only require that an EIS is prepared before state actions are implemented; however, six states require that one is prepared before local government actions are implemented. Kathryn C. Plunkett, Comment, *Local Environmental Impact Review: Integrating Land Use and Environmental Planning Through Local Environmental Impact Reviews*, 20 PACE ENVTL. L. REV. 211, 211 (2002).

7. O'Brien, *supra* note 4, at 259-60.

8. *See* CONN. GEN. STAT. § 22a-1b (2009); MONT. CODE ANN. §75-1-201 (2009); WIS. STAT. §1.11 (2009). *But see* WASH. ADMIN. CODE [Dept. of Ecology] § 197-11-400 (2009) (requiring environmental review of all state and local actions); D.C. CODE ANN. § 8-109.03 (requiring the review of environmental impacts before privately initiated action is implemented). More than twenty-five states have a SEPA and have promulgated similar statutes requiring preparation of an EIS or other form of environmental review. *See* CHARLES H. ECCLESTON, NEPA AND ENVIRONMENTAL PLANNING: TOOLS, TECHNIQUES, AND APPROACHES FOR PRACTIONERS 67 (2008).

9. D.C. CODE ANN. § 8-109.02(1)(B); *see also* Plunkett, *supra* note 6, at 215 (noting that "action" is considered either local government action or private development that requires local approval—permits, zoning variances, and special use permits). Under New York's State Environmental Quality Review Act, "action" is defined as "projects or activities directly undertaken by an agency" or projects that involve issuing a lease, permit, or license. N.Y. ENVTL. CONSERV. LAW § 8-0105(4)(i) (2008).

10. *See* Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 353 n.16 (1989) (noting that NEPA does not impose any substantive requirements). Most SEPAs are modeled after NEPA. *See generally* Stephen M. Johnson, *NEPA and SEPA's in the Quest for Environmental Justice*, 30 LOY. L.A. L. REV. 565, 595-96 (1997). However, the California Environmental Quality Act does seem to make it quite difficult to implement any action that significantly or unnecessarily effects the environment. O'Brien, *supra* note 4, at 257-58.

11. *Robertson*, 490 U.S. 332 at 334.

developed by the U.S. Green-building Council (USGBC), as the preferred method for building green.[12] This System "encourages and accelerates global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria."[13] The System evaluates the sustainable features of new construction and awards points in six areas: (1) location and siting; (2) water efficiency; (3) energy and atmosphere; (4) materials and resources; (5) indoor environmental quality; and (6) innovation and design.[14] Property owners can petition the USGBC for certification indicating that their buildings have achieved a certain number of points within each of these six areas.[15] Then, based on the number of points a building earns, it will be awarded one of the following: certified, silver, gold, or platinum LEED certification.[16]

1. State Green-Building Laws

Seattle was one of the first cities to adopt a green-building policy in 2000.[17] However, this policy did not apply to Safeco Field, the Seattle Mariners home park, because it was built one year before the policy's passage.[18] The green-building policy utilizes LEED standards and requires all city departments, offices, and contractors responsible for the financing, planning, designing, developing, constructing, and managing of city-owned facilities over 5,000 square feet to be sustainable and achieve LEED silver rating.[19]

Washington D.C. requires all new public and private buildings to be

12. U.S. Green Bldg. Council, *LEED Rating Systems*, U.S.GREENBUILDINGCOUNCIL.ORG, http://www.usgbc.org/DisplayPage.aspx?CMSPageID=222 (last visited Mar. 9, 2009) [hereinafter *LEED Rating Systems*].

13. *Id.*

14. *Id.*; *see also* U.S. GREEN BLDG. COUNCIL, GREEN BUILDING RATING SYSTEM FOR NEW CONSTRUCTION & MAJOR RENOVATIONS, 5 (Version 2.1 Nov. 2002), http://www.usgbc.org/DisplayPage.aspx?CMSPageID=220#v2.1 (last visited Nov. 12, 2009) [hereinafter NEW CONSTRUCTION RATING SYSTEM].

15. *Id.*

16. *Id.* at 6.

17. *Seattle a Top City for LEED Facilities*, SEATTLE.GOV, Feb. 26, 2009, http://www.seattle.gov/dpd/GreenBuilding/CapitalProjects/SeattlesPolicy/default.asp; *see also* J.R. Steele, *Green Construction Initiatives and Legal Issues Surrounding the Trend*, BUS. L. TODAY, Nov./Dec. 2007, *available at* http://www.abanet.org/buslaw/blt/2007-11-12/steele.shtml.

18. *Safeco Field History*, SEATTLE.MARINERS.MLB.COM, http://seattle.mariners.mlb.com/sea/ballpark/history.jsp (last visited Nov. 12, 2009).

19. Seattle Res. 30121, Sustainable Bldg. Policy § 6.9.4 (Feb. 22, 2000).

LEED certified under the Green-Building Act of 2006.[20] In recognition of the city adopting this policy and the city's move toward green-building, the Washington Nationals built the first certified "green stadium" by adhering to LEED requirements and implementing many sustainable design features, such as energy efficient lighting, an automatic control system that monitors air conditioning and energy use, green roofs, dual-flush toilets, and low flow sinks.[21] However, Washington D.C.'s green-building policy does not include any provisions that specifically address sports facility construction and operation.[22]

Boston amended its zoning code to ensure that major building projects are sustainable and enhance the quality of life in Boston.[23] Specifically, LEED silver certification is required on all major construction projects exceeding 50,000 square feet.[24] Developers must provide documentation to show their building meets the requirements for LEED certification ensuring that all buildings are planned and constructed to minimize environmental impacts and promote sustainable development.[25] This policy has yet to affect any sports facility construction or renovation.

New York has implemented similar but more lax rules, which require LEED certification only on public buildings.[26] New York's existing green-

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20. *See* Martin Austermuhle, *D.C. Paves Way for Environmental Responsibility*, DCIST.COM, Apr. 1, 2008, http://dcist.com/2008/04/01/washington_dc_h.php [hereinafter *D.C. Paves Way*]; D.C. CODE § 16-234.

21. *See* U.S. Green Bldg. Council, *A Grand Slam for Washington, D.C.: Nationals Stadium Earns LEED Silver Rating*, USGBC.ORG, www.usgbc.org/ShowFile.aspx?DocumentID=5108 (last visited July 14, 2009) [hereinafter *Project Profile Nationals Park*]; Ryan Thibodaux, *Take Me Out to the Environmentally-Friendly Ballgame!*, RYANTHIBODAUX.GREENOPTIONS.COM, Mar. 27, 2007, http://ryanthibodaux.

greenoptions.com/2007/03/27/take-me-out-to-the-environmentally-friendly-ballgame/.

22. Green Building Act of 2006, D.C. Code § 6-1451.11 (2006).

23. Zoning Code art. 37, § 37-1 (Jan. 10, 2007).

24. ICLEI, *Boston, MA, Implements Green Building Zoning Code*, ICLEIUSA.ORG, June 2009, http://www.icleiusa.org/success-stories/copy_of_built-environment/policies-and-plans/boston-ma-implements-green-building-zoning-code [hereinafter *Boston Green Building Zoning Code*]; *see also* Bradford Swing, *Project-Based Policy Development: Building the Case for Boston's Green-Building Policy*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 33, 33 (2007/2008). The Policy was passed in 2007. *Id.*

25. *Boston Green Building Zoning Code*, *supra* note 24.

26. *D.C. Paves Way*, *supra* note 20. The U.S. Green Building Council of New York convened the Green Codes Task Force in July 2008 to "green the laws and regulations that govern construction in the city." *Green Codes Task Force*, URBANGREENCOUNCIL.ORG, http://www.urbangreencouncil.

org/advocacy/green-codes-task-force.html (last visited June 15, 2009). The Green Codes Task Force will sift through construction codes and issue a report in the summer of 2009 making recommendations and proposed changes to statutory code language. *Id.* The report still has not been issued as of July 25, 2009. In addition, regardless of public or private ownership, LEED does not currently have standards for buildings that are not fully enclosed or have retractable roofs. Lisa Tae-

building policy, the Green City Buildings Act,[27] does not apply to sports facilities, which allowed the Yankees to avoid planning to green their new stadium or to achieve any level of LEED certification.[28]

San Francisco has also implemented a green-building policy, which became effective in November 2008.[29] Chapter 13C of the San Francisco Building Code[30] requires that new buildings constructed in the city meet green-building standards that were developed by the Green Building Task Force.[31] Specifically important for stadium construction, new large commercial buildings that consist of 5,000 square feet or more, must comply with LEED standards as of January 1, 2009.[32] Effective January 1, 2012, these projects must achieve LEED Gold certification,[33] and will be eligible for priority in permit processing as a result of compliance—a great benefit to teams and cities looking to expedite the construction process.[34]

Chicago has become one of the nation's greenest cities by committing to eco-friendly building principles.[35] The City of Chicago and the State of

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Ran Schroeder, *How Green Are the New NYC Sports Stadiums?*, INTHEFRAY.ORG, July 16, 2007, http://inthefray.org/content/view/2346/161/. This means that sports facility developers and owners do not have a specific set of requirements or guidelines that are directly applicable to sports facility construction and renovation. *Id.* They only have the general LEED requirements to follow that may not take into account the unique design and operational attributes of sports facilities. *Id.*

27. N.Y. Local Law 86 (2007).

28. The New York City Green City Buildings Act took effect in January 2007. Steele, *supra* note 17. It requires New York City's new municipal buildings achieve standards of sustainability, and nonresidential projects with construction costs of two million dollars or more to be designed and constructed to achieve LEED Silver or higher rating. *Id.* However, the Act does not apply to sports facilities; so, the new Yankee Stadium did not have to seek LEED certification. *See* Kenneth M. Block, *New York City's Green Building Act Becomes Law*, THE LEN REID.COM, www.thelenreid.com/resources/documents/060918_green.pdf (last visited June 15, 2009). The Yankees have committed to build a new Metro-North train stop by the stadium to encourage fans to use public transportation. Tae-Ran Schroeder, *supra* note 26. However, this public transportation effort is seemingly diminished, because the land taken to build the new stadium was home to two well-used public parks, and the project required that 377 mature trees, 70% of the local tree population, be cut down. *Id.*; E-Magazine, *The Greening of Ballparks (but Yankee Stadium Gets a Bronx Cheer)*, May 22, 2009, *available at* http://www.politicalaffairs.net/article/view/8555/1/365/ [hereinafter *Greening of Ballparks*]. A new mall, attracting many vehicles emitting carbon dioxide, will also be built next to the stadium. *Id.*

29. Cascadia, *San Francisco Green Building Program*, CASCADIAGBC.ORG, July 10, 2009, http://wiki.cascadiagbc.org/wiki/index.php?title=San_Francisco_Green_Building_Program [hereinafter *San Francisco Green Building*].

30. San Francisco, Cal., Ordinance No. 180-08, ch. 13C (Nov. 2008).

31. *San Francisco Green Building*, *supra* note 29.

32. Ordinance No. 180-08, ch. 1304C.2.2.1.

33. ch. 1304C.2.2.1.

34. *San Francisco Green Building*, *supra* note 29.

35. Meredith Laitner, Note, *Green-Building City Survey*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 81,

Illinois have legislation encouraging green-building: Illinois Public Act 093-0936, also known as the Energy Efficient Building Code, mandates energy efficiency standards for new or renovated commercial buildings.[36] Chicago also offers small grants to companies that install green roofs and dispenses millions of dollars to companies that install solar cells for energy within the city.[37] These and other efforts save builders and owners anywhere from fifteen to fifty percent on energy costs and conserve Chicago's natural resources.[38] The Act has not had any effect on the construction or renovation of any of the Chicago sports facilities.

2. Federal Laws Affecting Green-Building

The recently passed American Recovery and Reinvestment Act of 2009 (ARRA) will impact commercial real estate through provisions of the bill that focus on green-building, energy efficiency, and resulting available tax credits.[39] This Act provides an opportunity for local governments to apply for funds in the form of Clean Renewable Energy Bonds that could then be used for a variety of projects, including the construction or renovation of sports facilities that achieve energy-efficiency or install renewable energy technologies.[40] However, the deadline for cities to apply for those bonds was October 8, 2009.[41] Nonetheless, the ARRA provides states with $3.2 billion to use for the State Energy Programs[42] that directly support commercial property owners who invest in energy efficiency upgrades.[43]

In addition, the American Clean Energy and Security Act of 2009 was just passed by the House on June 26, 2009, and it was placed on the Senate calendar on July 6, 2009.[44] This Bill would impose additional requirements on states and, therefore, sports facilities. This Bill, if it were to become law,

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82-84 (2007/2008).

36. *Id.* at 82; 20 ILL. COMP. STAT. 3125/15 (2008).

37. Laitner, *supra* note 35, at 83.

38. *Id.* at 84-85.

39. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

40. *See generally*, U.S. DEPT. OF ENERGY, FINANCIAL ASSISTANCE FUNDING OPPORTUNITIES ANNOUNCEMENT, June 24, 2008, *available at* http://fossil.energy.gov/ programs/powersystems/futuregen/Restructured_FutureGen_Final_FOA__6-24-0.pdf [hereinafter U.S. DEPT. OF ENERGY].

41. *Id.*

42. American Recovery and Reinvestment Act, Title IV.

43. *American Recovery and Reinvestment Act of 2009*, REALTOR.ORG, http://www.realtor.org/government_affairs/gapublic/american_recovery_reinvestment_act_home (last visited July 21, 2009).

44. *American Clean Energy and Security Act of 2009*, OPENCONGRESS.ORG, http://www.opencongress.org/bill/111-h2454/text (last visited Oct. 12, 2009).

would require that states adopt energy efficient building polices that are at least as strict as federal building policies for both residential and nonresidential buildings.[45] Financial incentives are discussed in-depth in Part VII, but this bill also allows states to take advantage of grants and reimbursement programs for implementing energy-efficient building polices and for installing equipment that generates renewable energy.[46]

III. CONVENTIONAL SPORTS FACILITIES ADVERSELY AFFECT THE ENVIRONMENT

The previously mentioned green-building laws and federal laws that directly affect green-building, could be applied to stadium construction and renovation. While this has yet to happen, newly constructed and renovated conventional sports facilities are extremely harmful to the environment. Construction is the nation's principal manufacturing activity, using sixty percent of raw materials consumed each year.[47] "[T]he construction of buildings[, including sports facilities,] account[s] for one-sixth of the world's freshwater withdrawals, forty percent of the world's material and energy flows, and twenty-five percent of wood cut for nonfuel uses."[48] In addition, nonrecycled steel is still used in conventional stadiums.[49] This behavior contributes to increased greenhouse gas emissions from manufacturing new steel.[50] Furthermore, many of the adhesives, paints, and sodders contain harmful substances including lead and isocyanates.[51] Conventional-outdoor sports facilities also require millions of gallons of water, which can put strain on local water resources, while the use of harmful pesticides can pollute soil

45. American Clean Energy and Security Act of 2009, H.R. 2454, 111th Cong. § 201(c)(1)(A)(i) (2009).

46. §§ 132, 201.

47. Sara C. Bronin, *The Quiet Revolution Revived: Sustainable Design, Land Use Regulation, and the States*, 93 MINN. L. REV. 231, 243 (2008).

48. *Id.*

49. The New York Yankees and New York Mets did use recycled steel when constructing their new stadiums, but this is one of the only steps they have taken. "Of the nearly 17,500 tons of steel that has already been hauled to the new Yankee Stadium and to Citi Field, about 60% was once ferrous scrap: steel goods collected from junk yards, town dumps, and the back rooms of automobile repair shops." Christopher Faherty, *Steel Makes Its Way to New City Stadiums*, N.Y. SUN, Oct. 26, 2007, at 5, *available at* http://www.nysun.com/new-york/steel-makes-its-way-to-new-city-stadiums/65367/. Although, 60% is a good start, sports facilities should aim to use 100% recycled steel in construction and renovation projects. Using recycled steel, instead of manufacturing virgin steel, uses approximately 70% less energy. *Id.*

50. *Harmful Chemicals to be Cautious of in Building Materials*, HEARTLANDGREENSHEETS. ORG, http://www.heartlandgreensheets.org/harmfulchemicals.html (last visited Dec. 22, 2008).

51. *Id.*

and cause polluted run-off into nearby bodies of water, harming staff, players, and wildlife.[52] Lastly, in conventional buildings, including sports facilities, construction materials are often transported long distances on trucks that emit large amounts of greenhouse gas emissions.[53]

MLB alone attracts more than seventy-nine million attendees over the course of any given season.[54] Fans "produce mountains of trash by the time they leave, nearly all of which ends up in landfills."[55] For example, approximately 1400 tons or 2.8 million pounds of trash is produced each year at Safeco Field.[56] MLB stadiums, along with other sports facilities, consume vast amounts of resources—thousands of kilowatt-hours of electricity to power the lights and millions of gallons of water to flush the toilets and irrigate the playing fields.[57] For example, the New York Yankees new stadium has increased traffic in an already congested area of the city, increasing car exhaust and continuing to contribute to higher asthma rates among neighborhood residents.[58] It also demolished public parkland, which reduced green space, limited the space where rainwater can be absorbed and reused, and increased greenhouse gas emissions.[59]

IV. PUBLIC SUBSIDIZATION OF SPORTS FACILITIES

In this economic climate, states and cities have limited resources, and the pressure to spend public money in productive and responsible ways has increased. Sports facilities will continue to be publicly subsidized through financial mechanisms such as government bonds backed by a general sales tax increase. By building green sports facilities, this money benefits the

52. *Sports Environment Research Activity*, ENVIRONMENT-ED.COM, http://www.environment-ed.com/Sports%20and%20the%20Environment%20Research%20Activity.doc (last visited July 15, 2009) [hereinafter *Sports Environment*].

53. Bronin, *supra* note 47, at 243.

54. Matthew Philips, *Not Just Greener Grass: Ever Wonder What Happens to All Those Ballpark Hot-Dog Wrappers? Starting Now, They'll be Recycled*, NEWSWEEK, Apr. 14, 2008, *available at* http://www.newsweek.com/id/130592.

55. *Id.*

56. *See id.*

57. *Id.* The Philadelphia Phillies use about twenty million kilowatt-hours of utility power at Citizens Bank Park each year. *Philadelphia Phillies Lead Major Leagues in Green Power*, ENS-NEWSWIRE.COM, May 5, 2008, http://www.ens-newswire.com/ens/may2008/2008-05-05-091.asp [hereinafter *Phillies Green Power*]. They also purchase renewable energy to offset this usage. *Id.*

58. *See* Fernanda Santos, *Metro-North Station Opens at Yankee Stadium*, N.Y. TIMES, May 21, 2009, *available at* http://cityroom.blogs.nytimes.com/2009/05/21/metro-north-station-opens-at-yankee-stadium/.

59. *Id.*

community in far more ways than by building conventional sports facilities.[60] The facility and the franchise can become a significant asset that fosters community growth.[61] Unfortunately, when conventional sports facilities are built, the return on investment can slip away quickly when revenues are not as high as predicted, putting pressure on cities to provide additional relief or to extend a tax on its citizens past the agreed upon repayment period.[62]

The construction of Miller Park in Milwaukee, Wisconsin, was partially funded by stadium revenue bonds backed by money generated from a five-county general sales tax.[63] When the tax began, the expectation was that it would end in 2014.[64] Because sales tax revenues have been decreasing in recent years, the Southeast Wisconsin Professional Baseball Park District Board (the "Board"), the statutorily created body that owns and operates Miller Park, may need to extend the sales tax beyond 2014 to 2017.[65] The Board is responsible for financing Miller Park and ninety percent of its revenue comes from the sales tax.[66] Unfortunately, its only option is to either increase the sales tax or extend it to meet its obligation.[67]

In addition to these financial risks, cities risk that those expensive sports facilities will become obsolete quickly as other cities continue to offer luxury facilities to teams searching for new or better homes. As conventional sports facilities become outdated, the investment of public money into sports facilities with the hope of future economic return also becomes riskier. Now, with the increased pressure to globally, nationally, and locally change current patterns of consumption, create better designs for buildings, and develop better ways to use natural resources, building conventional sports facilities seems to

60. *See generally* Daniel J. Lathrope, Symposium, *Sports Law as a Reflection of Society's Laws and Values: Federal Tax Policy, Tax Subsidies, and the Financing of Professional Sports Facilities*, 38 S. TEX. L. REV. 1147, 1147 (1997).

61. The Sports Law Professor, *Public Funding of Private Sports Stadiums*, THESPORTSLAWPROFESSOR.BLOGSPOT.COM, Nov. 2, 2008, http://thesportslawprofessor.blogspot.com/2008/10/public-funding-of-private-sports.html.

62. *See generally* Lathrope, *supra* note 60, at 1153-54; *see also* Bridget Thoreson, *Legislators Balk at Extension of Miller Park Sales Tax*, MILWAUKEE J. SENTINEL, Mar. 10, 2008, *available at* http://www.journaltimes.com/articles/2008/03/10/local_news/doc47d5fd7409b43874510332.txt.

63. Avrum D. Lank, *Bond Sale Approved to Build Miller Park: Stadium Board Committee Votes to Issue $146.7 Million in Bonds, Bearing Rates Up to 5.8%*, MILWAUKEE J. SENTINEL, Mar. 7, 1997, § Business, at 1.

64. Thoreson, *supra* note 62.

65. *Id.*

66. *Id.*

67. *Id.*

be an outdated method.[68] For example, while the new Yankee Stadium boasts about its luxury seats, greatly improved concessions, and increased access for disabled fans, this $1.1 billion construction project includes very few green design features.[69] This means that the Yankees missed an opportunity to build a stadium that will last longer and serve as a symbol of the team's and the city's commitment to build sustainable structures that reduce negative environmental effects that contribute to climate change.[70] While another city may not be able to lure the Yankees from New York with a green building's lower operating and reduced waste costs, other cities may be more vulnerable and risk losing sponsor and fan support for a team as other teams and cities remain on the cutting-edge of sports facility design.[71]

V. ADOPTING NEW GREEN-BUILDING POLICIES THAT APPLY TO SPORTS FACILITY CONSTRUCTION WILL IMPROVE THE QUALITY OF THE ENVIRONMENT

Existing green-building policies do not include provisions that specifically apply to sports facility construction and renovation; instead, they only address commercial buildings in general. If cities have not yet passed green-building policies, then individuals should use the opportunity to lobby the legislature or city to adopt or modify policies to ensure that sports facilities are required to comply and, at the very least, are LEED certified. These policies will ensure that sports facility construction and renovation actually improves the quality of the environment.

Requiring sports facilities to meet existing LEED standards encourages smart site selection, efficient use of water and energy, use of local, recycled materials and resources, smart indoor environmental quality, and overall innovative design.[72] Working toward receiving LEED certification will require that team owners and cities contemplate adverse environmental effects

68. Evelyne Michaut & Rob Watson, *The Greener Law Practice: Your Firm Can Save Money—and Help Save the Planet—By Conserving Resources and Taking Steps to Reduce Greenhouse Gas Emissions*, AM. ASS'N FOR JUSTICE TRIAL, Apr. 1, 2008, at 38.

69. *Greening of Ballparks*, *supra* note 28.

70. For the purposes of this paper, it is assumed to some degree that climate change is caused in part by human action, including conventional building actions. *See* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 30, 36 (2007). The Intergovernmental Panel of Climate Change was established by the United Nations Environment Programme and the World Meteorological Organization and is the leading body for the assessment of climate change. *Organization*, IPCC.CH, http://www.ipcc.ch/organization/organization.htm (last visited July 26, 2009); *see also* Bronin, *supra* note 47, at 243.

71. This is discussed in detail *infra* Part VI.

72. *LEED Rating Systems*, *supra* note 12.

and work with facility operators to develop recycling procedures. In addition, consideration of the facility's high demand for water will lead to the installation of storm water recycling systems, allowing facilities, specifically those with grass, to capture storm water and recycle it by using it to water either the field or surrounding landscape. Finally, bathroom design will need to include: low-flow toilets, hand dryers, and sinks that automatically stop water flow when not in use. These efforts will reduce demand on natural resources and combat negative environmental effects.

Implementing these sports facility specific policies may prove somewhat difficult, especially because very few stadiums, team owners, and municipalities have made green stadiums a priority. In order to facilitate the development and implementation of these new or modified policies, it is helpful to consider other successful implementation processes and resulting green-building policies.

In Philadelphia, builders are going green without governmental pressure.[73] Philadelphia's green buildings are due to private efforts to initiate green development or private donations for green projects.[74] Many of these businesses and other corporations cooperate to promote the "'triple bottom line' of profitability, social awareness, and environmental responsibility," and to create sustainable and energy efficient structures.[75] In addition to private initiatives, the Pennsylvania state legislature is currently considering two green-building bills.[76] One bill would require all new or newly renovated state-approved buildings to meet energy efficient standards[77] and would establish a tax credit for construction or renovations that meet LEED certified standards.[78] These bills apply to construction projects in general, but there is

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73. Laitner, *supra* note 35, at 92.

74. *Id.* This type of large private donation that covers all construction and renovation costs could become more frequent. This is because private companies understand that consumers support socially responsible businesses and because they will reap the benefits of their investment longer if investing in a sustainable project.

75. *Id.* at 93 (*quoting* Glenn Rifkin, *Making a Profit and a Difference*, N.Y. TIMES, Oct. 5, 2006, at C5, *available at* www.nytimes.com/2006/10/05/business/05sbiz.html).

76. *Id.* at 94.

77. *Id.* This bill, House Bill 1204, is still pending before the Transportation Committee as of April 3, 2009. *House Bill 1204 History*, H.B. 1204, 2009-2010 Gen. Assem., Reg. Sess. (Pa. 2009), *available at* http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2009&sind=0&body=H&type=B&bn=1204 [hereinafter House Bill 1204].

78. *Id.* House Bill 1205, is still pending before the Environmental Resources and Energy Committee as of April 3, 2009. *House Bill 1205 History*, H.B. 1205, 2009-2010 Gen. Assem. Reg.Sess. (Pa. 2009), *available at* http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2009&sind=0&body=H&type=B&bn=1205.

potential to include specific requirements applicable to sports facility construction in future green-building bills. These specific policies would encourage green-building and address the specific issues that arise during sports facility construction and renovation.

The period leading up to the adoption of Boston's green-building policy is most relevant because it took the work and collaboration of many individuals to convince city officials that this was an important step for the city to take toward more sustainable practices. This type of process will likely be similar to the one that other cities will need to implement if they wish to modify or adopt green-building policies that specifically address sports facility construction and renovation. States, cities, teams, architects, and engineers will need to work together to make decisions that are best for all involved parties and for the environment.

Boston utilized project-related events surrounding the construction of each new green building to make the case for change.[79] Since 1999, the continued project-related events caused green-building to become a Boston governmental priority.[80] Ongoing policy debates resulted in the Greater Boston Real Estate Board creating a Green-Building Economic class, giving builders and developers the chance to learn about and get involved in the green movement.[81] A task force was then formed to evaluate possible challenges to implementing a green-building policy.[82] The result of the task force was a report that was transformed into the Green-Building Policy.[83] It recommended that Boston use LEED standards, adopt LEED Silver as the design and construction standard for any renovation and/or construction of all city facilities, and amend the City's zoning code to require LEED design and construction standard for all projects underway.[84] It also required that all project proponents submit a LEED checklist describing how the applicable standard would be met.[85] Finally, it emphasized the need to "integrate the design process [by] bringing architects, engineers, and building users together at the beginning to coordinate decisions that will reduce the building's draw on the earth's resources."[86] Utilizing an approach similar to Boston's will ensure that a cohesive policy is developed that will apply to sports facilities

79. Swing, *supra* note 24, at 35-36.

80. *Id.* at 61.

81. *Id.*

82. *Id.* at 70.

83. *Id.* at 71.

84. *Id.*

85. *Id.* at 76.

86. *Id.* at 49.

and give them an opportunity to not only improve the environment, but to improve the city's infrastructure and to create new jobs generated by implementing this policy.

VI. ENSURING SPORTS FACILITIES REALIZE THE GREATEST RETURN ON THEIR INVESTMENT

The modification of existing green-building policies or the adoption of new green-building laws will ensure that public monies are spent on sustainable facilities that are not just good for the team, but are good for its citizens. State and local governments will continue to subsidize the renovation and construction of sports facilities and play a major role in the design, construction, management, and ownership of the facility.[87] However, these governments must realize that building green sports facilities can play a determinative role in helping a struggling economy and help shape the reputation of a city.[88]

A. Infrastructure Improvements

Fortunately, green sports facilities can improve a city's infrastructure in ways conventional stadiums may not. Green facilities can do the following: improve the condition of the sidewalks surrounding the stadium by laying pervious, recycled rubber asphalt; reduce the demand on existing sewer pipes by increasing green areas and developing storm water storage and recycling systems; control traffic by encouraging public transportation; and improve air quality by emitting less carbon dioxide due to reduced energy consumption.[89] If the construction of a sports facility is refocused, as an environmental effort to improve city infrastructure, cities and states will in effect attract or keep a professional sports franchise while they improve ailing infrastructure and combat climate change.[90] For example, in an effort to win the bid for the

87. Dennis Coates, *A Closer Look at Stadium Subsidies*, AMERICAN.COM, Apr. 29, 2008, http://www.american.com/archive/2008/april-04-08/a-closer-look-at-stadium-subsidies.

88. Juan Rivero, *Stadiums Benefits New Spending*, HOMEPAGE.MAC.COM, http://homepage.mac.com/jjrivero/coney_island/text/stadiums.pdf (last visited July 13, 2009). Juan Rivero is an advocate and spokesperson for Save Coney Island, a grassroots community organization committed to the revitalization of Coney Island and the surrounding neighborhood. *About Us*, SAVECONEYISLAND.NET, http://www.saveconeyisland.net/?page_id=12 (last visited July 25, 2009).

89. *See* CHICAGO DEPARTMENT OF TRANSPORTATION, GREEN ALLEY HANDBOOK (2008), *available at* http://www.cityofchicago.org/city/webportal/portalContentItemAction.do?contentOID=536946contenTypeName=COC_EDITORIAL&topChannelName=Dept&blockName=Transportation/Green+Alleys/I+Want+To&context=dept&channelId=0&programId=0&entityName=Transportation&deptMainCategoryOID=-536883915.

90. Cities have a unique opportunity to combat climate change by delivering cost-effective policy

2016 Summer Olympics, the City of Chicago guaranteed that all sports venues would be powered by renewable energy; storm water would be collected for reuse, venues would use recyclable or reusable products, venue sites would adhere to green-building standards, and many subway tracks and stations would be renovated.[91] These efforts would have helped Chicago meet federal air quality standards that it has consistently failed to meet, while reducing demand on various public works departments and helping to create a cleaner and stronger city.[92] Unfortunately, on October 2, 2009, Chicago lost its bid for the Olympics.[93] Therefore, it remains to be seen if and how these Olympic-focused efforts will continue in the wake of Rio de Janeiro winning the bid.[94]

B. Building Green Sports Facilities and Renovating Conventional Sports Facilities Will Create New Green Jobs

Building green sports facilities creates green jobs that promote regional and local growth. Proponents of conventional sports facilities claim that building a new facility will bring new jobs to the area.[95] While some new jobs may be created when conventional sports facilities are built, real growth only happens when there is an "economically beneficial specialization by the community for the purpose of trading with other regions."[96] Green construction projects create a demand for green industry by raising awareness, thereby creating these specialized jobs and services that can be traded with other regions as they too come to understand the benefit of going green. For

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responses to climate change including the development of clean-energy systems and implementation of sustainable transportation and waste management techniques. *Cities and Climate Change*, OECD.ORG, http://www.oecd.org/document/27/0,3343,en_2649_34361_39760027_1_1_1_1,00.html (last visited July 19, 2009). One of these cost-effective policy responses is requiring sports facilities and facilities subsidized by city money to use clean energy, properly manage waste, and strongly encourage the use of public transportation to and from events at the sports facility. *Id.*

91. Caryn Rousseau, *Chicago Promising Greenest Olympics in 2016 Bid*, U.S.A. TODAY, Feb. 2, 2009, *available at* http://www.usatoday.com/sports/olympics/2009-02-22-2200121771_x.htm.

92. *Id.*

93. Aaron Smith, *Chicago Loses Olympic Bid to Rio*, CNNMONEY.COM, Oct. 2, 2009, http://money.cnn.com/2009/10/02/news/economy/chicago_olympics_rejection/index.htm.

94. *Id.*

95. JOANNA CAGAN & NEIL DEMAUSE, FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT 36-37 (1998); *see generally* ROGER G. NOLL & ANDREW ZIMBALIST, SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 494 (1997).

96. *See generally* Howard Hobbs, *Public Funded Fresno Stadium: Gross Overestimate of Economic Benefits, Understated Economic Costs*, DAILYREPUBLICAN.COM, Nov. 29, 1997, http://www.dailyrepublican.com/stadium-understated-cost.html.

example, unlike conventional construction jobs, green construction jobs are just now beginning to increase because of increased demand for specialized services and specific knowledge of green technology and installation techniques.[97] This is especially true now, as federal and state monies have been set aside to create new green jobs in renewable energy production and implementation of energy-efficiency programs that require retrofitting and upgrades to existing buildings.[98]

For example, the Green Jobs Act of 2007 authorized $125 million per year from the Federal Government to create an energy efficiency and renewable energy worker training program that identifies necessary skills and trains individuals for a wide range of green industries.[99] Massachusetts passed the Green Jobs Act of 2008 that provides grant money to stimulate clean energy economies and create accessible green jobs.[100] Minnesota also passed the Demand Efficiency Act, which created a Green Jobs Task Force and implemented a strategy for developing new green jobs.[101] In addition, Washington passed a bill that mandates that 100,000 buildings over the next five years be weatherized and made energy efficient.[102]

These types of bills and commitments from large-scale project developers, like those developing or renovating sports facilities, require that owners, architects, engineers, and construction managers know how to approach green building design, construction, and operation.[103] The creation of new jobs comes when there is a demand for professionals who have the following knowledge: green construction management methods; LEED and other green building requirements, including how to properly document these requirements to obtain LEED certification; costs for specific green features; proper sustainability vocabulary to be used in subcontracts; and the life cycles of certain green technologies.[104] Just over two million people have already found new jobs in the renewable energy sector and employment in alternative energy may rise to 2.1 million in wind and 6.3 million in solar by 2030.[105]

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97. *See generally* Sandra Zaragoza, *What's a Green Job?*, PORTFOLIO.COM, Sept. 18, 2009, http://www.portfolio.com/business-news/2009/09/18/city-struggles-to-train-for-green-economy/.

98. *Id.*

99. The Green Jobs Act of 2007, Pub. L. No. 110-140, Title X (2007).

100. H. 5018, 2008 Leg., 185th Sess. (Mass. 2008).

101. Demand Efficiency Act, ch. 136, 2007 Minn. Laws.

102. S. 5649, 61st Leg. Reg. Sess. (Wash. 2009).

103. *Sustainable Construction Management Class Description*, ENVIRO.BERKELY.EDU, Mar. 9, 2009, http://enviro.berkeley.edu/node/2660.

104. *Id.*

105. Int'l Labour Office, *Green Jobs Facts and Figures*, ILO.ORG, Sept. 2008, http://www.ilo.org/wcmsp5/groups/public/dgreports/---dcomm/documents/publications /wcms_

The State of Wisconsin has already increased the number of green jobs by creating a booming solar market. The demand for solar installations has increased eighty percent this past year, especially for large-scale projects, and solar glass production has increased tremendously in the past five years.[106] A new solar glass plant is opening in Wisconsin that will employ approximately 200 people.[107] These are all new manufacturing jobs, created as a direct result of increased demand for solar panels.[108]

The construction of the new Nationals Park has also created green jobs.[109] Before construction began, the businesses on the site provided about 160 jobs.[110] The ballpark created more than 4,400 temporary construction jobs and more than 360 full-time-equivalent permanent jobs.[111] Some of these jobs include specialized landscape architects who were trained in ecological management including how to install specialized groundwater and storm water systems, while other jobs included green-roof installers, and those trained in the specifics of the LEED certification method.[112] These individuals developed increased expertise by working on this LEED project, and neighboring cities and subsequent projects in surrounding areas will continue to utilize these professionals when completing future green projects.

VII. TEAM BONUS: TAX EQUITY AND POTENTIAL REVENUE INCREASES

Increased revenues are only one financial incentive for teams to build green sports facilities. By implementing new green technologies, teams can become eligible for a variety of tax incentives and deductions. Although these technologies can be expensive for teams up front, these green sports facilities will improve the city's infrastructure, create new jobs, and show citizens that teams are not just concerned about the bottom line, but also about the sustainability of the structure and its effect on the community. This is a win-win situation for any team, because it can improve the community and save money that can be used by a team similar to ticket, advertising, endorsement,

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098484.pdf.

106. Notes of Niels Wolter, from the Wisconsin Renewable Energy Summit (Oct. 23, 2008) (on file with author).

107. *Id.*

108. *Id.*

109. *See generally New Nationals Park*, NATIONALS.MLB.COM, http://nationals.mlb.com/was/ballpark/index.jsp (last visited Feb. 6, 2009).

110. *Project Profile Nationals Park*, *supra* note 21.

111. *Id.*

112. *See generally Green Ballpark*, NATIONALS.MLB.COM, http://nationals.mlb.com/was/ballpark/green_ballpark.jsp (last visited Feb. 26, 2009).

broadcast, and concession revenues.[113]

A. Energy Efficient Sports Facilities Provide Long-Term Cost Savings to Owners

In general, energy-efficient commercial buildings can save ten to twenty percent in operating costs.[114] For the purposes of this Comment, operating costs include: waste disposal and management, electricity, water, and field and building maintenance. These energy savings can also be applied to older sports facilities that undergo energy-efficiency retrofits.[115] Differences of at least twenty to thirty percent in energy costs can typically be achieved after the retrofitting is complete.[116] Some baseball teams have already undergone such retrofitting and have installed new solar panels in hopes of saving money.[117] These teams include the San Francisco Giants, the Colorado Rockies, and the Cleveland Indians.[118]

Most notably, the Seattle Mariners took advantage of energy savings.[119] The Seattle Mariners's efforts are an excellent example of how increased energy efficiency and eco-conscious practices can save money over a prolonged time-period.[120] Improved energy management practices in 2007 saved the Mariners $180,000 in the first seven months of the fiscal year as compared to 2006.[121] In 2007, the Mariners increased paper and plastics recycling, diverting 226 tons from the landfill and saving more than $26,000 in disposal costs.[122] These savings are the result of a comprehensive plan to

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113. *Professional Sports Teams and Organizations*, HOOVERS.COM, http://www.hoovers.com/professional-sports-teams-and-organizations/--ID__315--/free-ind-fr-profile-basic.xhtml (last visited July 12, 2009).

114. *Commercial Real Estate: Looking for Energy Solutions*, ENERGYSTAR.GOV, www.energystar.gov/ia/partners/spp_res/LFES_Commercial_Real_Estate.pdf (last visited Oct. 23, 2008).

115. MARK CHAO, ET AL., RECOGNITION OF ENERGY COSTS AND ENERGY PERFORMANCE IN COMMERCIAL PROPERTY VALUATION 5 (1999), www.imt.org/PDF%20files/CA%20RGs%202-99.PDF. This section in the report addresses energy and operating income in California buildings, but these concepts apply to buildings in all states. It places emphasis on the 20-30% in energy costs that can typically be achieved by implementing energy-efficient retrofits to existing buildings. *Id.*

116. *Id.*

117. *See* Craig Rubens, *Major League Solar: Baseball Goes Green*, EARTH2TECH.COM, May 26, 2008, http://earth2tech.com/2008/05/26/major-league-solar-baseball-goes-green/.

118. *Id.*

119. *See* Seattle *Mariners: Case Study*, RESOURCEVENTURE.ORG, June 2007, http://www.resourceventure.org/case-studies/success-stories/seattle-mariners/?searchterm=fibres.

120. *See id.*

121. *Id.*

122. *Id.*

increase energy efficiency and include such practices as: turning off equipment, adjusting energy system set points, adjusting lighting control, reducing infiltration, upgrading controls on domestic hot water, and installing aerators at restroom sinks.[123]

B. Renewable Energy State Tax Incentives Can Save Sports Facility Owners Money

Many states offer renewable energy tax credits and incentives. Forty-four states, as of November 2009, offer a variety of tax exemptions and deductions relating to energy conservation or production from renewable resources.[124] For example, Massachusetts offers corporate tax incentives for installing solar or wind powered facilities.[125] Under Section 38 of the Massachusetts General Laws, businesses may deduct the expenditures paid or incurred with respect to the installation of any solar or wind powered climatic control unit, water heating unit, or any other system.[126] The business may also recover the cost of labor attendant to the installation of the system.[127] In New York, tax exemptions are offered to private property owners for building certain solar or wind energy systems.[128] Under Section 487 of the New York Code, real property that includes a solar or wind energy system is exempt from taxation to the extent of any increase in the value of the property due to the inclusion of the system.[129] These state tax incentives are modeled after those that are offered by the Federal Government. These federal tax incentives also provide monetary savings to companies and individuals that choose to install and utilize renewable energy technologies.

C. The Federal Government Provides Energy Incentives and Deductions That Can Save Sports Facility Owners Money

Federal energy incentives and tax deductions apply to any commercial

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123. *Id.*

124. *See e.g.*, ARIZ. REV. STAT. ANN. § 43-1085 (2009); CAL. CODE REGS. tit. 20, § 2600 (2009); IOWA ADMIN. CODE r. 701-52.26 (2009). These three statutes authorize renewable energy tax credits. Thirty-six other states offer similar tax credits, exemptions, incentives, or deductions. Renewable/Clean Energy Tax Incentives (LEXIS 50 State Comparative Legislation/Regs. 2009). As of November 2009, these six states did not offer renewable energy tax incentives: AL, DE, MO, NC, TN, and WY. *Id.*

125. MASS. ANN. LAWS. ch. 63, § 38H (2009).

126. *Id.*

127. *Id.*

128. *See* N.Y. REAL PROPERTY TAX LAW § 487 (2009).

129. *Id.*

building provided certain standards are met. The recently passed Emergency Economic Stabilization Act of 2008 (EESA)[130] extended and amended many consumer tax incentives originally introduced in the Energy Policy Act of 2005.[131] The Energy Policy Act of 2005,[132] also known as the Energy Efficient Commercial Building Tax Deduction, contains market incentives in the form of tax deductions for owner investments in commercial building energy efficiency.[133] Appropriations are directed to states in the amount of $30 million for each of the fiscal years 2006 through 2010.[134]

First, a new building or new portion of an existing building must be within the scope of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) and the Illumination Engineering Society of North America (IESNA) Standard 90.1-2007.[135] This standard provides the minimum requirements for efficient design of buildings, except for low-rise residential buildings.[136] Sports facilities fall within the scope of this standard; so, new or renovated portions of sports facilities are eligible for the tax deduction. The EESA allows a tax deduction of up to $1.80 per square foot for new or existing commercial buildings that save at least fifty percent of the energy and power costs associated with the building.[137] Partial deductions of $0.60 may also be taken for improvements to the building envelope, lighting, heating, and cooling systems for buildings that save less than fifty percent of energy and power costs.[138] For example, if a new 1.2 million square foot stadium[139] was to achieve at least fifty percent reduction in the energy and power costs, then it would be eligible for a deduction of $1.80 per square foot:

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130. The Emergency Economic Stabilization Act of 2008: Energy Tax Incentives, Pub. L. No. 110-343 (2008) [hereinafter EESA].

131. U.S. Dept. of Energy, *Consumer Energy Tax Incentives: What the American Recovery and Reinvestment Act means to You*, ENERGY.GOV, Oct. 21, 2008, http://www.energy.gov/taxbreaks.htm.

132. The Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2008) [hereinafter Energy Policy Act].

133. Nat'l Elec. Mfrs. Ass'n, *The Energy Efficient Commercial Building Tax Deduction, available at* www.nema.org/gov/energy/upload/commbldgtaxdeduction.pdf (last visited Oct. 18, 2008) [hereinafter Energy Tax Deduction].

134. Energy Policy Act § 125.

135. Energy Tax Deduction, *supra* note 133.

136. Am. Soc'y of Heating, Refrigerating, and Air-Conditioning Eng'rs (ASHRAE), *Standards & Guidelines*, ASHRAE.ORG, http://www.ashrae.org/technology/page/548 (last visited Oct. 18, 2009).

137. Energy Policy Act § 179(d).

138. Energy Tax Deduction, *supra* note 133.

139. Miller Park is 1.2 million square feet, and is used only to illustrate how much a similar-sized stadium could save under section 179D. *Miller Park*, BASEBALLPARKS.COM, http://www.ballparks.com/baseball/national/miller.htm (last visited Nov. 18, 2009).

$1.80 x 1,200,000 = $2,160,000.[140] Therefore, so long as the cost of stadium construction or renovation exceeded the deduction, the stadium could see significant savings.[141] The EESA extended these deductions an additional five years through December 31, 2013.[142] The EESA also extended authority to issue qualified green-building and sustainable design project bonds through October 1, 2012.[143] In addition, certain types of energy projects developed under the EESA may be financed with tax credit bonds made available to local, state, and tribal governments under the subsequently passed ARRA.[144]

As mentioned in Part II, a pending bill before the U.S. Senate would provide even more financial incentives available to teams. Specifically, the new bill directs that no less than twenty percent of funds received from the Federal Government go to buildings implementing energy efficient practices, and no less than twenty percent of funds will be in the form of grants or tax incentives for those who deploy energy-efficient equipment, such as solar panels.[145] In addition, non-residential buildings may be reimbursed up to $10,000 for the installation of a solar panel system,[146] and may even be reimbursed for an energy audit if the building completes it in an attempt to retrofit an older building.[147] Sports facilities would most likely have the

140. *See* Energy Policy Act § 179D.

141. *See* § 179D.

142. EESA § 303.

143. § 307.

144. The Energy Improvement and Extension Act of 2008, enacted in October 2008, originally authorized the issuance of Qualified Energy Conservation Bonds that could be used by state and local government to finance certain types of energy projects. *Qualified Energy Conservation Bonds (QECBs)*, DSIRE.COM, Apr. 4, 2009, http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=US51F&re=1&ee=1. These are similar to the Clean Renewable Energy Bonds (CREBs) authorized in the American Recovery and Reinvestment Act (ARRA) passed in February 2009. *Id.* The ARRA expanded the allowable bond volume to $3.2 billion. *Id.* The availability of CREB funds differs depending on the population of the city or municipality applying for the grant. *American Recovery and Reinvestment Act Energy Opportunities*, MASS.CLEANENERGYCENTER.COM, http://masscec.com/index.cfm?cdid=10361 (last visited June 7, 2009). City and local governments are eligible applicants for CREBs under the ARRA, but individuals and organizations may suggest that local units of government use these funds for certain projects that are "shovel-ready," or projects that can be initiated immediately. *See* U.S. DEPT. OF ENERGY, *supra* note 40; Letter from The Sierra Club, John Muin Chapter, to City of Milwaukee (May 28, 2009) (on file with the Great Waters Group). Unfortunately, the deadline for local units of government to apply for these bonds was June 25, 2009. *Id.* However, the American Clean Energy and Security Act of 2009 will provide sports facilities with additional opportunities to take advantage of financial incentives in the form of tax equity and grants for achieving energy efficiency or installing renewable energy technologies. *See generally* American Clean Energy and Security Act of 2009.

145. American Clean Energy and Security Act of 2009 § 132.

146. § 208.

147. § 202.

opportunity to apply for these grants, and to take advantage of these reimbursement programs if this bill passes the Senate and is signed into law.

Taking advantage of available tax incentives increases the financial stability of a sports facility. The more financially secure the sports facility project, the more likely the state, city, and community will see the expected return on their investment, allowing any debt incurred to be repaid as quickly as possible. The tax and energy cost savings could be used for repayment of any debt incurred by virtue of municipal bonds that are issued first; then, after the debt is paid back, teams can keep the savings and use them as they see fit.[148] These long-term monetary savings, available as long as the team generates taxable income, should initially entice sports facility designers and owners to build green, and give cities an opportunity to finance sustainable structures that are more efficient and last longer.[149]

D. Emotional Connection to Climate Change Will Increase Sponsor and Fan Support

Pursuing environmental leadership will also show that teams are concerned about their negative effects on the environment and are working to improve their practices. MLB is on the right the track, but its efforts are focused only on practices after the sports facility is built. MLB and the Natural Resources Defense Council (NRDC) announced the creation of the Team Greening Program ("Program") in August of 2008.[150] This Program was implemented to coordinate environmentally sensitive practices pursued by nearly every MLB team.[151] The NRDC President said, "'MLB's greening initiative is good for the environment and [good for] the bottom line.'"[152] These efforts will work to reduce energy consumption, reduce waste, and make sports facilities run more efficiently, but it will also encourage sponsors and other corporate partners to do the same and provide financial assistance in the form of advertising dollars to any team who shares their mission to combat the effects of climate change.[153] This is especially important now, when

148. CAGAN & DEMAUSE, *supra* note 94, at 93.

149. The twenty-five year projected energy cost savings for Nationals Park is $440,000. *Project Profile Nationals Park*, *supra* note 21.

150. Press Release, Natural Resources Defense Council, Major League Baseball Goes Green in Collaboration with the Natural Resources Defense Council (Mar. 17, 2008), *available at* http://www.nrdc.org/media/
2008/080317.asp.

151. *Id.*

152. *Id.*

153. *Id.*; NRDC Greening Advisor for Major League Baseball, *Los Angeles Angels of Anaheim/ Principles/ Including Sponsors and Corporate Partners in Environmental Dialogue*,

enticing corporations to sponsor specific sports facility projects or advertise in sports facilities has become increasingly difficult as corporations look to cut corners and save money.[154] Pursuing environmental excellence will increase the chances that struggling corporations will see these sports sponsorships as an opportunity to show that they are socially responsible and committed to "greening" business.[155]

This will also show fans that their team is concerned about its effect on the environment and is working to improve its practices. This will help establish an emotional connection with fans and possibly increase their commitment to their respective teams. The MLB and NRDC partnership is mainly aimed at increasing advertising and sponsorship dollars, but it also strengthens the emotional tie individuals have to combating climate change. Right now, many Americans are emotionally invested in the fight against climate change. Sports facilities can serve as a symbol for improvement and change, and thereby increase fan support, which can lead to increased ticket and apparel sales.[156] The connections that exist between a team, its branded products, and its services are, at their core, emotional.[157] These emotional connections are meaningful and have been proven to result in better business performance—customers or fans that are more fully engaged with the team and what it stands for are far more valuable than those who are barely engaged at all.[158] It is true that there are fans and customers that have an emotional connection to a team regardless of its efforts to be socially and ethically responsible; therefore, a team would increase its chances of making emotional connections with another body of potential customers that do not yet share that meaningful emotional connection with a team but do care about combating climate change.

GREENSPORTS.ORG, http://www.greensports.org/mlb/Angels/generalDialogues.php (last visited Mar. 15, 2009).

154. For example, Citigroup contemplated backing out of its naming rights deal with the New York Mets, because of its recent financial troubles and subsequent government bailout. Amanda Terkel, *Citigroup May Back Out of $400 Million Deal With the Mets*, THINKPROGRESS.ORG, Feb. 3, 2009, http://thinkprogress.org/2009/02/03/citigroup-mets/.

155. Corporations have begun to realize the value in supporting "greening" efforts as a way of increasing the value of their brand and thereby increasing revenues. *See* William Sarni, *Green Practices*, VENTURE MAG., Oct. 17, 2007, *available at* http://www.venture-magazine.com/index.php?option=com_content&task=view&id=439&Itemid=89 (discussing GE, Toyota, and Wal-Mart's efforts to "go green" and the increased revenues and sales as a result of those efforts).

156. *See generally* William J. McEwen, *Making Market Segmentation Meaningful* in THE BEST OF THE GALLUP MANAGEMENT JOURNAL 2001-2007, at 136-38 (Geoffrey Brewer & Barb Sanford eds., 2007).

157. *Id.* at 137.

158. *Id.*

In a recent poll conducted by the Yale Project on Climate Change, fifty-one percent of the U.S. adult population said that they were either alarmed or concerned about climate change.[159] According to a Yale University, Gallup, ClearVision Institute Poll, seventy-one percent of the American public is persuaded that global warming is happening, and forty-eight percent believe that global warming is already having dangerous impacts on people.[160] This connection to climate change has become a consumer trend that deeply impacts businesses.[161] For example, fifty-three percent of global consumers prefer to purchase products and services from a company with a strong environmetnal reputation, and nearly nine in ten Americans say they are more likely to buy from companies that are committed to environmentally friendly practices.[162] These sorts of figures have caused businesses to see climate change remediation as a sound business opportunity.[163] Therefore, by building green sports facilities, teams and cities not only have an opportunity to improve city infrastructure and create green jobs, but also to increase revenues by embracing this consumer trend.[164]

VIII. CONCLUSION

Continued public subsidization of sports facilities ensures that teams play in the biggest and best sports facilities, but not necessarily the "greenest." As renovations and construction continue, teams and cities should build green sports facilities that are sustainable, efficient, and ensure the greatest return on multi-million dollar investments. Teams and facility developers could choose to implement these measures on their own, but there is no doubt that the implementation of green-building policies would expedite this transition and provide the necessary framework for the future. Sports facilities should be built and upgraded with locally sourced building materials and should install renewable energy technologies and automated control systems to increase energy efficiency. This is especially important in today's economic climate,

159. *Alarmed and Concerned: Survey Looks at How Americans Engage With Global Warming*, SCIENCEPROGRESS.ORG, http://www.scienceprogress.org/2009/05/alarmed-concerned/ (last visited July 23, 2009).

160. Anthony Leiserowitz, *American Opinions on Global Warming: Summary*, ENVIRONMENT.YALE.EDU, http://environment.yale.edu/news/5310 (last visited July 23, 2009).

161. Robert C. Illig, Essay, *Al Gore, Oprah, and Silicon Valley: Bringing Main Street and Corporate America into the Environmental Movement*, 23 J. ENVTL. L. & LITIG. 223, 230 (2008).

162. JOEL MAKOWER, STRATEGIES FOR THE GREEN ECONOMY 25-26 (2009).

163. Illig, *supra* note 161, at 230. Wal-Mart has embraced this new emotional connection to climate change and has worked to improve its carbon-footprint by developing its "Sustainability 360" campaign, which has increased revenue and enhanced overall brand value. *See* Sarni, *supra* note 155.

164. *See* Illig, *supra* note 161, at 231.

where states and cities are looking to improve ailing infrastructure and jumpstart their economies. Going green will increase local green jobs, and possibly increase fan and sponsorship support. Finally, team owners should take advantage of state and federal financial incentives and jump on this opportunity to not only build a sustainable facility, but to improve their team's city and the environment.

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