

# Stadium Financing and Franchise Relocation Act of 1999

Martin J. Greenberg  
*Marquette University Law School*

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### Repository Citation

Martin J. Greenberg, *Stadium Financing and Franchise Relocation Act of 1999*, 10 Marq. Sports L. J. 383 (2000)  
Available at: <http://scholarship.law.marquette.edu/sportslaw/vol10/iss2/12>

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# STADIUM FINANCING AND FRANCHISE RELOCATION ACT OF 1999

MARTIN J. GREENBERG\*

## I. INTRODUCTION

As we enter the new millennium, North America has experienced a “stadium mania,” a proliferation and boom in the construction and renovation of sports facilities. This period of growth has been caused by a combination of several factors:

- Accelerated physical and economic obsolescence of existing sports facilities;
- The transformation of stand alone sports facilities into centerpieces of larger development and entertainment complexes;
- The need for a “state-of-the-art” facility to remain economically competitive on the playing field; and
- The adoption by the rest of the world of the American style extended amenity type facilities.

Since 1990, there have been seventy-seven major league facility lease re-negotiations, modernizations, or newly constructed projects in professional football, baseball, basketball and hockey at an approximate cost of \$12 billion.<sup>1</sup> Since 1990, thirty-seven new stadiums and arenas, worth more than \$6.5 billion in construction costs, have opened.<sup>2</sup> By 1997, almost one-half of the country’s major professional sports franchises were either getting new or renovated facilities, or had requested them. There have also been seventy minor league stadiums completed in this decade along with twelve major auto race track facility expansions or renovations, thirty new convention centers, and over \$3.3 trillion of general infrastructure development.<sup>3</sup> In 1999, twenty-eight new college and professional stadiums and arenas opened, and thirty-nine more new

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\* Martin J. Greenberg is a Milwaukee sports and real estate lawyer and Chairman of the Board of Stadium Game Management Group, LLC. He has written *The Stadium Game*, *Sports Law Practice*, and *Sport\$Biz*.

1. See *Stadium Financing and Franchise Relocation Act of 1999: Hearings on S. 952 Before the U.S. Senate Comm. on the Judiciary*, 106<sup>th</sup> Congress (1999) [hereinafter *Hearings*] (testimony of Richard Horrow, Pres. Horrow Sports Ventures), available in 1999 WL 41677 (F.D.C.H.).

2. See Eric Mitchell, *Major League Building Boom Near End?*, *SPORTS BUS. J.*, June 28, 1999, at 1.

3. See *Hearings*, *supra* note 1, (testimony of Horrow).

openings will occur in the year 2000, at a total cost of \$7.4 billion. "From 1999 to 2001, colleges and universities will complete 21 projects costing more than \$884 million."<sup>4</sup>

Sports facilities have become centerpieces of larger and more technologically sophisticated entertainment megaplexes. Thus, the venue owner and the local government development agencies' desire to provide the maximum number of entertainment outlets and thus, opportunities for revenue, all within the venue of the local professional team.

Because of expansion and the capabilities of entertainment technology, each new venue raises the standard by which the phrase "state-of-the-art" is measured. Venues, which in some cases are no older than ten to fifteen years and are currently functional, substantially modern, and aesthetically pleasing, have suddenly become outdated and obsolete in comparison to the facilities being built in neighboring jurisdictions. This accelerated obsolescence is at the heart of the battles which rage between team owners, communities and fans. Consequently, the need for new and more sophisticated facilities is a never-ending process. In order to remain economically viable, compete on a level playing field, and remain within a community, each team requires a state-of-the-art facility. These facilities must include luxury suites; club or preferred seating; stadium club or restaurants; signage; expanded merchandising or novelty shops; wider varieties of concession stands; on-site parking; permanent or personal seat licenses (PSLs); corporate name and other sponsorship relations; auxiliary development; and a totally consumer friendly environment. Today's sports venue is not just a sports facility, it is a destination place where sporting events are integrated with a retail and entertainment experience.

## II. PUBLIC FINANCIAL ASSISTANCE

As a result of this demand for new state-of-the-art facilities and the desire of keeping the team at home, communities around the United States have provided substantial public financial assistance in supporting facility construction. This phenomenon has been referred to as "the municipal franchise fee" (i.e., the cost of retaining and keeping the franchise at home). The relationship, direct or indirect, between facility financing and regional economic growth, community development and job creation, has led to direct participation by all three levels of government; city, county and state. In order to support a new state-of-

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4. Mitchell, *supra* note 2, at 45.

the-art facility, the public has been asked to participate either through tax abatement, hotel/bed accommodation tax and other tourist taxes; assessments on car rentals; alcohol/beverage and tobacco taxes; food/restaurant tax; lottery proceeds; sales and use tax increases; ticket surcharges; real property taxes; the general fund; tax exempt bonds; or special assessment districts (economic development zones), to name a few.

Richard Horrow, Facility Development Consultant for the National Football League, and an expert on public/private partnerships, has stated that public/private facility partnerships are characterized by a number of elements:

First, the facilities are designed with as much flexibility for as many different types of events as architecturally and aesthetically possible. Second, negotiations with anchor tenants have included at least the long-term lease commitment parallel to the length of the financing, coupled with an appropriate allocation of risks and rewards based on predictable revenue streams such as PSLs, skyboxes, club seats, naming rights, and the like. Third, facility development initiatives have attempted to "bundle" as many infrastructure needs as possible in respective comprehensive initiatives. Fourth, facility financing structures have involved the private business sector, coupled with multi-level governmental cooperation from the city, county, and state. Fifth, the public financing components have primarily focused on bonds supported by multiple public tourists and user-oriented revenue streams directly and indirectly linked to economic development, job creation, and long-term community growth.<sup>5</sup>

What follows is the percentage of private vs. public funds that have been used to build facilities during the 1990s.

<u>Facilities Built</u>	<u>Public</u>	<u>Private</u>
NFL	73	27
MLB	80	20
NBA/NHL	27	73
NBA only	55	45
NHL only	74	26 <sup>6</sup>

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5. *Hearings, supra* note 1, (testimony of Horrow).

6. Malcolm Gable, *Evaluating the Economic Benefits of New Stadiums and Arenas: Trends & Statistics*, Presentation at the First Annual Sports Finance Forum (May 24-25, 1999).

What follows is a chart which identifies stadiums and arenas recently or soon to be built and the estimated percentage of the cost of the facility paid by taxpayers.

City	Team	League	Est. Total in Millions	Est. Public Cost in Millions	% Paid by Taxpayers
Seattle	Mariners	MLB	498.00	372.00	74.70
Nashville	Titans	NFL	292.00	227.00	77.70
Cleveland	Browns	NFL	282.50	203.50	72.00
Denver	Broncos	NFL	360.00	270.00	75.00
Pittsburgh	Pirates	MLB	228.00	188.00	82.50
Pittsburgh	Steelers	NFL	233.00	157.40	67.70
Cincinnati	Bengals	NFL	404.00	404.00	100.00
Houston	Astros	MLB	266.00	181.90	68.40
Milwaukee	Brewers	MLB	322.00	232.00	72.00
San Francisco	Giants	MLB	306.00	26.00	8.50
Atlanta	Hawks/Thrashers	NBA/NHL	213.50	140.00	65.70
Columbus	Blue Jackets	NHL	150.00	0	0
Minnesota	Wild	NHL	130.00	95.00	73.10
Raleigh	Hurricanes	NHL	158.00	138.00	87.30
Dallas	Mavericks/Stars	NBA/NHL	300.00	125.00	41.70
Indiana	Pacers	NBA	175.00	175.00	100.00
Los Angeles	Kings/Lakers & Clippers	NHL/NBA	350.00	12.00	3.40
Miami	Heat	NBA	228.00	178.00	78.10
Colorado	Avalanche	NHL	165.00	8.85	5.40
Detroit	Tigers	MLB	295.00	115.00	39.00
<b>TOTALS</b>			<b>5,355.75</b>	<b>3,248.65</b>	<b>60.7<sup>7</sup></b>

Approximately \$14.7 billion in government subsidies has found its way into facilities for Major League Baseball (MLB), the National Football League (NFL), the National Basketball Association (NBA), and the National Hockey League (NHL), including more than \$5.2 billion since the year 1989.<sup>8</sup>

7. Eric Mitchell & Bill King, *Leagues Spurn Congressional Reigns on Stadium Financing*, SPORTS BUS. J., May 10-16, 1999, at 5.

8. See Raymond J. Keating, *Sports Pork: The Costly Relationship Between Major League Sports and Government*, POL'Y ANALYSIS, Apr. 5, 1999, at 1, 1.

These numbers (all in 1997 dollars) exclude the billion of dollars in subsidies provided through the use of tax-free municipal bonds; interest paid on debt; lost property and other tax revenues not paid on facilities; taxpayer dollars being placed at risk of being lost if the venture failed; direct government grants to teams, and the billions of dollars spent by taxpayers on minor league facilities<sup>9</sup>.

### III. STADIUM DEBATE

As a result of taxpayer participation, the 90s were an era characterized by the stadium debate. The stadium debate usually involves a community's analysis of whether tax dollars and public participation should be a part of the sports facility construction and financing process, and whether the economic results justify the expenditures. The proponents of public participation take a firm stance that the facility and surrounding developments have the desired economic impact on a municipality (such as the Cleveland-Gateway project; the RCA Dome; and Camden Yards, to name a few) and that the facility brings unmeasured media identification and credibility to the community. Sports facilities are a critical component of a community and cultural infrastructure. They benefit a city's image and quality of life; create civic pride; can be used for a multitude of diverse events; and thus, are similar to such community assets as parks, zoos and libraries.

[W]hile more difficult to quantify, many community and political leaders have advocated a sports franchise and facility as a critical component of image enhancement and community pride. In its May, 1997 report, the Economic Analysis Corporation provided a perspective on the 1996 Congressional Research Service study on facility development. It concluded the following:

Sports teams provide valuable consumption benefits to a local community. Three benefits include the ability of local residents to follow and enjoy a home team, an increase in community spirit, and a potential means to draw people to downtown areas. In many respects, local government support of new stadium construction is similar to local government subsidization of other valuable local consumption activities, such as concert halls, zoos, parks, and golf courses. . . . Sports teams are a unique type of consumption good in that they provide substantial benefits to many local citizens who do not attend the team's games. These citizens in the local community receive valuable consumption

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9. *Id.*

benefits merely from the presence of a professional sports team. Since these citizens cannot be charged directly by the team for the benefits they receive, there is a stronger economic rationale for local government subsidization of professional sports team than for most other publicly subsidized consumption activity.<sup>10</sup>

"In fact, the Florida Supreme Court described the public benefits of stadium facility construction in *Poe vs. Hillsborough County*, . . . (the 1997 case validating the bonds to construct Raymond James Stadium in Tampa).<sup>11</sup> The Court found: "that the Buccaneers instill civic pride and camaraderie into the community and that the Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens."<sup>12</sup>

However, a group of economists and politicians harshly disagree. They contend that sporting facilities, financed largely with public dollars (the "sports pork"), are nothing more than a form of public subsidy to benefit private owners and players.<sup>13</sup> Those opposed to public funding maintain that public money is converted to private profit and that governmental units throughout the country are mortgaging their future to the sports industry. They believe publicly financed sports facilities overplay the actual bottom line and economic impact of the dollar flow to the community ("stadium proponents almost always overstate the effectiveness of a stadium as an economic development engine"<sup>14</sup>), and that most facilities simply represent a transference of dollars from one entertainment source to another.<sup>15</sup> They claim that new facilities do not pay for themselves, nor do they act as an economic engine.<sup>16</sup> The naysayers believe that sports facilities result in the generation of annual benefits that are less than the taxpayers actual cost to create and maintain the facility. For instance, it is claimed by one tax economist that while the annual benefits generated at Orioles Park at Camden Yards is \$3 million; the annual cost to Maryland taxpayers is \$14 million.<sup>17</sup> Some economists believe that a new stadium is at best a short and not farsighted solution

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10. *Hearings, supra* note 1, (testimony of Horrow).

11. *Id.* (citing 695 So. 2d 672 (Fla. 1997)).

12. *Id.* (quoting *Poe*, 695 So. 2d at 678-79).

13. See Keating, *supra* note 8, at 17.

14. Dennis Zimmerman, *Taxpayers Need to Carefully Weigh the Benefits, Costs*, SPORTS BUS. J., Apr. 27-May3, 1998, at 35.

15. See Keating, *supra* note 8, at 18.

16. See *Id.* at 17.

17. See Zimmerman, *supra* note 14, at 35.

to a team's competitive advantage and financial distress.<sup>18</sup> "The new stadium effect diminishes over time, as the novelty wears off and fewer fans attend games."<sup>19</sup>

Thomas M. Finneran, Speaker of the Massachusetts House of Representatives, testified before the Senate Judiciary Committee with respect to the Stadium Financing and Franchise Relocation Act of 1999. His statement reflects politicians' position with respect to publicly financed sports facilities. Speaker Finneran commenced his presentation as follows: "I must respectfully take exception to the legislation's encouragement of taxpayer money actually being used for ballpark and stadium construction. This provision puts the local government in hock and in harness for up to one-third of the cost of stadium construction. Such a result is troubling."<sup>20</sup>

Speaker Finneran goes on to indicate that:

In Massachusetts we have declared that the only appropriate use of taxpayer money is for infrastructure improvements. This includes the cost of roads, bridges, sewer pipes and traffic controls that have a definitive "public purpose" to promote and enhance public access, public safety, and public health. There is no state taxpayer money for "brick or mortar" to build a new ballpark or stadium. There is no state taxpayer money to purchase land or engage in any creative land-swap or leaseback scheme. In Massachusetts, we recognize that infrastructure improvements, which carry a valid "public purpose" are appropriate public expenditures.

Many leagues talk of public-private partnerships between the professional sports team and the host municipality. To date, such relationships have consisted of the municipality, assuming the burdens of expensive, long-term debt while receiving no stake in the exponential increase of the value of the team with whom they are a "partner." These sports teams are extremely profitable private business enterprises. They enjoy astronomical revenues. You are all aware of the current National Football League television contract that yields that league 17.6 billion dollars over 8 years. When any business negotiates such a private transfer of private wealth, there is no public injury. However, there should be no confusion regarding franchise demands and expectations for public subsidies. Based upon that television contract, the National

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18. *See id.*

19. *Id.*

20. *Hearings, supra* note 1, (statement of Thomas M. Finneran, Speaker of the Mass. H.R.), available in 1999 WL 391223 (F.D.C.H.).

Football League could build every single team a brand-new \$300 million stadium and still share over 1 billion dollars a year for 8 years!

In Massachusetts, we rejected the notion that taxpayers are obligated to subsidize stadiums for professional sports franchises. The Massachusetts House of Representatives has consistently articulated a set of principles, which are as follows:

No public funds for any part of a stadium facility;

No public funds or subsidy for the team franchise;

No public funds for the purchase and lease-back of land for the benefit of the franchise;

No expectation that taxpayers should act as a no-cost or low-cost bank for private, for-profit businesses;

No recognition, acceptance, or embrace of "economic multiplier models" which attempt to justify public subsidies of private business arrangements;

An insistence that the leagues and member teams take full responsibility for their facility financing needs;

An insistence that any public funds be used solely for infrastructure needs which serve public access, public safety, and/or public health purposes;

An insistence that any infrastructure expenditure which primarily or exclusively benefits the individual franchise owners be accompanied by an annual revenue stream back to the taxpayers in order to help such an expenditure.<sup>21</sup>

Edith Prague, a State Senator from Connecticut, also appeared before the Senate Judiciary Committee with respect to the Stadium Financing and Franchise Relocation Act of 1999. She was there to discuss the proposed deal Connecticut made to owner Robert Kraft for the purpose of moving the New England Patriots to Hartford, Connecticut. This proposed deal has been described as "the richest, most egregious deal in the history of professional sports. A deal that would put the taxpayers of Connecticut in the most unenviable position of paying all the bills for 30 years, while Mr. Kraft reaped all the profits."<sup>22</sup> State Senator Prague described the deal as follows:

\$374 million for a stadium which when completed would be turned over to Mr. Kraft. It would be rent-free and tax-free. It

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21. *Id.*

22. *Hearings, supra* note 1, (statement of Edith Prague, St. S. Conn.), available in 1999 WL 20008766.

was a thirty-year commitment. The State of Connecticut would pay for preparing the site and building any needed infrastructure.

The stadium would have 150 luxury suites and 6,000 club seats. The luxury suites would sell for \$100,000 to \$125,000 and the club seats for \$5,000. The state guaranteed at first guaranteed [sic] \$17.5 million a year for 30 years toward any shortfall in sales. That figure was lowered to \$13 million, a reduction presented as a breakthrough in negotiations. The State would pay \$15 million for a practice facility for the Patriots. The State would provide 25,000 parking spaces, 5,000 adjoining the stadium, 1,000 within a mile and the rest within a reasonable distance. Mr. Kraft would pay \$70 million for a hotel attached to the Pavilion. He would be free at any time to sell the hotel and make millions in profit. The State would provide a Stadium Capital Replacement Costs Fund of \$115 million available over the 30-year period. The state would pay \$250,000 per year for insurance. The state would incur \$125,000 per year for agency expenses. The state would pay \$750,000 to move the Patriots to Hartford. At the end of 30 years, we would have paid an additional \$212 million in interest on the bonds. And the state did pay \$800,000 in legal fees to hammer out the deal.<sup>23</sup>

State Senator Prague also indicated:

All this while Hartford is the tenth poorest city in the United States of America, according to United States Department of Housing and Urban Development statistics - a city where 35.2 percent of the residents live in poverty. In our state of Connecticut, one out of every five children lives in poverty. We have the highest property taxes in the nation and the greatest bonded indebtedness. Eleven percent of our \$4.5 billion budget goes to debt service. In return for the "luxury" of having the Patriots come to Hartford, Mr. Kraft would receive:

All revenues from stadium operations, including all ticket sales and luxury seat sales, concessions - food and souvenirs - from all functions at the stadium except for University of Connecticut football games. The stadium would be owned and operated by Mr. Kraft and he would receive the revenues from the naming rights, television contracts, and the 5,000 parking spaces abutting the stadium.<sup>24</sup>

Whatever the proposed product, the thought of a renovated or newly constructed sports facility has tremendous political overtones. If the

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23. *Id.*

24. *Id.*

community refuses to pay the price, the owner may threaten re-location as a method of forcing a public subsidy. If the current community is unwilling to subsidize sports facilities, there are a number of other recipient communities that will pay the price. The City of St. Petersburg built a \$138 million baseball stadium in 1990 as a bargaining chip to convince either the Chicago White Sox or the San Francisco Giants to relocate.<sup>25</sup> Tampa Bay was finally awarded an expansion team in 1998. St. Louis taxpayers spent almost \$300 million on the TransWorld Dome to attract an NFL expansion team.<sup>26</sup> After St. Louis' bid for a team was turned down by the NFL, the stadium sat empty for nearly three years, until St. Louis was able to lure the Rams from Los Angeles by offering the team a deal it could not refuse. As a result, the 1990s have produced more re-locations of sports franchises than ever before, including four in the NHL and four in the NFL. League rules and the legal system, via the anti-trust and eminent domain route, have proved ineffective in keeping the team at home. Without a state-of-the-art facility, owners are sometimes forced to be backpackers and town skippers in order to maximize their leverage and profits in order to operate their teams.

Public financial participation has also resulted in asking the taxpayers for their consent. Although referendums since 1993 have passed twenty-three times and failed eight times (including most recently the Arizona Cardinals-Mesa Referendum), there is an ever growing resistance by taxpayers and communities to subsidize facilities with tax dollars, and the pendulum is now swinging to a more private-public participation formula.<sup>27</sup> In the end, public subsidies for facilities are all about politics.<sup>28</sup> One commentator has noted that "few politicians - conservative or liberal - can resist the impulse to spend tax dollars on sports. Maybe its the 'edifice complex', or the sheer enjoyment of cutting ribbons and sticking shovels in the ground."<sup>29</sup>

#### IV. SPORTS BROADCASTING ACT

In 1961, Congress enacted the Sports Broadcasting Act, which essentially exempted from anti-trust attack the right to pool or sell television

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25. See Keating, *supra* note 8, at 8.

26. See Angelo Bruscas, *Stadium Price in NFL Ballpark; Minus Allen's Share, Cost Seems Consistent*, SEATTLE POST-INTELLIGENCER, Dec. 11, 1996, at D1.

27. See Jeff Mayers, *Stadium Project Key to Winning, Packers Contend*, WIS. BUS. J., Dec. 19, 1999, at 1A.

28. See Keating, *supra* note 8, at 8.

29. *Id.*

rights.<sup>30</sup> As a result of the Sports Broadcasting Act, the anti-trust laws do not apply to the sale or transfer of all or any part of the rights of leagues or member clubs in the sponsored telecasting of games of football, baseball, basketball or hockey.<sup>31</sup> The Act expands the meaning of "sponsored telecasting" to include over the air cable and satellite transmissions of the games of that professional sport that are engaged in or conducted by member clubs.<sup>32</sup>

As a result of this exemption and also the popularity of the game, in 1998, the NFL signed, in total, \$17.6 billion in television contracts over eight years, averaging \$2.2 billion per year.

What follows is a chart that indicates the approximate increase in TV revenues for the NFL:

NFL	Total Package in Billions
1998-2005	17.600
1994-1997	4.388
1990-1993	3.600
1987-1989	1.404 <sup>33</sup>

Major League Baseball currently receives about \$425 million per year under its current television contracts. Paul Tagliabue, Commissioner of the NFL, has said that the original intent of the Sports Broadcasting Act was to benefit both the public and professional football.<sup>34</sup>

The 1961 Act was passed because Congress recognized that without it, many teams and their fans would be unable to make effective use of television. Under that Act, the NFL has created the most pro-consumer television plan in sports today. Every regular season and playoff game is televised on free over-the-air television. Even the League's Sunday night game televised nationally each week on the cable network ESPN, are shown on over-the-air stations in the home communities of the participating teams. The NFL has maintained this strong commitment to broadcast television even while it has grown from 12 teams in 1960 to 31 teams today and even though network television has experienced dra-

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30. See 15 U.S.C. § 1291 (1999).

31. See *id.*

32. See *id.*

33. Gable, *supra* note 6.

34. See *Hearings, supra* note 1, (testimony of Paul Tagliabue, Comm'r NFL), available in 1999 WL 41678 (F.D.C.H.).

matic changes as a result of competition from cable, satellite, and other options. No other professional league is today similarly committed to broadcast television.<sup>35</sup>

#### V. THE STADIUM FINANCING AND FRANCHISE RELOCATION ACT OF 1999

The Stadium Financing and Franchise Relocation Act of 1999 was introduced in the United States Senate on May 4, 1999.<sup>36</sup> The Act was introduced by Arlen Specter, Senator from the State of Pennsylvania. The Act can be summarized as follows:

1. The anti-trust exemptions for MLB and the NFL relative to the anti-trust exemption under the Sports Broadcasting Act, would continue only if the MLB and NFL established a special trust fund into which they would deposit an amount equal to ten percent of the amounts received under the joint agreements for the sale or transfer of rights for sponsored telecasting of games of that professional sport. The funds so deposited in trust would be used only for financing the construction or renovation of playing facilities from which games of the teams of each league would be televised;<sup>37</sup>
2. The NFL and MLB would be required to make available to a local government entity upon request from the amounts in the trust fund, assistance for the cost of construction or renovation of playing facilities to be used by a member club in that league, up to a maximum of one-half of that cost. This would apply only if the local government entity makes a commitment under a lease or other written agreement entered into between the member club and local government to provide funds in an amount equal to at least one-half of the amount of the funds to be provided for that purpose by the league. The amount so placed in the trust fund by the league shall be excluded from designation as defined gross revenues of the league or any other similar designation that describes revenues that are to be shared by the member clubs or the players of the league.<sup>38</sup>
3. Providing all of the above are met, an additional anti-trust exemption would be granted by which any league may deny a member club

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35. *Id.*

36. *See* S. 952, 106<sup>th</sup> Cong. (1999).

37. *See* 145 CONG. REC. S4673 (statement of S. Specter)

38. *See id.* at S4674.

the right to transfer their location of the franchise of that member club.<sup>39</sup>

In a nut shell, the proposed law requires football and baseball to assist local communities with TV revenues received in part as a result of the Sports Broadcasting Act relative to the construction and financing of new playing facilities for league clubs as a continuing condition to receiving the anti-trust exemption, permitting the pooling of TV rights.

In order to receive the anti-trust exemption, the proposed legislation obligates MLB and the NFL to agree to place ten percent of their network TV revenues into a trust fund to be used to help the financing, construction or renovation of facilities for use by their teams.<sup>40</sup> Such trust funds "will be excluded from the league's gross receipts which are distributed to clubs and players."<sup>41</sup>

Money from the trust fund will be provided to finance up to one-half the cost of a construction or renovation of ballparks and stadiums on a matching fund basis, conditioned upon the local government's agreement to provide at least one dollar of financing for every two dollars to be provided from the trust fund.

Thus, for example, if the cost of constructing a new stadium for the Philadelphia Eagles, or for the Pittsburgh Steelers, were \$280 million, the National Football League would be obligated to provide \$140 million to each such project, on condition that the city and state, combined, provided at least \$70 million.<sup>42</sup>

The proposed legislation will also enlarge the anti-trust exemption given the professional baseball, basketball football and hockey leagues to permit those leagues to deny a member club's request to move its franchise to a different city.

## VI. COMMENTARY

Senator Specter, in introducing the legislation, indicated that:

This legislation is necessary because baseball and football have for too long had a public-be-damned attitude. At the present time, major league sports is out of control and franchise moves for football teams and the demands upon cities and states for exorbitant construction costs is a form of legalized extortion . . . .<sup>43</sup>

Specter further stated that"

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39. *See id.*

40. *See id.*

41. *Id.*

42. *Id.*

43. *Id.*

One would think that some of that giant revenue windfall might trickle down and be used to help finance new ballparks and stadiums which produce greatly enhanced revenues for team owners, yet it seems the more TV money a league makes, the more its clubs demand from local taxpayers to fund the construction of new playing facilities. The irony of this is that none of these huge TV revenues would accrue to the clubs and their players if the leagues did not have the benefit of an anti-trust exemption permitting clubs to pool their TV rights.<sup>44</sup>

Specter also concludes that "the public funding and public price tag is significant "in a context where our schools are under funded, where our housing is in need of assistance, where we need funds for child assistance, [and] where we need funds for transition from welfare to work."<sup>45</sup>

Senator Specter's introduction of the Act could have been politically motivated and prompted by the fact that Pennsylvania is currently looking at construction of four new facilities for its major sports franchises.<sup>46</sup> In March of 1999, the Pennsylvania State Government approved an \$809 million package that provides tax money for four major league stadiums in Pittsburgh and Philadelphia.<sup>47</sup> Furthermore, "[d]uring 1999 and 2000, NFL and MLB teams will move into 11 new stadiums, costing \$3.5 billion, of which \$2.3 billion is public money."<sup>48</sup>

In June of 1999, the Senate Judiciary Committee held hearings relative to the proposed Act. Criticisms of the Act included:

1. The Act is unnecessary. The notion that teams or leagues are not contributing to the construction of facilities is false. The NFL maintains that it has contributed \$400 million to twenty-one projects in the 1990s.<sup>49</sup> "The NFL started a program in 1994 that used the visiting team's share of club seat revenue to offset stadium construction costs for the home team."<sup>50</sup> The NFL also recently "revised its By Laws so an owner could borrow 34 percent to 50 percent of a new stadium's cost."<sup>51</sup> On Wednesday, May 26, 1999, the NFL "committed more than \$200 million . . . as collateral for new stadi-

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44. *Id.*

45. *Id.*

46. *See id.*

47. *See Mitchell & King, supra note 7, at 5.*

48. *Id.*

49. *See id.*

50. *Id.*

51. *Id.*

ums in Philadelphia, Denver and Foxborough, Mass[achusetts].”<sup>52</sup> “The money is the first to be committed under a bylaw enacted in March 1999. The policy allows league backing of up to 50% of private financing used for stadiums in the top six markets, and 34% for those below that level.”<sup>53</sup> The NFL money is designed to permit owners to privately participate in the funding of stadiums by paying back the monies allocated from the NFL through the “40% club seating revenues that would go to the visiting teams.”<sup>54</sup>

2. Requiring ten percent of the revenue derived by broadcast agreements to fund stadiums would adversely affect small market teams.
3. The Act would impose a uniform Federal approach on stadium financing on what is so clearly a local issue.
4. The Act as written would retroactively apply to any stadium project not yet completed and would undo settled financial arrangements, many of which were specifically approved by voters.
5. The Act would have an adverse affect on existing collective bargaining arrangements. The Act would undermine the relationship between the league and their players, inappropriately inserts the federal government into the collective bargaining relationship and is an unprecedented intrusion by Congress into both an existing collective bargaining agreement between labor and management and a judicially approved and monitored settlement of anti-trust litigation.

Paul Tagliabue, Commissioner of the NFL, appeared before the Senate Judiciary Committee on Senate Bill 952 on June 22, 1999. Tagliabue indicated:

We believe that these provisions are unnecessary and would have negative, unintended effects; that the provisions unfairly ignore the very substantial contributions that NFL clubs make today toward stadium construction; that mandatory use of television revenues in this manner would unwisely decrease the amount of equally shared revenue received by each of the teams in the League and thereby threaten smaller market clubs; that the provisions improperly interfere with state and local decision making on sports facilities; and that they risk undoing what is currently the most successful labor partnership in professional sports.<sup>55</sup>

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52. *NFL to Help Fund New Stadiums*, MILWAUKEE, J.-SENTINEL, May 27, 1999, at 4.

53. *Id.*

54. Steve Hershey, *Stadium Funding OK'd*, USA TODAY, May 27, 1999, at 9C.

55. *Hearings, supra* note 1, (testimony of Tagliabue).

The Stadium Financing and Franchise Relocation Act of 1999 is another Congressional attempt to address the problem of franchise relocation and public support of facilities. The last scurry of congressional legislation focusing on these issues occurred in 1995 and 1996, when the following Acts were introduced:

1. Fans Rights Act<sup>56</sup>
2. Fan Freedom and Community Protection Act<sup>57</sup>
3. Team Relocation Taxpayer Protection Act<sup>58</sup>
4. Professional Sports Antitrust Clarification Act<sup>59</sup>
5. Sports Antitrust Reform Act also known as the Professional Sports Protection Act<sup>60</sup>
6. Stop Tax-Exempt Arena Debt Issuance Act<sup>61</sup>

These Acts focused upon antitrust immunity; franchise movement; relocation; reparations for cities who lost a moving franchise; and denial of tax-exempt status to stadium and arena bonds.

## VII. CONCLUSION

The NFL and MLB will not sit on the sidelines with respect to the Stadium Financing and Franchise Relocation Act of 1999. The sports lobby will actively work to oppose the Specter legislation. Its chances of passage, like many of its predecessor Acts, are slim. The Specter Act, like many of its predecessors, once again brings into the forefront the issue of public subsidies for sports facilities. As one commentator has stated:

Unfortunately, it does not look as if the sports subsidies game will be ending any time soon. No political party is leading a charge to 'end sports welfare as we know it.' Instead, the sports pork game promises to be played out, city by city, year after year, with the underdog taxpayer activists pitted against high-powered extortionists.<sup>62</sup>

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56. See H.R. 2699, 104<sup>th</sup> Cong. (1995).

57. See H.R. 2740, 104<sup>th</sup> Cong. (1995).

58. See S. 1529, 104<sup>th</sup> Cong. (1996).

59. See S. 1699, 104<sup>th</sup> Cong. (1996).

60. See S. 1767, 104<sup>th</sup> Cong. (1996).

61. See S. 1767, 104<sup>th</sup> Cong. (1996). "STADIA" as this Act has been called, has been reintroduced in both the House and the Senate, and would amend Section 141 of the Internal Revenue Code to provide that bonds issued to finance professional sports facilities would be considered as private activity bonds and the interest on such bonds would not enjoy tax exempt status.

62. Keating, *supra* note 8, at 25.

What the debate does point to is the underlying issue, and that is how the government gets out of the sports subsidy business. Suggestions have included: government or community ownership of teams; employing direct democracy through referendums; extending the anti-trust exemption to other leagues; eliminating the federal tax break on financing sports facilities; or generating a constitutional amendment prohibiting corporate sports welfare.

What the debate has produced is a much more critical look at the way public taxpayer dollars are spent in the sports arena, and the need for a new and creative way to truly make the equation a more private-public partnership.

