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Article

STADIUM FINANCING: WHERE WE ARE, HOW WE GOT HERE, AND WHERE WE ARE GOING

FRANK A. MAYER, III*

I. INTRODUCTION

In recent years, cities and private investors have constructed new sports stadiums across the country in record numbers. Since the year 2000, local governments and investors have combined to build twenty-one new stadiums for the National Football League ("NFL"), National Basketball Association ("NBA"), Major League Baseball ("MLB"), and National Hockey Association ("NHL").¹ Several analysts argue that the rapid changes in design and available amenities over the last decade have rendered any stadium over ten years old economically obsolete.²

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1. These stadiums include: Paul Brown Stadium, Cincinnati (2000); Nationwide Arena, Columbus (2000); Commercial Park, Detroit (2000); Enron Field, Houston (2000); Minute Maid Park, Houston (2000); Pacific Bell Park, San Francisco (2000); Xcel Arena, St. Paul (2000); American Airlines Arena, Dallas (2001); Invesco Stadium at Mile High, Denver (2001); Miller Park, Milwaukee (2001); Heinz Field, Pittsburgh (2001); PNC Park, Pittsburgh (2001); Ford Field, Detroit (2002); Gillette Stadium, Foxborough (2002); Reliant Stadium, Houston (2002); SBC Arena, San Antonio (2002); Seahawks Stadium, Seattle (2002); Great American Ballpark, Cleveland (2003); Lincoln Financial Field, Philadelphia (2003); Citizens Bank Park, Philadelphia (2004); Petco Park, San Diego (2004). List compiled by and on file with author.

By the year 2009, the New York Jets hope to continue this trend with their plan to build a new stadium on Manhattan’s West Side. The stadium’s goal is to generate record-breaking revenue streams through naming rights, corporate sponsorships, suite sales, and club-seat sales. While the organization anticipates receiving substantial profits from the new stadium, it still must figure out a way to finance the estimated $1.4 billion cost. To this end, the organization is currently negotiating with several private lending institutions, including Salomon Smith Barney and Lehman Brothers, in order to borrow $600 million to fund the new stadium. City and state officials have pledged another $600 million, leaving the team to cover the remaining $200 million. No one has ever attempted a financing plan on this scale in the history of stadium construction.

The cost, however, may be even higher than $1.4 billion in the end due to the bidding war that erupted between the Jets and the owner of Madison Square Garden (Cablevision) over the land upon which the Jets propose to build the stadium. In order to secure the land, the Jets were forced to raise their initial offer from $100 million to $720 million. The team’s demands on New York City and its fans to fund the stadium and the possible ramifications such financial support might have on the community have brought the debate over public financing of a sports stadium to the forefront.

Since the nineteenth century, stadiums have been built with complete public financing, complete private funding, or more typically, by some combination of both private and public money.
While municipal governments' decisions to fund these projects have always been questioned, people did not begin to raise serious arguments over the use of public money to support construction of sports stadiums until the 1960s. These arguments prompted the federal government to push local governments to increase the private funding used in these ventures. New York's plan of mixed private and public funding for stadium development represents the modern approach to financing a new sports stadium.

Even with these changes to stadium financing, many critics still argue against the use of public money to build stadiums, because they assert that stadiums will not benefit the community as a whole. The purpose of this Article is to compare the arguments for and against public and private financing. The Article establishes that while the critiques of public financing have merit, private financing is also problematic. The Article's goal is to demonstrate that while neither structure alone presents a feasible option, the combination of the two provides a potentially workable solution.

To develop this argument, Section II discusses the causes of the recent boom in construction of new stadiums. Section III provides a brief history of the development of financing for stadiums since the nineteenth century. Section IV examines the benefits and sacrifices associated with both public and private financing mechanisms. Section V expands on the major pitfalls of private financing through a case study of Oregon Arena Corporation's recent bankruptcy declaration. Finally, Section VI argues that the current system of mixing public and private financing should remain intact.

II. RATIONALE FOR THE INCREASE IN STADIUM CONSTRUCTION

Stadium owners and municipal governments are often willing to risk upsetting certain members of the public by building new stadiums because of the possible revenues a new sports stadium can


14. The Revenue and Expenditure Control Act of 1968, the Deficit Reduction Act of 1984, and 1986 Tax Reform Act all served to reduce the ability of the local government to provide tax-exempt bond funding for public facilities. See id. at 176 (noting 1986 Tax Code is pivotal legislation).

15. See Greenberg, supra note 12, at 150-51 (discussing different eras of stadium financing).

produce. Numerous factors account for the increased revenues a new stadium can generate, however, the majority of the increase in revenues are realized through improved stadium revenue-producing engines. Another typical reason for construction is the pressure teams can place on a city to build a new stadium, either by citing the need for a single sport complex or threatening to move to a new location.

A. Stadium Revenue-Generating Engines

Numerous amenities inside new stadiums produce income for the team and facility owner. With each new stadium that is built, designers develop new methods for generating income, often transforming every facet of the building into a revenue producer. The increased income that teams reap from new revenue generating concepts provides the incentive for stadium and team owners to lobby for new stadiums that contain these most recent generators. These revenue generators have become particularly important for teams in smaller markets in leagues that do not share revenue. Without highly developed revenue generators, these “small market” teams are unable to compete financially with teams that receive more lucrative media contracts. Several of these revenue producers are discussed below.

1. Advertising

While advertising has been a part of professional sports for a long time, new technology and creative ad placements have taken the relationship between the two to a higher level. As sports teams increase the percentage of advertising revenue they retain,

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17. See id. at 588 (noting sports and entertainment is fastest growing industry).
19. See id. at 145-46 (discussing threat of moving teams to urban locations and stressing need for single sport complex).
20. See Greenberg, supra note 12, at 271 (listing new and old revenue producers).
21. See id. at 271, 299 (noting naming rights as most lucrative revenue producer).
22. See id. at 334 (discussing how advertising is exempt from league revenue sharing in NFL, thus making it very profitable, especially considering advertising can generate up to six million dollars in annual revenue).
23. See id. at 334-35 (recognizing demand for advertising).
the incentive to increase advertising grows. The ability to increase these profit streams can have a huge impact on the decision to build a new stadium. New stadiums typically contain many different opportunities for advertising, several of which are discussed below.

The first kind of advertisement is signage. Signage is the generic term used to describe any posters or placards placed around the stadium. New stadiums use technology to maximize the returns on such signage. For example, stadiums now contain Dorna Boards, which allow stadiums to place long signs that rotate advertisements. Each board can hold approximately twenty-eight separate advertisements. Other technological improvements in signage include Adsleeves, which cover entryway turn-styles, Glow-Benches, which are rotating advertisements on the back of the benches in stadiums, and “Stall Tactics,” which are advertisements inside of bathroom stalls. These signs can cost advertisers between several thousand and several hundred thousand dollars per sign depending on the amount of camera time or fan viewing the sign will receive.

Sponsorship provides another common form of popular advertising. In a sponsorship deal, “a sponsor may obtain the right to display its name or logo on team uniforms or other clothing, name a stadium or arena, or offer promotions, like fan contests held as part of a game.” While these packages vary in construction, they can add millions of dollars each year to revenues produced by the stadium.

24. See id. (describing numerous revenue producers of advertising industry).
25. See Greenberg, supra note 12, at 334 (describing how two professional sports teams, Washington Wizards and Washington Redskins, experienced tremendous increases in advertising revenues). The NBA’s Washington Wizards saw a 100 percent increase in their advertising returns when they built a new stadium, and the NFL’s Washington Redskins were able to increase their advertising revenue from around $250,000 to between $6 and $8 million. Id.
26. See id. at 337 (explaining innovative ways to display signs and get them in front of as many consumers as possible).
27. See id. (noting Dorna Boards as most prevalent in basketball games).
28. See id. (“Each 80-foot-long Dorna Board can rotate as many as 28 separate advertisements through the same space during the game.”).
29. See id. (illustrating various cost-effective methods of advertising).
30. See Greenberg, supra note 12, at 335 (explaining how return on advertising depends on camera time).
31. Id. at 338.
32. See id. at 340 (stating how sponsorship agreements at San Francisco’s Pacific Bell Park total over $60 million).
Stadium pouring rights and virtual advertising are two additional, smaller sources of revenue for a stadium. Stadium pouring rights grant a beverage company exclusive rights to sell its beverages in the team's home stadium. Presently, Coca-Cola Co. has a dominant share of the pouring rights for stadiums in the four major sports. Virtual advertising uses "computer-generated ads electronically placed on otherwise blank walls, fences and playing surfaces" that can only be seen by TV viewers. This type of advertisement has advantages over other forms because it maximizes limited space by changing every few minutes and can be transmitted simultaneously into different countries appearing in each country's native language.

2. Naming Rights

Stadium naming rights first appeared in 1987 when the Los Angeles Forum was renamed the Great Western Forum. Since that time, naming rights have become one of the most lucrative revenue generating aspects of a new stadium. The NFL Houston Texans currently have the largest naming deal in their partnership with Reliant Energy Inc., which will generate $300 million over the next thirty years. Today, many naming right agreements go beyond the name of the stadium itself. Certain packages also include the naming rights to the entryways, the field, or the breezeways. Other types of packages may include partial team ownership.

33. See id. at 342 (claiming pouring rights are new but evolving into one of professional sports' most competitive markets).
34. See id. at 343 (noting Coke has pouring rights for 22 MLB teams, 24 NFL teams, 24 NBA teams, and 21 NHL teams).
35. GREENBERG, supra note 12, at 344.
36. See id. (explaining how Japanese viewers see advertisements in Japanese while, simultaneously, American viewers see same ads in English).
37. See id. at 299 (describing while other stadiums had been named after geographic regions, renowned individuals, or home teams, Great Western Forum was first to be named after a corporation itself, and thus began new era of corporate sponsorship).
38. See id. (stating naming rights have become most lucrative revenue generator).
39. See id. at 303 (describing Houston Texans' naming deal).
40. See GREENBERG, supra note 12, at 299 (demonstrating how NFL Cleveland Browns decided only to sell naming rights to auxiliary areas, including two stadium portals).
41. See id. at 310 (showing how Adolph Coors Brewing Company received naming rights, signage rights, and ownership stake in franchise as part of its deal with Colorado Rockies).
agreement to use naming revenue to pay off financing for the stadium,\textsuperscript{42} or as a part of a larger sponsorship agreement.\textsuperscript{43}

The cost of naming rights depends on a number of factors. The leading factor is the presence of an established sports franchise, without which most investors would lose interest in the stadium.\textsuperscript{44} Corporate sponsors also consider the total number of major events the stadium will host in a given year, including sporting events and any other special events that the stadium may attract.\textsuperscript{45} A third factor that contributes to the price of a naming deal involves the number of corporations located in the general vicinity of the proposed site of the facility.\textsuperscript{46} Once the naming right terms are established, the proceeds from the deal are often divided between the team and the facility owner.\textsuperscript{47}

3. Club Seats

Club seats generally are defined as sections of individual stadium seating which may contain enhanced amenities, including extra-wide and comfortable seats, exclusive lounges, and wait staff to handle section concessionary needs.\textsuperscript{48} The Miami Dolphins were the first to use club seating to increase a stadium’s income.\textsuperscript{49} Since that time, club seats have become increasingly popular, growing by over 500\% since the early 1990s.\textsuperscript{50} By the year 2000, prices for individual season club seats ranged from slightly under $1,000 to approximately $15,000, depending both on the sport and the stadium.\textsuperscript{51}

\textsuperscript{42} See id. (stating Fleet Financial Services received naming rights for home of NHL Boston Bruins and NBA Boston Celtics by reducing borrowing amount necessary to build stadium).

\textsuperscript{43} See id. at 309 (noting Phillips and Time Warner received naming rights as well as opportunity to develop entire media system of Phillips Arena in Atlanta).

\textsuperscript{44} See id. at 313-14 (explaining how investors would lose interest in stadium).

\textsuperscript{45} Events such as the Superbowl, NCAA Final Four, or other major tourist attractions that increase the visibility of the corporation increase the amount of money the corporation is willing to spend in sponsoring the stadium. See Greenberg, supra note 12, at 314.

\textsuperscript{46} See id. (explaining how increasing corporate entities in particular vicinity would increase probability of selling naming rights).

\textsuperscript{47} See infra notes 53-56 and accompanying text (describing details and options for dividing club seat revenues).

\textsuperscript{48} See Greenberg, supra note 12, at 271 (illustrating amenities received by club seat patrons).

\textsuperscript{49} See id. (describing former Miami Dolphins owner, Joe Robbie, as pioneer/inventor of club seating).

\textsuperscript{50} See id. (noting growth of club seats has produced “a significant and steady revenue stream for the four major league professional sports teams”).

\textsuperscript{51} See id. at 274 (listing prices of club seats for major league teams). The NFL Tennessee Titans’ club seats sell for $750 - $2,495 per season, while the NBA
Today, stadium owners use anticipated revenues generated by club seats to guarantee loans, bonds, or any other financing method they employ to build a new facility. Once the stadium is constructed, the club seat profits are divided between the team and arena owner in a number of different ways. Possible divisions for club seat revenue include a flat percentage provision, a scaled percentage-based sharing scheme, a flat fee to the lessor, or total retention by the team.

4. **Personal Seat Licenses**

Personal Seat Licenses ("PSLs") are fees paid by individuals to guarantee the individual a right to purchase season tickets in a specified location for a designated period of time. These license fees can range from $250 to $16,000 depending on the sport and team. Certain seat licenses apply only to the sport for which they were sold and not to any other special events that might take place in the stadium. Typically, PSLs have limitations on the transferability of the license and the economic benefit that can be received by selling the license.

PSLs help address one of the main criticisms of public financing for stadiums. Much of the debate over sports stadium financing has centered on the need to target more of the spending to those Los Angeles Lakers’ club seats sell for $12,995 - $15,000 per season and include admission to NBA Los Angeles Clippers and NHL Los Angeles Kings games. Id. at 271 (stating Robbie used club seats to secure facility’s finances).

For example, the NHL Anaheim Mighty Ducks’ lease agreement with the Oden Facility Management Corporation of Anaheim provides that the Mighty Ducks shall retain forty-five percent of the first $10 million, fifty percent of the next $10 million, and fifty percent of all remaining revenues produced from club seats. Id. at 277 (stating process involves stadium owners taking specific percentage of net proceeds from club seats). For example, the MLB Arizona Diamondbacks pay Maricopa County Sports District five percent of their gross proceeds from club seating. Id.

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who actually benefit from the stadium. Aside from luxury seating, there are very few ways to tap the users for more money. PSLs transfer cost to those who use the stadium most often. The NFL Carolina Panthers employed this theory in the construction of their new stadium. The Panthers' effective use of PSLs almost completely eliminated the need for random taxpayers to bear the stadium's cost.

5. **Luxury Suites**

Another form of revenue generating seating is the luxury suite. The use of luxury suites in sports stadiums began in the 1880s with the Chicago White Stockings. Since that time, suites have become the second largest revenue producers behind television contracts. By the year 2000, suites in the four major sports ranged from an average of $50,046 to $184,913 per season. The suite is leased for a specified period of time and allows the lessee to invite a particular number of guests to each game for the length of the contractual period. As with naming rights and club seating, luxury box proceeds are divided by using a number of different methods based on the team's specific circumstances.

6. **Concessions**

Concession rights are "rights transferred to a concessionaire for the sale and dispensing of food, snacks, refreshments, alcoholic and non-alcoholic beverage, merchandise, souvenirs, clothing, novelties, publications, and other articles in the stadium or arena, pursuant to a concession agreement." These agreements typically set

61. See id. at 295 (explaining fans' view of PSLs as way to become involved and get something in return for supporting their teams).

62. See id. at 293 (noting NFL's Carolina Panthers sold PSLs and luxury suites with signed contract for next six to ten years valued at $113 million before stadium opened).

63. See Greenberg, supra note 12, at 293 (stating seat license revenue covered majority of cost of stadium, leaving only $55 million for taxpayers).

64. See id. at 279 (describing first use of luxury suites in sports stadiums).

65. See id. (describing necessity of luxury suites for virtually all professional sports).

66. The NFL average low is $50,046, while the NBA average high is $184,913. Id. at 279-80.

67. See id. at 289 (describing possibilities offered to luxury suite owners and users).

68. See Greenberg, supra note 12, at 291-92 (listing methods of dividing proceeds from luxury suites as flat percentage-based sharing and scaled percentage). For a further discussion of naming right packages, see supra notes 38-41 and accompanying text.

69. Id. at 349.
up precise locations where the concessionaires may sell their products including stands, condiment areas, vending machines, clubs, or cafeterias.\textsuperscript{70} The facility owner’s profits from these agreements are usually based on a percentage of the sales of certain items rather than on a percentage of total sales.\textsuperscript{71} The remainder is either kept exclusively by the facility owner or split between the team and facility.\textsuperscript{72}

Another system used to address concessionaire revenue sharing is concession slotting.\textsuperscript{73} Under this system, the concessionaire is charged a one-time fee in exchange for a long-term contract to provide concessionary services to the stadium.\textsuperscript{74} Concession slotting is generally used to help defer stadium construction costs.\textsuperscript{75}

7. Parking Facilities

Sports stadiums generate a great deal of traffic. This creates opportunities to produce revenue through parking. On average, parking is the smallest revenue generator of any of the listed categories.\textsuperscript{76} Because owners of preexisting parking lots are allowed to keep all revenues from sporting events, the lessor and lessee are deprived of any benefit.\textsuperscript{77} To solve this perceived problem, many stadium owners have petitioned the city government to tax private lots that are directly benefiting from sports stadiums.\textsuperscript{78}

While parking receipts are not usually a major source of revenue for a stadium, it is often an area about which both the sports team and the stadium owners are amenable to negotiation.\textsuperscript{79} When the NFL’s Philadelphia Eagles and MLB’s Philadelphia Phillies left Veterans Stadium in 2003 and 2004 respectively, the City of Phila-

\textsuperscript{70} See id. (explaining concession agreements grant exclusive rights only in specific physical locations).

\textsuperscript{71} See id. (showing stadium owners take only 0-10\% from restaurants and 35-55\% commission from concessions).

\textsuperscript{72} See id. at 351 (illustrating allocation of concession revenues).

\textsuperscript{73} See Greenberg, supra note 12, at 351 (demonstrating another strategic effort lessors and lessees implement to increase concession revenues).

\textsuperscript{74} See id. (defining concession slotting).

\textsuperscript{75} See id. (explaining how concessionaires will contribute toward stadium construction costs in exchange for extended contracts).

\textsuperscript{76} See id. at 328 (stating parking revenues are smallest among stadiums’ main economic generators).

\textsuperscript{77} See id. (describing how parking lease concerns can be dealt with during negotiations).

\textsuperscript{78} See Greenberg, supra note 12, at 329 (detailing solutions for reclaiming parking revenues).

\textsuperscript{79} See id. (noting parking leases at first glance are not highly significant issues during negotiations).
delphia, as owner of the stadiums, renegotiated the terms of the parking and concession agreement with both teams.\textsuperscript{80} This agreement allows the teams, rather than the city, to control stadium parking and demonstrates how parking provisions are often the subject of negotiation and are used by a municipality to transfer revenue generators and assorted liabilities to a team.

B. Other Rationales for the Increase in Stadium Construction

While the aforementioned revenue producing engines are major catalysts in spurring the construction of new stadiums, owners sometimes join with cities to construct new stadiums for other reasons. Owners and cities come together to build new stadiums, for example, in response to pressure from sports teams that threaten to move to a new city or the need of a team to move from a multipurpose arena to a single sport facility.\textsuperscript{81} Either of these rationales can motivate a city or stadium investor to fund a new arena.

City residents often feel a strong connection with their local sports teams. This results in a general fear among politicians of public outcry associated with a team leaving a particular city.\textsuperscript{82} Sports franchises are a relatively rare commodity. The number of cities capable of hosting a team far outnumber the total number of professional teams. Because many team owners are not stadium owners, they are able to threaten to move to a different city if it appears as though this would provide greater financial opportunity.\textsuperscript{83} The prospect of increased revenue streams or appreciation in team value provides most owners with enough incentive to seriously consider a move.\textsuperscript{84}

\textsuperscript{80} See First Amendment to Lease Agreement, 2001, City of Philadelphia - Philadelphia Auth. for Indus. Dev., Section 2(j), 11 (adding Subsection 8.03(i)) (on file with author).

\textsuperscript{81} See Senkiewicz, supra note 16, at 595 (opining ideal situation would be to have rich owners pay for their own stadiums); see also Robinson, supra note 18, at 145-46 (describing factors which contribute to building new stadiums).

\textsuperscript{82} See Senkiewicz, supra note 16, at 595 (noting owners' bargaining leverage and how owners use public's demand for local sports teams to their advantage).

\textsuperscript{83} See Goodman, supra note 18, at 210 ("As long as the quantity of major league teams remains less than the quantity of cities believing they can support a team, cities will be pitted against each other in the business of franchise enticement.").

\textsuperscript{84} Because team owners receive a large percentage of the stadium generated income without any of the stadium related expenses, a new stadium and the increased revenue it generally provides increases the value of sports teams. See id. at 188 (commenting on franchise appreciation and how almost all of professional sport franchise owners gain profit through franchise appreciation).
This dilemma often forces the local or state government to either spend public funds building the new stadium in order to keep the team, or refuse, and risk losing the team to another city.\textsuperscript{85} The power of the team owner to arbitrarily move the team to a new location has grown over time.\textsuperscript{86} As this power grows, the team owners can apply more pressure on the cities.\textsuperscript{87} This has forced many politicians to feel obligated to spend public money on new stadiums or risk becoming known as the person who "lost" the local sports franchise.

The benefits of single sport stadiums to both stadium owners and patrons are another factor in the push to build new facilities. In the 1970s and 1980s, multi-purpose stadiums were built for purposes of practicality.\textsuperscript{88} Today, sports fans prefer the enhanced sight lines and stadium setup offered by single sport facilities over the practicality of having only one stadium.\textsuperscript{89} This preference translates into increased ticket prices to reflect the benefit of the better views and the overall enhancement of the experience.\textsuperscript{90} At the same time, team owners can focus on the emerging, and now vital, corporate clientele in the new single-purpose stadiums.\textsuperscript{91} Between the new revenue generators, the pressure from teams, and the need for more sport specific stadiums, public officials, stadium investors, and team owners have significant motivation to construct new arenas.

\textsuperscript{85} See Senkiewicz, supra note 16, at 595 (expressing how public demand and outcry for local sports teams can affect local government spending).

\textsuperscript{86} Originally, the individual sports leagues placed restrictions on team movement by requiring a supermajority of team owners to allow franchise relocation. The Ninth Circuit Court of Appeals, however, ruled that because the teams in the league were sufficiently independent from each other, the case warranted rule of reason analysis under antitrust law. Under a rule of reason analysis, the court found that a jury could have determined that the rule requiring a supermajority harmed competition among the teams. See L.A. Mem'l Coliseum Comm'n v. NFL, 726 F.2d 1381, 1397 (9th Cir. 1984) (granting teams much more leeway in their determinations to relocate).

\textsuperscript{87} See Goodman, supra note 13, at 210 (describing cities' position as "Prisoner's Dilemma" when attempting to hold or attract local sports team).

\textsuperscript{88} See Robinson, supra note 18, at 146 (reporting multi-purpose stadiums as most desirable during this time period).

\textsuperscript{89} See Goodman, supra note 13, at 184 ("The advent of the single-purpose stadium allows a football team to have an ideal 70,000-seat stadium, and a baseball team to seat an ideal 45,000 spectators.").

\textsuperscript{90} See id. (describing how single purpose stadiums translate optimal seating into higher revenues).

\textsuperscript{91} See Robinson, supra note 18, at 145-46 ("Proximity to this core clientele has become a new priority.").
III. BRIEF HISTORY OF STADIUM FINANCING

While the spike in sports stadium construction in the last decade has sparked the debate over public finance, the use of local debt to finance public facilities is not a new concept. The history of funding for local public facilities began in the early 1800s and expanded through the middle of the 1960s. During this one hundred and sixty-year period, stadiums were funded by a mixture of private and public funding. While private funding remained constant over the last two centuries, the history of municipal financing is much more complex and has undergone far more changes. This Section discusses the origins of general obligation bonds, their transformation into tax-free revenue bonds, and the eventual regulations placed on tax-exempt bonds by the federal government. The Section concludes with a review of the practical effect federal legislation had on actual construction financing.

A. Construction Funding Prior to Federal Legislation

Municipal financing of public facilities has involved a number of different financing options over time. In the past, general obligation bonds ("GO bonds") were the most commonly used instruments. The general taxing authority of the issuer paid these "full faith and credit" bonds, but were not tied to any specific assets. Once these bonds were issued, the government would repay them through local tax increases. The use of government issued debt in the form of GO bonds began in an attempt to support canal building in the early 1800s, but did not become popular until the railroad boom later that century. Local government officials used bond financing to build railroad stations in their hometowns to ensure that the railroads would not bypass their communities. The bonds' speculative nature resulted in much lower returns to the community than if the government had invested the money in other projects. These small returns prompted taxpayers to demand

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92. See Goodman, supra note 13, at 176 (reviewing elemental history of municipal debt issuance).
93. See id. (detailing history of governmental lending to finance construction of public facilities).
94. See Robinson, supra note 18, at 150 (stating history and practical application of GO bonds).
95. See id.
96. See Goodman, supra note 13, at 176 (recounting when use of GO bonds became more prevalent).
97. See id. (explaining early instances of government bond financing).
restrictions on the issuance of GO bonds,\(^98\) after which many states amended their constitutions to restrict or severely limit the use of GO bonds.\(^99\)

The limitations on GO bonds forced municipalities to find another way to publicly finance projects without violating the newly amended state constitutions. In the early 1960s, local and state governments began issuing bonds that could be directly tied to either an identifiable revenue source associated with the public facility or to some other specifically defined revenue source.\(^100\) These revenue-based debentures, known as revenue bonds, collect no taxes on interest and have become very popular with investors.\(^101\) With respect to sports stadiums, a revenue bond can be connected to the stadium revenues or by more general sources such as an increase in sales tax or hotel occupancy tax.\(^102\) Revenue bonds do not require a general voter referendum like GO bonds because general revenues are not involved in the repayment of the debt.\(^103\) Although revenue bonds provide numerous benefits, many have criticized the loss of tax revenue flowing to the federal government due to the tax exemption.\(^104\)

B. Regulations on the Public Funding of Sports Stadiums by the Federal Legislature

Community members demanded legislative action when they realized tax revenue was being lost on the tax-exempt bonds. Congress' first response was to implement the Revenue and Expendi-

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98. See id. at 177 (describing what caused legislatures to amend limitations on issuances of GO bonds).
99. See, e.g., N.J. CONST. art. VIII, § 3(2). The New Jersey State Constitution provides:
   No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation.
Id.
100. See Robinson, supra note 18, at 150 (detailing incentive to use revenue bonds as opposed to GO bonds because they do not require voter approval).
101. See Goodman, supra note 13, at 177-78 (revealing additional reasons why revenue bonds have become more popular).
102. See Greenberg, supra note 12, at 152 (elaborating on common financial instruments used to fund sports facilities and mentioning increase in sales tax or occupancy tax).
103. See Robinson, supra note 18, at 150 (explaining why voter referenda is not required for approval of issuance of GO bonds).
104. See Goodman, supra note 13, at 178-79 n.16 (citing 1921 Treasury Secretary Andrew Mellon as vocal critic and referring to his letter to Congress requesting "elimination of all tax-exempt bonds").
ture Control Act of 1968 ("1968 Act"). The 1968 Act "designated local bonds as taxable if more than 25% of the bond proceeds [were] utilized by a nongovernmental entity in trade or business; and debt service on more than 25% of the proceeds was secured by property used in a trade or business."105 While the 1968 Act began to limit the use of revenue bonds for certain facilities, others, including sports stadiums, were exempted as inherently quasi-public in nature.106 This meant that a construction project would still be eligible for tax-exempt bonds even if the sports team used the facility more than 25% of the time and paid off more than 25% of the debt with stadium revenues. This freedom allowed stadium builders to continue constructing new stadiums throughout the 1960s and 1970s.107

The first restriction on the general exemption for sports stadiums came with the Deficit Reduction Act of 1984, which denied tax-exempt financing for luxury boxes by prohibiting the use of bond proceeds to acquire land, currently used properties, and other facilities.108 The government's next major legislative step in limiting the tax-exempt bonds for sports stadiums came with the 1986 Tax Reform Act ("1986 Act"), which eliminated sports stadiums as facilities qualified for federal tax subsidies.109 As long as stadiums remained non-exempt and bonds issued to finance the arena would be taxable, they would remain less attractive to investors because of higher costs reflecting higher costs of debt service. The only remaining option for stadium investors and municipal governments was to develop a financing method that Congress would not consider to be a private activity bond. This required a demonstration that the construction financing would not fall within Section 141 of the Internal Revenue Code, which states:

[A] bond is a private activity bond if the bond is issued as part of an issue that meets the private business use test of § 141(b)(1) and the private security or payment test of

105. Id. at 180 (emphasis in original).
106. See id. (explaining tax-exempt financing for public purpose facilities).
107. See id. at 181 (noting development of new facilities and increased financing costs).
§ 141(b)(2). The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. The private security or payment test is met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) to be derived from payments, whether or not to the issuer, in respect of property, or borrowed money, used or to be used for a private business use. 110

This Section provides a two-part test for determining if a project is a private activity bond. If a sports team uses its sports stadium more than 10% of the time, this will satisfy the first prong of the test. Therefore, in order for the government to classify a stadium as public, stadium owners needed to remain within the confines of the private security/payment test’s requirements that no more than 10% of the stadium debt be secured by the revenues produced by the stadium itself. 111

The practical result of the 1986 Act was to change the method of debt repayment. Municipal officials and stadium owners structured their debt repayment so that revenue streams from the actual stadium accounted for less than 10% of the total repayment, while the public was responsible for the remaining 90%. 112 This financing plan forced the federal government to recognize a stadium construction project as a public facility and consequently permit tax-exempt bond financing. In order to reach the 90% public funding level, municipal governments have employed techniques including


111. See Robinson, supra note 18, at 152 (explaining requirement stadium owners have had to meet in order to classify stadium as public).

112. See id. at 153-54 (explaining stadium debt payment financing).
increasing the sales tax,\textsuperscript{113} tourist tax,\textsuperscript{114} sin taxes,\textsuperscript{115} and implementing a tax on lottery proceeds.\textsuperscript{116}

Attempts by Congress to alter stadium financing have resulted in a fundamental shift in the methods employed by prospective stadium owners to finance new facilities. This shift has resulted in a great deal of public debate over the fairness and equity of leaving 90\% of the financial burden for a stadium on community residents, most of whom may not directly benefit from its construction.

IV. PUBLIC AND PRIVATE FINANCING ALTERNATIVES

While there are many incentives to build a new stadium, the big question remains: who should pay for them? Historically, 78\% of a stadium's costs have been publicly financed.\textsuperscript{117} After the Internal Revenue Code changes in 1986, the burden began to slowly shift over to the private sector, resulting in a split of 57\% public and 43\% private financing.\textsuperscript{118} According to one commentator, this trend will continue to even out in the early part of the twenty-first century.\textsuperscript{119} Regardless of the distribution of burden, the debate over the increase in stadium construction continues.

A. Benefits of Having a Publicly Funded Sports Stadium

Proponents of publicly funded sports stadiums argue that sports complexes provide numerous benefits to the entire community, and therefore, the community should help fund the arena's

\textsuperscript{113} See Goodman, supra note 13, at 194 (describing how Arlington, Texas successfully raised close to $135 million for Ballpark at Arlington through local sales tax increase of 0.5 \% with intention of equally affecting local community and nonresidents who came to visit stadium).

\textsuperscript{114} See id. at 195-96 (stating portion of debt service for Chicago White Sox's stadium, Comiskey Park II, was paid for by two percent City of Chicago hotel tax, which was popular among local community because majority of tax was paid for by nonresidents who came to see baseball game).

\textsuperscript{115} See id. at 196 (detailing tax, which added 4.5 cents to cost of cigarettes carton, $3 per gallon of liquor, and 32 cents to cost of case of beer, paid for portions of Jacobs Field, home of Cleveland Indians, and Gund Arena, home of Cleveland Cavaliers).

\textsuperscript{116} See Senkiewicz, supra note 16, at 586 (stating Maryland took percentage of state lottery proceeds to fund new stadium to entice Cleveland Browns' owner to move team to Baltimore).

\textsuperscript{117} See Influx of Stadiums, supra note 2, at 16 (referencing statement by Donald J. Longeran, vice president of Legg Mason Real Estate Services, in Philadelphia).

\textsuperscript{118} See id. (reviewing decrease in public-private stadium financing percentage from initially 78\% public, then 57\%, and predicting 54\% public after 2000).

\textsuperscript{119} See id. at 12 (identifying Longeran as commentator and discussing how he spoke regarding stadium updates at International Association of Assembly Managers conference in Philadelphia on Aug. 1-5, 1997).
construction. These benefits include a direct financial contribution to the area, the ability to revitalize dying communities, and the addition of a mechanism to attract new corporations. Some theorists even argue that without public funding stadiums would never be built.

The primary rationale for public funding of sports stadiums is that the stadiums provide benefits to the community. According to one commentator, "for each $1 spent on pro sports, an additional $1.75 is created in the economy; for each $1 spent on pro sports, household income rises an additional 17 cents; and for each $1 million spent on pro sports, 76 jobs are created." Most of these benefits are derived from individuals who come into town for games and spend money that otherwise would have been spent elsewhere. Sectors that see a distinct boost in revenue include tourism, hotel occupancy, charitable donations, and overall increased consumption. The increased private and public consumption promoted by the stadium extends into the area as a whole whether the local residents attend games or not. Thus, the argument goes, when a stadium is constructed, everyone in the community benefits.

Another cited benefit of public funding to the local community is that new corporations tend to migrate to areas where teams are located. Corporations seek advantages in hiring the best and the brightest as competition for qualified employees tightens. Having a professional sports team in the area provides one more amen-

120. See Goodman, supra note 13, at 207 (stating "there may be enough noneconomic benefits flowing from a new stadium to warrant the contribution of limited public financing").

121. See id. at 207-08 (noting benefits of publicly funded sports stadiums).

122. Most stadiums today cost a minimum of $200 million to build. See id. at 186 (noting new stadium for Baltimore Ravens cost $200 million). This would result in a price increase of $30-40 million.

123. Influx of Stadiums, supra note 2, at 12.

124. See id. at 16 (detailing benefits that are derived by communities from monies spent on sporting events and specifically using Camden Yards in Baltimore, Maryland as example).

125. See Bhasin, supra note 108, at 205 (enumerating these specific industries as demonstrations of stadiums’ economic benefits).

126. See id. (explaining flow of benefits from increased goods consumption to surrounding areas, including non-quantifiable factors such as urban redevelopment which occurred in Baltimore and Cleveland).

127. See Goodman, supra note 13, at 208 (stadiums lure other "business to locate within the urban sprawl").
ity the company can provide for potential employees. In fact, certain cities view the acquisition of a major sports franchise as notice to the world of its arrival as a major city.

At the same time, new stadiums allow a community to bring in special events, including the possibility of the Super Bowl or the Olympics. These events attract tourists from across the country, which in turn, provide a benefit to the local economy. While there is some argument over whether regular season sports games bring in any real positive economic improvement, the benefit of special events like the Super Bowl or the NCAA Final Four is undeniable.

Stadiums also have the ability to help revitalize dying communities. Sports teams can provide a common focus for the people of an area that tends to improve community spirit. This new common interest can bring a sense of pride back to a community. For example, Arizona’s Bank One Ballpark renewed communal vigor and helped spark a re-growth of Phoenix’s downtown area. Similarly, the development of Cleveland’s new stadiums (part of the Gateway Project) helped the city escape some of the urban blight that had plagued the area. While not all stadiums can completely transform their surroundings into vibrant industrial zones, with foresight and planning, they can be a positive step in reconstruction.

Several other arguments favoring public funding for sports stadiums include a public purpose argument and a financial requirement argument. According to some theorists, because taxpayers

128. See id. ("[T]he real trophy for any city remains the procurement of traditional large corporate concerns, which seek to offer employees an enhanced quality of life in a tight labor market.").

129. See id. (opining sports facilities and teams are one piece of desirable market).

130. See id. at 205 (reporting economic impact of Super Bowl on host cities from 1996 – 2001 ranged from $295 million to $396 million). Many stadiums, including Houston’s new Reliant Stadium and Detroit’s Ford Field, are designed specifically to place the cities in the rotation of cities hosting the Super Bowl. See id. (stating how NFL owners emphasize new stadiums in selection process for Super Bowl).

131. See id. at 204-05 (exemplifying economists’ agreement over economic benefit of Super Bowl, but disagreement as to exact quantity of economic benefit).

132. See Bhasin, supra note 108, at 206 (specifying community spirit as one of non-quantifiable benefits produced by having sports teams).

133. See Goodman, supra note 13, at 207-08 (illustrating revival in Phoenix from previously desolate zone to place where people “congregate on nights and weekends”).

134. See id. (describing positive effects of stadium construction upon surrounding communities).
would never spend money on services that would benefit non-taxpayers, "it may be advantageous for the federal government, which receives funds from all beneficiaries, to subsidize resident consumption and thereby motivate local governmental units to provide an economically efficient level of public facilities."\(^{135}\) In other words, taxpayers would seldom vote to support a stadium if people from other communities will benefit without paying. If the federal government did not provide some support for the arenas, they would not be built.\(^{136}\)

Without the public support of tax-exempt bonds, it is estimated that stadium construction costs would rise approximately 15-20%.\(^{137}\) Adding an additional 15-20% to the construction costs of even the most inexpensive of modern stadiums could make them cost prohibitive.\(^{138}\) Fewer new stadiums would result in the loss of the increased revenue produced by new sports complexes. Ultimately, it could be argued that this is a loss for society as a whole.

**B. Problems Presented by Public Financing**

Many people are not convinced by the arguments in favor of public financing and cite contrary statistics that show these benefits to be illusory. These individuals argue that while benefits to the community may exist, the returns are never as promising as planners expect and many communities are left with unpaid costs.\(^{139}\) Further, they argue that any money brought in by the stadium would flow into the community anyway under the substitution effect, and that any money spent on the stadium could have been spent on other equally worthy projects.\(^{140}\) Finally, opponents also argue that stadiums are not efficient at producing new jobs, that those who pay taxes to support the stadium often cannot afford to go to games, and that the alternative taxing methods unfairly inhibit established community programs such as the lottery.\(^{141}\) Like

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\(^{135}\) Id. at 180.

\(^{136}\) See Senkiewicz, supra note 16, at 596 (noting problems that would result if federal government did not provide support for arenas).

\(^{137}\) See id. (describing cost increase if stadium construction was not subsidized by tax exemptions).

\(^{138}\) See id. (noting any increases in stadium construction costs would have constituted substantial financial burden).

\(^{139}\) See id. at 589 (noting congressional study showing stadium projects have no discernable economic impact).

\(^{140}\) See id. ("Economists argue that most of the money spent on professional sports would be spent anyway, even if a team didn’t exist within the community.").

\(^{141}\) See Senkiewicz, supra note 16, at 590-94 (discussing impact of stadiums on employment opportunities).
the arguments presented in favor of public financing, some of these arguments appear to have merit.

Some studies indicate that the stadium's actual benefit to the community may be very small.\textsuperscript{142} In fact, some studies have shown that a stadium may have no impact whatsoever on the local community.\textsuperscript{143} Opponents therefore conclude that a majority of the money generated from the stadium represents disposable income that would have been spent elsewhere in the community had the stadium not been there.\textsuperscript{144} This "substitution effect" is based on the idea that most individuals have a certain amount of disposable income that they are willing to spend.\textsuperscript{145} Whether or not the money is spent on sporting events is irrelevant because the money will be spent on other items.\textsuperscript{146} Similarly, the money that went into funding the stadium has an opportunity cost. If the money had not been spent on the stadium it could presumably have been used elsewhere to promote other forms of business, entertainment, or public good.\textsuperscript{147}

Critics are also quick to point out that many of the stadiums' benefits do not trickle down to the community or are so short-lived that they provide little benefit. Often a majority of the financial revenues generated by a stadium goes to the owners, players, and those who build and supply the stadium.\textsuperscript{148} At the same time, the promise of new jobs rarely comes to fruition, and most of the jobs created by stadiums are short-term construction jobs and rarely lead to full time positions.\textsuperscript{149}

\textsuperscript{142} See id. at 588 (noting critics point out lack of benefits to community from stadium construction).

\textsuperscript{143} See, e.g., id. at 589 ("A recent study conducted by the Congressional Research Service analyzed 30 stadium projects, concluding that 27 of these projects had no discernible economic impact on the community, while the other 3 projects actually had a negative effect on the community.").

\textsuperscript{144} See id. (noting Mark Rosentraub estimated between 12-34 percent of money generated from a sports stadium signifies real gain and rest represents disposable income).

\textsuperscript{145} See Goodman, supra note 13, at 202 (explaining each person budgets money for leisure activities).

\textsuperscript{146} See id. at 202-03 (noting money not spent on one luxury item will be spent on another).

\textsuperscript{147} See Robinson, supra note 18, at 157 (describing how taxpayers' money used to finance stadium could be used elsewhere).

\textsuperscript{148} See Goodman, supra note 13, at 189 (noting profits from stadiums stay within reach of few individuals).

\textsuperscript{149} See id. at 206 (noting empirical evidence denies that stadiums are effective public method for job growth). In a study done in Maryland in preparation for the construction of a stadium for an NFL team in Baltimore, public reports estimated that a new stadium would create 1,394 full time jobs at a cost of $127,000
Finally, opponents argue that individuals who are taxed to make up for the federal contributions to the stadium rarely benefit directly from the stadium. The largest factor contributing to this problem is the increase of ticket prices. Between the general rise in prices and the increasing frequency of the use of personal seat licenses, many individuals find that they are no longer able to afford tickets. The tendency of corporations to buy large numbers of tickets has added to the problem. In many stadiums today, single game tickets are rarely available, and when they are, the tickets are seldom below the upper deck.

The stadium funding methods employed by the municipal government can also present problems to the community. As discussed above, a common complaint about exempting stadium-financing bonds from taxes is resulting revenue loss to the city. Yet, this is not the only local loss presented by public stadium financing. After 1986, the government shifted to alternative forms of financing and began to tax, among other things, items related to tourism and lotteries. The government’s imposition of taxes to increase the cost of lottery tickets or hotel and car rental rates resulted in a decline in the number of people playing the lottery or traveling to the city. By increasing the cost of participating in these industries, the government effectively reduced the revenue that each produced, thereby negatively affecting any program that had previously received funding from lottery proceeds or any company associated with tourism. These increases in taxes are more defensible if they are approved in a general election. There are multiple cases, however, where the electorate vetoed a proposed increase in sales per job, while at the same time Maryland’s Sunny Day Fund for economic development had created 5,200 jobs at a cost of $6,250 per job. Id.

150. See id. at 193 (stating “the taxpayers who bear the greatest burden of payment and finance, as a group, do not enjoy a proportionate share of the associated benefits.”).

151. See Robinson, supra note 18, at 156 (noting “average fan” is unable to take advantage of entertainment because of ticket prices).

152. The average cost for a family of four to attend a baseball game is over $150. Id.

153. See id. (noting “[a]ccess to professional sporting events is . . . financially problematic for the ‘average fan’”).


155. See id. at 597 (listing alternate tax income used to finance construction brought upon by Tax Reform Act of 1986).

156. See Goodman, supra note 13, at 195-97 (describing programs that benefit from tax and demonstrating how they were allocated by tax law).
taxes or similar public financing package and the government found an alternative means to circumvent the vote.  

Several of the arguments presented above, however, are not arguments limited to the financing of sports stadiums. While it is true that the government could have used the revenue it gave up through tax-free bonds elsewhere, the same could be said of many governmental programs that target less than the entire population. For example, any time a local government lowers corporate tax rates to attract new businesses into the area, the same opportunity cost exists. These corporate tax benefits reduce the potential revenue for the city in the hope that the corporation will provide a boost to the local economy. Just as with sports stadiums, it is never clear that the new corporations that enter the community will provide an actual benefit to the community at large, or whether that money goes to private individuals. As long as cities continue to provide such opportunities to new businesses, it is unclear why the same benefit should not be given to new sports stadiums with the similar potential.

At the same time, both sides cite "friendly" statistics that tend to bolster their claims. For instance, Lonergan argues that money spent on sports stadiums result in a 175% return for the community. At the same time, congressional research services have found that many stadiums produce little to no benefit for the community. While these two arguments contradict one another, both can be true if one examines an individual stadium rather than all sports stadiums in aggregate. Obviously, there is a greater chance of community benefit provided by a stadium built in a central, easily accessible location as a part of a greater development plan than one built in isolation, outside the city limits. The resultant effect appears to be a need for more reliance on the context of the stadium development rather than how it is financed.

\[157.\] Voters rejected a 0.5 cent sales tax increase to support construction of Pittsburgh's PNC Park. See Robinson, supra note 18, at 161 (noting rejection of referendum). Subsequently, an alternative package was constructed that did not require a vote, but still required public funding. See id. (describing new referendum). A similar situation resulted after voters rejected a public financing package for Seattle's Safeco Field. See id. (chronicling similar result in Seattle's scenario).

\[158.\] See id. at 157-58 (indicating opportunity costs from corporate tax breaks are not exclusive to financing sports stadiums).

\[159.\] See Influx of Stadiums, supra note 2, at 12 (noting that for each $100 spent on professional sports, $1.75 is injected into economy).

\[160.\] See Senkiewicz, supra note 16, at 589 (detailing study that found that of thirty stadiums tested, three had noticeable negative impact on surrounding communities).
In the end, the amount of benefit that a stadium will provide to a community has as much to do with how well the stadium is planned as the method of financing used for its construction. Stadiums built as part of a larger construction plan for the area are far more likely to generate revenue for the community than one built with the hope that the stadium alone will bring in other business.

V. CURRENT PROBLEMS OF PRIVATE FINANCING DISPLAYED IN THE TRANSACTIONS OF PAUL ALLEN AND THE OREGON ARENA CORPORATION

Opponents of public funding of sports stadiums often argue that stadiums should be privately funded because the majority of the benefit flowing from the stadium stays with the franchise and stadium owners. As the bankruptcy of the Oregon Arena Corporation ("OAC") demonstrates, however, private financing of a stadium has its own problems. The ramifications of this bankruptcy case will not only affect future attempts at private funding, but also the present community in the Rose Quarter that was meant to surround the Rose Garden. The following Section reviews the history and implications of the OAC's current bankruptcy proceedings and what it means for private financing of sports stadiums.

A. Background of the Oregon Arena Corporation

In June of 1991, the OAC was formed with an equity contribution from Paul G. Allen in the amount of $48 million. The corporation's purpose was to oversee the design, construction, and operation of the Rose Garden and Rose Quarter, the district in Portland surrounding its stadium. The OAC gained control of the Garden Garage, the Annex Building, and a ground lease with the City of Portland as a part of its agreement to redevelop the Rose Quarter. In 1995, the OAC finished construction of the Rose Garden, four years after the corporation organized, and began planning for the development of the surrounding community.


162. See First Amended Disclosure Statement, supra note 161, at 14-16 (detailing business of debtor and purpose of incorporation).

163. This ground lease excludes an approximate acre parcel, which is owned in fee by OAC. See id. at 14.

164. See id. at 14-15 (discussing funding plans for arena); see also Rose Garden, at http://www.sfo.com/~csuppes/NBA/PortlandTrailBlazers/index.htm (last vis-
In contrast to most modern stadiums, the Rose Garden was almost completely funded through private investment. The city's total contribution amounted to $34.5 million for renovations to the Memorial Coliseum, construction of two adjacent parking structures, and the completion of various infrastructure elements required to support the complex. The rest of the money came from Allen's personal contribution of $46 million, $16 million in bank loans, $10 million from bond interest, and the remaining $155 million from private notes. This was the first time a stadium owner had used this type of financing to construct a sports stadium. In the past, this method had been used mostly to finance plants, factories and other large enterprises.

Construction was strategically planned to be as cost effective as possible. The OAC built the stadium to allow for a variety of different sporting events, including professional hockey, soccer, track, and concerts, but the stadium is predominantly used by the NBA Portland Trailblazers. The arena is also designed to house a full contingency of revenue producing engines, including luxury suites, club seats, concessionaires, and advertising. These fea-


165. See First Amended Disclosure Statement, supra note 161, at 14 (describing Rose Garden financing package).

166. See id. (illustrating financing for all components of Rose Quarter); see also Rose Garden, supra note 164 (listing specifications of Rose Garden's surrounding elements).


168. See id. (noting borrowing from pension funds was new concept in stadium financing).


170. See Rose Garden, supra note 164 (listing variety of events and uses of Rose Garden).

171. See Rose Garden Arena: Home of the Portland Trailblazers boosts advertising inventory and revenue, at http://www.clarityvisual.com/pdfs/success/RoseGardenArena.pdf (last visited Mar. 18, 2005) (showing signage in stadium is state of art with full motion advertising); see also First Amended Disclosure Statement, supra note 161, at 14 (describing revenue producing engines). The deal between the Noteholders, OAC, and the Trailblazers Organization designated that ten percent of stadium's gross ticket revenues would go to OAC as rent, while all of the money from suite tickets and preferred seating tickets would be deposited directly into accounts held by Noteholders. See id. at 16.
tures combined to draw over 2.5 million people for various events in the Rose Garden’s first full year of operation.172

Paul Allen had garnered so much respect through his dealings with Microsoft and the OAC that the City of Portland sought his help in building up the rest of the area surrounding the Rose Garden.173 Initially, the OAC was selected to guide the redevelopment of the Rose Quarter.174 Then, when the Memorial Coliseum was fighting to prevent demolition, the city transferred planning control of the building to the OAC in a Memorandum of Understanding, directing them to produce a development plan.175

B. OAC Bankruptcy

The Chapter 11 filing for OAC did not occur overnight. The first signs of trouble appeared in 1999, when Paul Allen personally provided $10,285 million to keep the OAC from defaulting.176 Problems progressed for the Rose Garden when, in 2002, interest rates were lowered and Allen began to seek to restructure the terms of the OAC’s deal with its bondholders.177 He spent over a year trying to renegotiate the $192 million still owed to the note-holders through 2020.178 OAC President Steve Patterson argued that the stadium’s current payments are “2-1/2 times higher than the biggest payments of any other arena with a single professional sports tenant.”179 The decision that the company was no longer able to

172. See Timeline of Events, supra note 161 (discussing revenue produced by various forums in Rose Garden’s first year).

173. See Paul M. Falsetto, Memorial Coliseum in a Fight for its Life, HISTORIC PRES-
ERVATION N.W., at http://www.hp-nw.com/sos_memorial.htm (May 12, 2004) (de-
tailing Paul Allen’s role in development of Rose Garden).

174. See Jim Redden & Kristina Brenneman, Rose Quarter changes on hold?, PORTLAND TRIB., Mar. 2, 2004 (illustrating early revitalization efforts of Rose Gar-

175. See Falsetto, supra note 173 (detailing Portland’s attempt to oversee revital-
ization surrounding area development).

176. See Timeline of Events, supra note 161; see also First Amended Disclosure State-
ment, supra note 161, at 16 (recalling Paul Allen’s personal subsidy of OAC’s debts).

177. See Timeline of Events, supra note 161 (noting Allen’s attempts to restruct-
ture deal).

178. See Associated Press, Billionaire Allen likely loses Rose Garden, MAIL TRIB.,
May 20, 2004 [hereinafter Billionaire Allen] (stating one aspect of negotiations
would have had Allen form new corporation that would have bought all assets
from OAC for $89 million, but note-holders rejected offer), available at http://

179. Brent Walth & Ted Sickinger, Game’s Over, THE OREGONIAN, Mar. 7,
2004, at FOI.
service long-term debt came in early 2003, at which time it began negotiations with creditors.\footnote{180}{See First Amended Disclosure Statement, supra note 161, at 12-13 (demonstrating that OAC has submitted plan which would turn over all of Class 1 assets of company to creditors in satisfaction of claims).}

On February 27, 2004, the OAC filed for Chapter 11 protection in an attempt to restructure its debt and continue operations as total losses for the stadium approach $20 million over the last nine years.\footnote{181}{See Timeline of Events, supra note 161 (describing debt totals in 2001 for Rose Quarter); see also Walth & Sickinger, supra note 179, at F01 (detailing financial investments described in bankruptcy proceedings); First Amended Disclosure Statement, supra note 161, at 16 (stating that debt is approximately $17,565 million).} After Allen failed to find an equitable restructuring agreement with the note holders, he sought permission from the court to turn the stadium over to them.\footnote{182}{See Billionaire Allen, supra note 178 (setting forth petition to hand over ownership of Rose Garden); see also First Amended Disclosure Statement, supra note 161, at 23 (stating that along with transfer of stadium to note-holders, OAC will also transfer all executory contracts and unexpired leases).}

In January of 2005, the creditors took ownership of all of the assets of the OAC – including the Rose Garden.\footnote{183}{See Todd Murphy, Paul Allen’s Rose Garden: Under new ownership, PORTLAND TRIB., Jan. 4, 2005, available at www.portlandtribune.com/archview.cgi?id=27773 (noting building was officially transferred to financial companies).} According to published reports, the OAC not only lost control of its assets, but Allen personally lost the $46 million he put into the construction of the arena.\footnote{184}{See id.} Worse yet, the structure of the original financing has had the unanticipated effect of stripping the Trailblazers of a quarter of its revenue.\footnote{185}{See id. (stating transfer of Arena leave Trailblazers in position to get almost no revenue from stadium where they play).} Since they no longer have any interest in the arena, the Trail Blazers are a mere tenant in the Rose Garden. As a result, they will receive no revenue from the various revenue generators discussed above.\footnote{186}{See id. (acknowledging Trailblazers will receive no revenues from luxury seats, special seating and revenue from advertising).} The Trailblazers’ president has been quoted as saying that the team’s lease is “the worst lease in all of professional sports.”\footnote{187}{See id. (quoting Steve Patterson).}

C. Rationale for the OAC’s Chapter 11 Filing

A number of different factors led to the OAC’s inability to continue paying off the Rose Garden’s creditors. According to the
bankruptcy disclosures, the main factors include continued business losses, the general Portland economy, the discontinuation of economic support from the Trailblazers, and the OAC's default on current notes.\textsuperscript{188} According to Patterson, the Rose Garden had lost money in all but two of the nine years it had been in operation.\textsuperscript{189} Projections for future stadium revenues are even worse. In planning for 2005, OAC projected negative cash flow over the next three years to be in excess of $11 million.\textsuperscript{190}

There are many possible reasons for the Rose Garden's sharp drop in revenues. One frequently cited explanation is the reduced attendance at the Portland Trailblazers' games.\textsuperscript{191} The Trailblazers' attendance has fallen by 20\% over the past four years, while attendance at other stadiums has remained relatively constant.\textsuperscript{192} Failure to sell out luxury seating is going to be an even larger problem for the Rose Garden in the future.\textsuperscript{193} Forty-six of the current suite contracts, which represent a substantial portion of the total number of suites, are going to expire at the end of this season.\textsuperscript{194} Most suite owners have informed the team that they do not intend to renew under the current system.\textsuperscript{195} This would result in a loss of $5.3 million in revenue for the stadium.\textsuperscript{196}

Preferred seating has also presented a similar problem. In the past several years, the franchise has only been able to sell 60\% of its preferred seating.\textsuperscript{197} Contracts on 56\% of the preferred seating that the team has sold will expire this year with many seat holders stating that they will not return unless improvements are made to

\textsuperscript{188} See First Amended Disclosure Statement, supra note 161, at 17-21 (describing aggregate effect of factors leading to Chapter 11 filing).

\textsuperscript{189} See id. at 16 (stating that in years 2000 and 2001 stadium turned profit of only $800,000).

\textsuperscript{190} See id. at 7, 17 (anticipating negative cash flow from operations and debts).

\textsuperscript{191} See id. at 17 (noting 25.5\% decline in attendance in the fiscal year of 2003).

\textsuperscript{192} See Walth & Sickinger, supra note 179, at F01 (noting economic factors contributing to financial woes of Oregon Arena Corporation).

\textsuperscript{193} See id. (noting lack of revenue from luxury suites whose leases were not renewed); see also First Amended Disclosure Statement, supra note 161, at 18-19 (discussing problems with preferred seating "which represents fifteen percent (15\%) of its overall revenue in 2004").

\textsuperscript{194} See First Amended Disclosure Statement, supra note 161, at 18.

\textsuperscript{195} See id. (stating non-renewal of these leases or renewal at lower prices could negatively impact cash flow even more).

\textsuperscript{196} See id. (stating that forty-two open suites represent more than $5.3 million in revenue).

\textsuperscript{197} See id. at 18-19 (detailing preferred seating predicament which contributed to Chapter 11 filing).
the stadium.\textsuperscript{198} Patterson argues that even if the stadium completely sold out, the note-holders' payment terms would still result in a yearly loss.\textsuperscript{199} The decrease in stadium attendance has certainly hurt the Rose Garden's revenue production.

The OAC's downfall demonstrates that private financing not only has its own problems, but that it can also have a negative effect on the public and surrounding community if the builders become so over-burdened with debt that continued operations become impossible. It also highlights a second major problem with the private financing of sports stadiums that may deter future investors.\textsuperscript{200} During the negotiation process, one of the major sticking points with the note holders was their demand that Allen personally guarantee any further loss.\textsuperscript{201} Many companies or private investors faced with the risk of having to make similar personal outlays or guarantees will hesitate to privately finance a stadium.\textsuperscript{202} According to the President of Boston-based Game Plan, Randy Vataha, "[i]t will certainly give lenders reason to pause and at least look at what additional things do you have to add to the documentation mix, the deal structure mix . . . ."\textsuperscript{203} With this in mind, even if private funding of a stadium were preferable to public funding, it is not clear that such funding will be a possibility in the future.

D. The Effect of the OAC Bankruptcy on the Rose Quarter

In many cities, stadiums are relied upon to revive a declining community. The Rose Quarter in Portland is such a district and is not frequented unless there is a game being played at the Rose Garden.\textsuperscript{204} In order to change the area, the Portland Development Commission hired design experts to plan out improvements.\textsuperscript{205} Because the OAC owned the Rose Garden, the Entertainment Complex, and was in charge of the redevelopment of the Rose Quarter,

\textsuperscript{198} See id. at 19 (furthering explanation of factors contributing to less revenue).
\textsuperscript{199} See Walth & Sickinger, supra note 179, at F01 (explaining consequences of prior debt).
\textsuperscript{200} See id. (discussing OAC bankruptcy proceedings).
\textsuperscript{201} See Rose Garden Woes, supra note 167 (noting investors wanted Paul Allen to underwrite stadium bonds).
\textsuperscript{202} See id. (describing lack of interest in debt underwriting by private individuals or companies).
\textsuperscript{203} Id.
\textsuperscript{204} See Redden & Brenneman, supra note 174 (insinuating Rose Garden's financial problems stem from lack of use).
\textsuperscript{205} See id. (outlining several proposals for constructing streets, housing, and buildings).
any planned renovation of the area was on hold while the bankruptcy proceedings and ownership situation were being resolved.

The decline of the Rose Garden has had a direct negative impact on the rest of the Rose Quarter. As revenues dropped at the Rose Garden, the most popular restaurant, “Cucina! Cucina!” defaulted and became $150,000 in arrears to the OAC, who is unable to find a suitable replacement tenant. The Memorial Coliseum lost $226,000 last year and is projected to lose another $220,000 this year. Non-sporting activities in the Rose Quarter have dropped 39% since 1997, with even larger drops in other types of shows. Overall, Rose Quarter retail lease revenues have dropped from $1.3 million to $900,000 in one year. As this case demonstrates, when a stadium is no longer able to support itself and begins to lose customers, it can negatively affect the entire community.

VI. The Future of Sports Stadium Financing Lies in a Combination of Public and Private Funding

As long as stadiums continue to be built, debates will continue over the most rational way to fund them. Allowing municipal governments to fund stadiums with tax-exempt bonds reduces income and results in a loss to the community that must be borne equally by both those who do and do not use the stadium. Alternative methods of public financing through sales tax increases or tourism taxes place an increased burden on the community and take money away from other programs that have an equal need for funding. Either way, public financing lacks the ability to target only those who will benefit from the stadium, and therefore, creates problems.

Private financing, on the other hand, places the entire burden on several individuals who must be able to sustain the stadium through ebbs and flows in public support of the team. Once the stadium begins to experience problems, reviving it is much more difficult because it requires those few individuals to invest more

206. See First Amended Disclosure Statement, supra note 161, at 20-21 (noting general downward economic trend has affected Rose Quarter’s retail tenants).

207. Id. at 21 (noting each year Memorial Coliseum continues its losses as building’s competitive situation worsens with expansion of competitive venues and deterioration of its old infrastructure).

208. See id. at 19-20 (stating drops are also due in part to opening of major amphitheater in Clark County, which is only sixteen miles away from Rose Quarter).

209. See id. at 21 (noting further substantial reduction in retail value expected over next year).

210. See Goodman, supra note 13, at 219-21 (emphasizing need for creative private financing alternatives).
money or risk bankruptcy for the stadium. Without revenue coming in from the stadium, it is impossible to make necessary improvements or add new amenities, thus causing the stadium to sink further into debt. Without outside support, the stadium and the surrounding community face disaster.

Several legislators have attempted to completely eliminate tax-free funding for sports stadiums. One recent example was Senator Daniel Patrick Moynihan, who stated that he felt that tax-free funding for sports arenas “ultimately injures State and local governments and other issuers of tax-exempt bonds, that provides an unintended Federal subsidy . . . and that contributes to the enrichment of persons who need no Federal assistance whatsoever.”212 In 1996, Moynihan presented his Stop Tax-Exempt Arena Debt Issuance Act (“STADIA”), which would change the 1986 Act into a one-part test by eliminating the provision labeling construction projects as public if they are funded by at least 90% of public money.213 This would categorize any new project as a private activity if a private organization used it more than 10% of the time.214 The obvious result is that no sports stadium would ever be able to receive tax-free bond financing.

The problem with this legislation is that it threatens to prevent the construction of any new stadiums. The loss of tax-exempt bonds to support the stadium will raise the overall cost of construction and place a much higher burden on private investors. Even if the intangible benefits that a stadium provides for a community are ignored, the loss of new stadiums is detrimental to society from a financial and social prospective.

New stadiums unquestionably increase revenue for teams. Many critics of public funding argue that this increased revenue flows only to the team and facility owners while the community sees very little increase in revenue.215 This argument has several flaws, not the least of which is that many studies have shown that stadiums can in fact revive decaying communities. Furthermore, the increased revenue from a new stadium represents increased income to individuals as well as increased public consumption. Increased

211. For a discussion on the difficulties of reviving a stadium after using private financing, see supra notes 161-203 and accompanying text.
213. See id. (describing Stop Tax-Exempt Arena Debt Issuance Act).
214. See id. (noting effect of STADIA).
215. See id. at 174 (“Many claim that such an economic arrangement unjustly diverts scarce community resources to privately owned sports franchises.”).
consumption has a positive economic benefit for society as a whole.\textsuperscript{216} By eliminating tax-exempt financing and thereby reducing the number of new stadiums constructed, a plan like Moynihan's would ultimately have a negative economic impact.

Moynihan's argument has another flaw. He ignores the fact that the government regularly provides both direct and indirect subsidies to various entities that arguably do not need them.\textsuperscript{217} It is not entirely clear why sports stadiums are any less worthy of such government "subsidies" than any of these other programs.\textsuperscript{218}

The result is that simply denying any public funding to sports stadiums is not a feasible alternative. It is clear there are positive and negative aspects to public and private financing, and in individual cases both sides present potentially valid points. The purpose of this Article is not to imply that stadiums should be completely publicly funded. The fact remains, however, that as long as stadiums are designed as part of a well-planned community project, they can have many positive public impacts.

As long as there are more cities suited to host professional teams than teams available, stadium construction will continue. The key to a stadium's success, however, may depend more upon the context and planning that surrounds it, than its choice of funding. Successful stadium-community relationships are the result of intense planning regarding the most effective way to incorporate the new facility into the existing community. Whether the city chooses to use public or private financing (or some combination thereof), the return to the community will typically be positive if the design and implementation of the stadium is properly planned.

\textsuperscript{216} See Bhasin, \textit{supra} note 108, at 205 (citing benefits including increased tourism, hotel occupancy, jobs in sports industry and other areas, and charitable donations).

\textsuperscript{217} An argument could be made that programs, including farming subsidization and corporate tax reduction among others, are all "unnecessary" government subsidies that favor only certain members of a community.

\textsuperscript{218} See Goodman, \textit{supra} note 13, at 196.