An act relating to local government. An act to add Section 3.3 to the Statutes of Chapter 1333 of the Statutes of 1968, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 2649, as amended, Ammiano. Local government. Tidelands and submerged lands: City and County of San Francisco: seawall lots.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

Existing law declares, until January 1, 2094, that certain parcels of real property denominated as the designated seawall lots are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement. With respect to those lands, the San Francisco Port Commission is authorized to lease all or a portion of the designated seawall lots if specified conditions are met.

This bill would, similarly, declare that seawall lot 322-1 is free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and would authorize the port to lease seawall lot 322-1, subject to certain requirements and conditions. This
bill would authorize the port to provide a rent credit or other waiver or deferral of rent in connection with either a nontrust lease of seawall lot 322-1, or, with the approval of the State Lands Commission, a lease of any other designated seawall lot or other port property that is not subject to public trust or Burton Act trust use restrictions, that results in an effective rent to the port for below fair market value, if the State Lands Commission finds that certain conditions are met.

Existing law provides financing support for hosting the 34th America’s Cup in San Francisco.

This bill would state the intent of the Legislature to enact legislation facilitating the hosting of the 34th America’s Cup in San Francisco.


The people of the State of California do enact as follows:

SECTION 1. For the purposes of this act the following terms have the following meanings:

(a) “Affordable housing” means housing for very low, low-, or moderate-income households as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(b) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(c) “Burton Act transfer agreement” means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(d) “Burton Act trust” means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(e) “City” means the City and County of San Francisco, a charter city and county, and includes the port.

(f) “Commission” means the State Lands Commission.

(g) “Designated seawall lot” or “designated seawall lots” means any or all of the parcels of real property situated in the city and commonly known as seawall lots 328, 330, 337, 347S, and 322-1, including a portion of Mission Rock Street, as shown on
that certain map entitled “revised map of designated seawall lots,”
which is reproduced in Section 8 of this act and is on file with the
commission and the port.

(h) “Lease” means a ground lease or space lease of real
property, license agreement for use of real property, temporary
easement, right-of-way agreement, development agreement, or
any other agreement granting to any person any right to use,
occupy, or improve real property under the jurisdiction of the port.

(i) “Nontrust lease” means a lease of all or any portion of the
designated seawall lots free from the use requirements established
by the public trust, the Burton Act trust, and the Burton Act transfer
agreement.

(j) “Person” means an individual, corporation, limited liability
company, partnership, joint venture, business entity, business trust,
association or other private organization or private entity, or any
governmental entity or agency.

(k) “Pier 70 area” means the Pier 70 area as defined in
subdivision (s) of Section 1 of Chapter 477 of the Statutes of 2011.

(l) “Port of San Francisco” or “port” means the city acting by
and through the San Francisco Port Commission.

(m) “Public trust” or “trust” means the common law public
trust for commerce, navigation, and fisheries.

(n) “Seawall lot 322-1” means that parcel of real property
situated in the city commonly known as seawall lot 322-1, as shown
on that certain map entitled “revised map of designated seawall
lots,” which is reproduced in Section 8 and is on file with the
commission and the port.

(o) “Chapter 660” means Chapter 660 of the Statutes of 2007,
as amended.

(p) “Tidelands” means the lands lying below the elevation of
ordinary high water, whether filled or unfilled, and includes
submerged lands.

SEC. 2. The Legislature finds and declares all of the following:

(a) The San Francisco waterfront is a valuable public trust asset
of the state that provides special maritime, navigational,
recreational, cultural, and historical benefits to the people of the
region and the state.

(b) The lands comprising the San Francisco waterfront consist
primarily of sovereign tidelands granted to the city by the state
pursuant to the Burton Act. Under the city’s charter, the granted
lands are held and managed by the port. The Burton Act authorizes
the port to use, conduct, operate, maintain, manage, regulate,
改善, and control the San Francisco waterfront consistent with
the public trust and the Burton Act trust.

(c) The Legislature has previously found that rectifying the
deteriorating conditions along the San Francisco waterfront, the
preservation of the numerous historic piers and other historic
structures on port land, and the construction of waterfront plazas
and open space, are matters of statewide importance that will
further the purposes of the public trust and the Burton Act trust.
The Legislature has also found that revitalization of the Pier 70
area and the restoration of its unique collection of historic
maritime industrial buildings is of particular importance. As the
port strives to make productive use of the Pier 70 area and other
lands under its jurisdiction, it faces numerous obstacles related
to the high costs of waterfront development, including costs
associated with seismic safety improvements, historic
rehabilitation, hazardous materials remediation, and providing
public access to the waterfront. The success of the port’s efforts
to revitalize the waterfront depends in part on strategies for
increasing revenues from port lands and for reducing the costs of
beneficial development projects.

(d) The seawall lots are tidelands that were filled and cut off
from the waterfront by the construction of the great seawall (now
occupied by the Embarcadero roadway) in the late 19th and early
20th centuries. Over time, certain of the seawall lots or portions
thereof, including the designated seawall lots, have ceased to be
useful for the promotion of the public trust and the Burton Act
trust, except for the production of revenue to support the purposes
of the Burton Act trust. The designated seawall lots are presently
either vacant or leased on an interim basis, primarily for commuter
parking.

(e) The Legislature, in Chapter 660 of the Statutes of 2007,
found that most of the designated seawall lots are no longer
necessary for the purposes of the public trust or Burton Act trust.
The Legislature also found that future revenues from the
development and leasing of the designated seawall lots are an
essential source of funds to preserve the port’s numerous historic
piers and structures, construct and maintain waterfront plazas
and open space, and improve public access to the waterfront.
Chapter 660 lifted the use restrictions of the public trust and Burton Act trust from those designated seawall lots and authorized the port to enter into nontrust leases of the lands, subject to certain conditions, and subject to the requirement that the lease revenues be used for specified trust purposes.

(f) Seawall lot 322-1 is presently used for surface parking primarily serving commuters. The lot was not included in Chapter 660, but like the other designated seawall lots, seawall lot 322-1 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, is cut off from the water, constitutes a relatively small portion of the tidelands granted to the city, and is no longer necessary for public trust or Burton Act trust purposes. It is the intent of the Legislature that seawall lot 322-1 be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement in the same manner and subject to the same requirements as the designated seawall lots under Chapter 660, subject to the additional provisions of this act.

(g) The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life in California, and is a matter of statewide concern. The Legislature has previously found that attainment of the state’s housing goals requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels. The Legislature has also found that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government, and that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community. The Legislature has also recognized that local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

(h) Some of the port’s designated seawall lots, including seawall lot 322-1, are well-suited to support infill affordable housing development. Development of affordable housing typically requires a ground lease at rents that are below market. However, Chapter 660 requires the port to receive fair market value for nontrust leases of designated seawall lots.
(i) The city has implemented a number of local programs designed to encourage the development of affordable housing, including programs that impose fees, exactions or other obligations on new development. For example, the city’s jobs-housing linkage program imposes fees on most types of commercial development to offset the demand for affordable housing generated by new employment.

(j) Private commercial development on port property is subject to the city’s jobs-housing linkage program fees. These fees increase the already high costs associated with development and revitalization of port property. The project development costs for port property would be reduced if the jobs-housing linkage fees that would otherwise be imposed on development projects on port property could be reduced or waived in exchange for an equivalent amount of rent credits or similar incentives provided by the port to encourage affordable housing development on other port property.

(k) A purpose of this act is to reduce the costs associated with development that will revitalize the waterfront and benefit the public trust, while also encouraging affordable housing development on port lands no longer needed for trust purposes, by authorizing the port to grant rent credits or similar incentives for affordable housing development on seawall lot 322-1 or other port property where housing is permitted, provided the port can apply those credits to reduce the affordable housing fees or other obligations imposed on development within the Pier 70 area or on other port lands and subject to the conditions set forth in this act.

(l) Seawall lot 322-1 is located in the city’s Northeast Waterfront Historic District. This act includes conditions to ensure that any development of seawall lot 322-1 for nontrust use is compatible with the historic and architectural maritime character of the district.

(m) The preservation of the port’s historic finger piers and other historic resources furthers trust purposes and is of statewide benefit. The city has adopted programs to encourage the preservation of historic resources, including a transferable development rights program. This act amends the Burton Act to clarify that the port may sell transferable development rights to
preserve historic resources on port property, to the extent authorized under local law and subject to certain limitations.

SEC. 3. (a) Seawall lot 322-1 shall be free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement for the period between the effective date of this act and January 1, 2094, and shall be treated as a designated seawall lot for purposes of the authority granted to the port under Chapter 660. The port may enter into a nontrust lease for all or any portion of seawall lot 322-1, subject to the requirements of Section 4 of Chapter 660 and this act. Section 6 of Chapter 660 shall not apply to seawall lot 322-1.

(b) As a condition for commencing vertical construction on seawall lot 322-1 for a nontrust use pursuant to subdivision (a), the port shall obtain a certificate of appropriateness or a comparable determination of compatibility of the development with the historic character of the surrounding area, as may be provided under the city’s planning code. For purposes of effectuating this section, the port is authorized to submit to the procedures set forth in the city’s planning code for obtaining a certificate of appropriateness or comparable determination.

SEC. 4. (a) Notwithstanding subdivision (c) of Section 4 of Chapter 660, the port may provide a rent credit or other waiver or deferral of rent in connection with either a nontrust lease of seawall lot 322-1, or, with the approval of the commission, a lease of any other designated seawall lot or other port property that is not subject to public trust or Burton Act trust use restrictions, that results in an effective rent to the port below fair market value, if the commission finds that both of the following conditions are met:

(1) The nontrust lease is for affordable housing. The lease may allow other uses, including, but not limited to, commercial uses and market rate housing, provided that no portion of the rent credit, waiver, or deferral is applied to the rent for those other uses.

(2) The port is entitled to apply the value of the rent credit, waiver, or deferral as an offset against fees or other exactions or obligations that would otherwise be levied or imposed by the city on development projects located on Pier 70, or on other lands under the port’s jurisdiction, if approved by the commission, relating to the projects’ impacts on or demand for affordable
housing, including, but not limited to, fees imposed pursuant to
the city’s jobs-housing linkage program.
(b) The port shall provide the commission with documentation
necessary to support the findings required by subdivision (a) of
this section at the time the port submits the proposed nontrust
lease and other documentation required under subdivision (c) of
Section 4 of Chapter 660.
(c) Nothing in this section shall be construed as limiting the
port’s authority to provide rent credits, waivers, or deferrals under
a nontrust lease in exchange for other valuable consideration
provided by the lessee that meets the fair market value requirement
of Chapter 660.
(d) Nothing in this section shall be construed as limiting the
port’s authority under the Burton Act to use or lease the designated
seawall lots for uses permitted by the Burton Act, subject to any
applicable limitations of state law.
SEC. 5. Sections 3 and 4 of this act shall be inoperative on
January 1, 2094, after which date the use of the designated seawall
lots shall be consistent with the public trust, the Burton Act trust,
and the Burton Act transfer agreement. No later than January 1,
2094, all structures, buildings, and appurtenances on the
designated seawall lots not consistent with the purposes of the
public trust, the Burton Act trust, and Burton Act transfer
agreement shall be removed or modified, including any necessary
restoration or remediation of the seawall lots, to facilitate public
trust uses.
SEC. 6. Section 3.3 is added to Chapter 1333 of the Statutes
of 1968, to read:
SEC. 3.3. The preservation or restoration of marine resources
consistent with the primary mission of the San Francisco Harbor
may include the sale or transfer by the City and County of San
Francisco, acting by and through its Port Commission (port), of
the port’s transferable development rights, as defined in the city’s
planning code, in connection with the preservation of a historic
pier or historic structure under port jurisdiction. To the extent
authorized by the planning code, the port may sell or transfer
development rights associated with a historic pier or historic
resource on port property, provided that if the affected port
property is subject to the public trust, the restriction on the port’s
development rights following transfer shall be for a period not
exceeding 66 years. The port shall use the proceeds from a transfer of development rights solely for the furtherance of the purposes specified by this act, which include, without limitation, reimbursement of the costs of rehabilitation of a historic pier or historic resource undertaken by any individual, corporation, limited liability company, partnership, joint venture, business entity, business trust, association, or other private organization or private entity. For purposes of effectuating this section, the port is authorized to submit to the procedures for transfer of development rights set forth in the city’s planning code.

SEC. 7. The Legislature finds and declares that unique circumstances exist at the San Francisco waterfront as described in Section 2 of this act, and that therefore this act sets no precedent for any other location or project in the state.

SEC. 8. The following map is a part of this act:
PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED
SEC. 9. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 10. If any provision of this act, or its application to any person, property, or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.

SECTION 1. It is the intent of the Legislature to enact legislation facilitating the hosting of the 34th America’s Cup in San Francisco.