

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2649

Introduced by Assembly Member Ammiano

February 24, 2012

~~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.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

- 1 SECTION 1. *For the purposes of this act the following terms*
- 2 *have the following meanings:*
- 3 (a) *“Affordable housing” means housing for very low, low-, or*
- 4 *moderate-income households as defined in paragraph (3) of*
- 5 *subdivision (h) of Section 65589.5 of the Government Code.*
- 6 (b) *“Burton Act” means Chapter 1333 of the Statutes of 1968,*
- 7 *as amended.*
- 8 (c) *“Burton Act transfer agreement” means that certain*
- 9 *agreement dated January 24, 1969, between the state and the city,*
- 10 *relating to the transfer of the Port of San Francisco from the state*
- 11 *to the city, and any amendments to that agreement in accordance*
- 12 *with its terms.*
- 13 (d) *“Burton Act trust” means the statutory trust imposed by the*
- 14 *Burton Act, by which the state conveyed to the city, in trust and*
- 15 *subject to certain terms, conditions, and reservations, the state’s*
- 16 *interest in certain tidelands, including filled lands, and lands*
- 17 *dedicated or acquired by the city as assets of the trust.*
- 18 (e) *“City” means the City and County of San Francisco, a*
- 19 *charter city and county, and includes the port.*
- 20 (f) *“Commission” means the State Lands Commission.*
- 21 (g) *“Designated seawall lot” or “designated seawall lots”*
- 22 *means any or all of the parcels of real property situated in the city*
- 23 *and commonly known as seawall lots 328, 330, 337, 347S, and*
- 24 *322-1, including a portion of Mission Rock Street, as shown on*

1 *that certain map entitled “revised map of designated seawall lots,”*
2 *which is reproduced in Section 8 of this act and is on file with the*
3 *commission and the port.*

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

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

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

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

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

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

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

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

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

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

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

38 (b) *The lands comprising the San Francisco waterfront consist*
39 *primarily of sovereign tidelands granted to the city by the state*
40 *pursuant to the Burton Act. Under the city’s charter, the granted*

1 lands are held and managed by the port. The Burton Act authorizes
2 the port to use, conduct, operate, maintain, manage, regulate,
3 improve, and control the San Francisco waterfront consistent with
4 the public trust and the Burton Act trust.

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

23 (d) The seawall lots are tidelands that were filled and cut off
24 from the waterfront by the construction of the great seawall (now
25 occupied by the Embarcadero roadway) in the late 19th and early
26 20th centuries. Over time, certain of the seawall lots or portions
27 thereof, including the designated seawall lots, have ceased to be
28 useful for the promotion of the public trust and the Burton Act
29 trust, except for the production of revenue to support the purposes
30 of the Burton Act trust. The designated seawall lots are presently
31 either vacant or leased on an interim basis, primarily for commuter
32 parking.

33 (e) The Legislature, in Chapter 660 of the Statutes of 2007,
34 found that most of the designated seawall lots are no longer
35 necessary for the purposes of the public trust or Burton Act trust.
36 The Legislature also found that future revenues from the
37 development and leasing of the designated seawall lots are an
38 essential source of funds to preserve the port's numerous historic
39 piers and structures, construct and maintain waterfront plazas
40 and open space, and improve public access to the waterfront.

1 Chapter 660 lifted the use restrictions of the public trust and
2 Burton Act trust from those designated seawall lots and authorized
3 the port to enter into nontrust leases of the lands, subject to certain
4 conditions, and subject to the requirement that the lease revenues
5 be used for specified trust purposes.

6 (f) Seawall lot 322-1 is presently used for surface parking
7 primarily serving commuters. The lot was not included in Chapter
8 660, but like the other designated seawall lots, seawall lot 322-1
9 was filled and reclaimed as part of a highly beneficial plan of
10 harbor development, has ceased to be tidelands, is cut off from
11 the water, constitutes a relatively small portion of the tidelands
12 granted to the city, and is no longer necessary for public trust or
13 Burton Act trust purposes. It is the intent of the Legislature that
14 seawall lot 322-1 be freed of the use requirements of the public
15 trust, the Burton Act trust, and the Burton Act transfer agreement
16 in the same manner and subject to the same requirements as the
17 designated seawall lots under Chapter 660, subject to the
18 additional provisions of this act.

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

35 (h) Some of the port's designated seawall lots, including seawall
36 lot 322-1, are well-suited to support infill affordable housing
37 development. Development of affordable housing typically requires
38 a ground lease at rents that are below market. However, Chapter
39 660 requires the port to receive fair market value for nontrust
40 leases of designated seawall lots.

1 (i) The city has implemented a number of local programs
2 designed to encourage the development of affordable housing,
3 including programs that impose fees, exactions or other obligations
4 on new development. For example, the city's jobs-housing linkage
5 program imposes fees on most types of commercial development
6 to offset the demand for affordable housing generated by new
7 employment.

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

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

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

34 (m) The preservation of the port's historic finger piers and other
35 historic resources furthers trust purposes and is of statewide
36 benefit. The city has adopted programs to encourage the
37 preservation of historic resources, including a transferable
38 development rights program. This act amends the Burton Act to
39 clarify that the port may sell transferable development rights to

1 *preserve historic resources on port property, to the extent*
2 *authorized under local law and subject to certain limitations.*

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

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

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

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

34 *(2) The port is entitled to apply the value of the rent credit,*
35 *waiver, or deferral as an offset against fees or other exactions or*
36 *obligations that would otherwise be levied or imposed by the city*
37 *on development projects located on Pier 70, or on other lands*
38 *under the port's jurisdiction, if approved by the commission,*
39 *relating to the projects' impacts on or demand for affordable*

1 housing, including, but not limited to, fees imposed pursuant to
2 the city's jobs-housing linkage program.

3 (b) The port shall provide the commission with documentation
4 necessary to support the findings required by subdivision (a) of
5 this section at the time the port submits the proposed nontrust
6 lease and other documentation required under subdivision (c) of
7 Section 4 of Chapter 660.

8 (c) Nothing in this section shall be construed as limiting the
9 port's authority to provide rent credits, waivers, or deferrals under
10 a nontrust lease in exchange for other valuable consideration
11 provided by the lessee that meets the fair market value requirement
12 of Chapter 660.

13 (d) Nothing in this section shall be construed as limiting the
14 port's authority under the Burton Act to use or lease the designated
15 seawall lots for uses permitted by the Burton Act, subject to any
16 applicable limitations of state law.

17 SEC. 5. Sections 3 and 4 of this act shall be inoperative on
18 January 1, 2094, after which date the use of the designated seawall
19 lots shall be consistent with the public trust, the Burton Act trust,
20 and the Burton Act transfer agreement. No later than January 1,
21 2094, all structures, buildings, and appurtenances on the
22 designated seawall lots not consistent with the purposes of the
23 public trust, the Burton Act trust, and Burton Act transfer
24 agreement shall be removed or modified, including any necessary
25 restoration or remediation of the seawall lots, to facilitate public
26 trust uses.

27 SEC. 6. Section 3.3 is added to Chapter 1333 of the Statutes
28 of 1968, to read:

29 SEC. 3.3. The preservation or restoration of marine resources
30 consistent with the primary mission of the San Francisco Harbor
31 may include the sale or transfer by the City and County of San
32 Francisco, acting by and through its Port Commission (port), of
33 the port's transferable development rights, as defined in the city's
34 planning code, in connection with the preservation of a historic
35 pier or historic structure under port jurisdiction. To the extent
36 authorized by the planning code, the port may sell or transfer
37 development rights associated with a historic pier or historic
38 resource on port property, provided that if the affected port
39 property is subject to the public trust, the restriction on the port's
40 development rights following transfer shall be for a period not

1 *exceeding 66 years. The port shall use the proceeds from a transfer*
2 *of development rights solely for the furtherance of the purposes*
3 *specified by this act, which include, without limitation,*
4 *reimbursement of the costs of rehabilitation of a historic pier or*
5 *historic resource undertaken by any individual, corporation,*
6 *limited liability company, partnership, joint venture, business*
7 *entity, business trust, association, or other private organization*
8 *or private entity. For purposes of effectuating this section, the port*
9 *is authorized to submit to the procedures for transfer of*
10 *development rights set forth in the city's planning code.*

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

15 *SEC. 8. The following map is a part of this act:*

- 1 *PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE*
- 2 *INSERTED*

1 *SEC. 9. The Legislature finds and declares that, because of*
2 *the unique circumstances applicable only to the lands described*
3 *in this act, a statute of general applicability cannot be enacted*
4 *within the meaning of subdivision (b) of Section 16 of Article IV*
5 *of the California Constitution. Therefore, this special statute is*
6 *necessary.*

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

17 ~~SECTION 1. It is the intent of the Legislature to enact~~
18 ~~legislation facilitating the hosting of the 34th America's Cup in~~
19 ~~San Francisco.~~