

AMENDED IN SENATE AUGUST 22, 2012
AMENDED IN ASSEMBLY MAY 2, 2012
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 to add Section 3.3 to ~~Chapter~~ *the Burton Act (Chapter 1333 of the Statutes of 1968 1968)*, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2649, as amended, Ammiano. 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, upon the State Lands Commission making specified findings, ~~seawall lot 322-1 is certain~~

seawall lots are 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~~ *these lots*, subject to certain requirements and conditions. ~~This~~ *The* 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 *these* 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 the use restrictions of the public trust, the Burton Act trust, or the Burton Act transfer agreement, *lots* that ~~results~~ *result* in an effective rent to the port for below fair market value, if the State Lands Commission finds that certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: 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) “Chapter 660” means Chapter 660 of Statutes of 2007, as
- 19 amended.
- 20 (f) “City” means the City and County of San Francisco, a charter
- 21 city and county, and includes the port.
- 22 (g) “Commission” means the State Lands Commission.

1 (h) “Designated seawall lot” or “designated seawall lots” means
2 any or all of the parcels of real property situated in the city and
3 commonly known as seawall lots 328, 330, 337, 347S, and 322-1,
4 including a portion of Mission Rock Street, as shown on that certain
5 map entitled “revised map of designated seawall lots,” which is
6 reproduced in Section—8 9 of this act and is on file with the
7 commission and the port.

8 (i) “Historic pier” means any pier, marginal wharf, pier shed,
9 bulkhead building, and any other building or structure in the San
10 Francisco waterfront between and including Pier 48 and Pier 45
11 that has been included in the Port of San Francisco Embarcadero
12 Historic District and that is either individually listed or eligible
13 for listing on the National Register of Historic Places or has been
14 designated as, or meets the standards for, resources contributing
15 to the historic significance of the Port of San Francisco
16 Embarcadero Historic District under federal law.

17 (j) “Historic structure” means any building, structure, or other
18 facility, including a historic pier, that is located on port property
19 and either is individually listed or eligible for listing on the
20 National Register of Historic Places, or has been designated as, or
21 meets the standards for, a resource contributing to the historic
22 significance of a ~~national register listed~~ *nationally registered*
23 historic district, the proposed Pier 70 Historic District, or a district
24 eligible for listing as a historic district under federal law.

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

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

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

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

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

3 (p) “Preservation” means the rehabilitation, restoration, or
4 preservation of historic piers or other historic structures in
5 accordance with the Secretary of Interior’s Standards for the
6 Treatment of Historic Properties. Preservation includes seismic
7 retrofitting, substructure repair, and other structural and life-safety
8 improvements, provided that the improvement is necessary for,
9 and in furtherance of, the preservation of historic piers or other
10 historic structures.

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

13 (r) “Seawall lot 322-1” means that parcel of real property
14 situated in the city commonly known as seawall lot 322-1, as shown
15 on that certain map entitled “revised map of designated seawall
16 lots,” which is reproduced in Section 8 9 and is on file with the
17 commission and the port.

18 (s) *“Seawall lot 337” means that parcel of real property situated*
19 *in the city commonly known as seawall lot 337, as shown on that*
20 *certain map entitled “revised map of designated seawall lots,”*
21 *which is reproduced in Section 9 of this act and is on file with the*
22 *commission and the port.*

23 (~~s~~)

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

27 (~~t~~)

28 (u) “Transferable development rights” means transferable
29 development rights as that term is defined in the city’s planning
30 code, as may be amended from time to time.

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

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

36 (b) The lands comprising the San Francisco waterfront consist
37 primarily of sovereign tidelands granted to the city by the state
38 pursuant to the Burton Act. Under the city’s charter, the granted
39 lands are held and managed by the port. The Burton Act authorizes
40 the port to use, conduct, operate, maintain, manage, regulate,

1 improve, and control the San Francisco waterfront consistent with
2 the public trust and the Burton Act trust.

3 (c) A unique attribute of the port is the numerous historic
4 maritime resources present on port property, many of which are
5 in need of major structural repairs and are not currently available
6 for the use and enjoyment of the public. The Legislature has
7 previously found that rectifying the deteriorating conditions along
8 the San Francisco waterfront, the preservation of the numerous
9 historic piers and other historic structures on port land, and the
10 construction of waterfront plazas and open space, are matters of
11 statewide importance that will further the purposes of the public
12 trust and the Burton Act trust. The Legislature has also found that
13 revitalization of the Pier 70 area and the restoration of its unique
14 collection of historic maritime industrial buildings is of particular
15 importance. As the port strives to make productive use of the Pier
16 70 area and other lands under its jurisdiction, it faces numerous
17 obstacles related to the high costs of waterfront development,
18 including costs associated with seismic safety improvements,
19 historic rehabilitation, hazardous materials remediation, and
20 providing public access to the waterfront. The success of the port's
21 efforts to revitalize the waterfront depends in part on strategies for
22 increasing revenues from port lands and for reducing the costs of
23 beneficial development projects.

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

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

1 access to the waterfront. Chapter 660 lifted the use restrictions of
2 the public trust and Burton Act trust from those designated seawall
3 lots and authorized the port to enter into nontrust leases of the
4 lands, subject to certain conditions, and subject to the requirement
5 that the lease revenues 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 the
11 water, constitutes a relatively small portion of the tidelands granted
12 to the city, is not currently being used, and is not anticipated in
13 the foreseeable future to be used, for public trust or Burton Act
14 trust purposes. It is the intent of the Legislature that, conditioned
15 on the approval by the commission, seawall lot 322-1 be freed of
16 the use requirements of the public trust, the Burton Act trust, and
17 the Burton Act transfer agreement in the same manner and subject
18 to the same requirements as the designated seawall lots under
19 Chapter 660, subject to the additional provisions of this act.

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

36 (h) Some of the port's designated seawall lots, including seawall
37 lot 322-1 *and portions of seawall lot 337*, are well-suited to support
38 infill affordable housing development. Development of affordable
39 housing typically requires a ground lease at rents that are below

1 market. However, Chapter 660 requires the port to receive fair
2 market value for nontrust leases of designated seawall lots.

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

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

20 (k) A purpose of this act is to reduce the costs associated with
21 development that will revitalize the waterfront, facilitate the
22 preservation of historic piers and structures, and benefit the public
23 trust, while also encouraging affordable housing development on
24 port lands no longer needed for trust purposes, by authorizing the
25 port, subject to commission approval, to grant rent credits or similar
26 incentives for affordable housing development on seawall lot
27 322-1, *and portions of seawall lot 337*, or other port property
28 where housing is permitted, provided the port can apply those
29 credits to reduce the affordable housing fees or other obligations
30 imposed on development within the Pier 70 area, *seawall lot 337*,
31 or on other port lands and subject to the conditions set forth in this
32 act.

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

37 (m) The preservation of the port's historic piers and other
38 historic structures is critical for the preservation of the city's rich
39 maritime history, furthers trust purposes, and is of statewide
40 benefit. The city has adopted programs to encourage the

1 preservation of historic resources, including a transferable
 2 development rights program. This act amends the Burton Act to
 3 clarify that the port may transfer transferable development rights
 4 to preserve historic piers and structures on port property, to the
 5 extent authorized under local law and subject to certain limitations.

6 SEC. 3. (a) Seawall lot 322-1 shall remain subject to the use
 7 requirements of the public trust, the Burton Act trust, and the
 8 Burton Act transfer agreement until the commission finds both of
 9 the following:

10 (1) Seawall lot 322-1 is no longer necessary for public trust or
 11 Burton Act trust purposes.

12 (2) Lifting the use requirement of the public trust, the Burton
 13 Act trust, and the Burton Act transfer agreement until January 1,
 14 2094, is in the best interest of the state.

15 (b) ~~Upon~~*If* the commission ~~making~~*makes* the findings identified
 16 in subdivision (a), seawall lot 322-1 shall be free from the use
 17 requirements of the public trust, the Burton Act trust, and the
 18 Burton Act transfer agreement for the period between the effective
 19 date of this act and January 1, 2094, and shall be treated as a
 20 designated seawall lot for purposes of the authority granted to the
 21 port under Chapter 660. The port may enter into a nontrust lease
 22 for all or any portion of seawall lot 322-1, subject to the
 23 requirements of Section 4 of Chapter 660 and this act. Section 6
 24 of Chapter 660 shall not apply to seawall lot 322-1.

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

34 SEC. 4. (a) Notwithstanding subdivision (c) of Section 4 of
 35 Chapter 660 ~~of the Statutes of 2007~~, the port may, conditioned on
 36 the approval of the commission, provide a rent credit or other
 37 waiver or deferral of rent in connection with ~~either a nontrust lease~~
 38 ~~of seawall lot 322-1, or a nontrust lease of any other designated~~
 39 ~~seawall lot or other port property that is not subject to the use~~
 40 ~~restrictions of the public trust, the Burton Act trust, or the Burton~~

1 ~~Act transfer agreement~~, that results in an effective rent to the port
2 below fair market value, if the commission finds that both of the
3 following conditions are met:

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

8 (2) The port is entitled to apply the value of the rent credit,
9 waiver, or deferral *of rents in connection with a nontrust lease of*
10 *seawall lot 322-1* as an offset against fees or other exactions or
11 obligations that would otherwise be levied or imposed by the city
12 on development projects located on Pier 70, ~~or on other lands under~~
13 ~~the port's jurisdiction, if approved by the commission in accordance~~
14 ~~with this paragraph, relating to the projects' impacts on or demand~~
15 ~~for affordable housing, including, but not limited to, fees imposed~~
16 ~~pursuant to the city's jobs-housing linkage program. If the~~
17 ~~development project benefiting from the offset is not located on~~
18 ~~Pier 70, the commission shall not make an approval under this~~
19 ~~paragraph unless the project is located on the designated seawall~~
20 ~~lot on which the affordable housing is located, or the commission~~
21 ~~finds that the development project includes investment in the~~
22 ~~preservation of a historic pier or historic structure in an amount~~
23 ~~equal to or greater than the amount of the offset.~~

24 *(b) Notwithstanding subdivision (c) of Section 4 and Section 6*
25 *of Chapter 660, the port may, conditioned on the approval of the*
26 *commission, provide a rent credit or other waiver or deferral of*
27 *rent in connection with a nontrust lease of seawall lot 337 that*
28 *results in an effective rent to the port below fair market value, if*
29 *the commission finds that both of the following conditions are met:*

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

35 (2) The port is entitled to apply the value of the rent credit,
36 waiver, or deferral *of rent in connection with a nontrust lease of*
37 *seawall lot 337* as an offset against fees or other exactions or
38 obligations that would otherwise be levied or imposed by the city
39 on any other development project located on seawall lot 337, if
40 approved by the commission in accordance with this subdivision,

1 *relating to the other project’s impact on, or demand for, affordable*
 2 *housing, including, but not limited to, fees imposed pursuant to*
 3 *the city’s jobs-housing linkage program.*

4 (b)

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

10 (e)

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

16 (d)

17 (e) Nothing in this section shall be construed as limiting the
 18 port’s authority under the Burton Act to use or lease the designated
 19 seawall lots for uses permitted by the Burton Act, subject to any
 20 applicable limitations of state law.

21 *SEC. 5. If the port constructs structures other than affordable*
 22 *housing on seawall lot 322-1, the port shall acquire, subject to the*
 23 *approval of the commission and in consultation with the California*
 24 *Coastal Conservancy, land of equal monetary value to seawall lot*
 25 *322-1 that is adjacent to the water and promotes the public trust*
 26 *in exchange for permanently lifting the trust use restrictions at*
 27 *seawall lot 322-1. If the port is unable to find available and*
 28 *suitable land to acquire, the port shall make a deposit of an amount*
 29 *that is equal to the value of seawall lot 322-1 to the Kapiloff Land*
 30 *Bank Fund pursuant to the Kapiloff Land Bank Act (Division 7*
 31 *(commencing with Section 8600) of the Public Resources Code).*

32 ~~SEC. 5.~~

33 *SEC. 6. Sections 3 and 4 to 5, inclusive, of this act shall be*
 34 *inoperative on January 1, 2094, after which date the use of the*
 35 *designated seawall lots shall be consistent with the public trust,*
 36 *the Burton Act trust, and the Burton Act transfer agreement. No*
 37 *later than January 1, 2094, all structures, buildings, and*
 38 *appurtenances on the designated seawall lots not consistent with*
 39 *the purposes of the public trust, the Burton Act trust, and the Burton*
 40 *Act transfer agreement shall be removed or modified, including*

1 any necessary restoration or remediation of the seawall lots, to
2 facilitate public trust uses.

3 ~~SEC. 6.~~

4 *SEC. 7.* Section 3.3 is added to ~~Chapter 1333 of the Statutes~~
5 ~~of 1968, the~~ *Burton Act (Chapter 1333 of the Statutes of 1968)*, to
6 read:

7 Sec. 3.3. For purposes of subdivision (e) of Section 3, the
8 preservation or restoration of marine resources consistent with the
9 primary mission of the San Francisco Harbor may include the
10 transfer by the City and County of San Francisco, acting by and
11 through its Port Commission (port), of the port's transferable
12 development rights, as defined in the city's planning code, as may
13 be amended from time to time, in connection with the preservation
14 of a historic pier or historic structure under port jurisdiction. To
15 the extent authorized by the planning code and upon a
16 determination by the port commission that there are no foreseeable
17 public trust needs for the development rights, the port may transfer
18 development rights associated with a historic pier or historic
19 structure on port property, provided that if the affected port
20 property is subject to the public trust and the Burton Act trust, the
21 restriction on the port's development rights following transfer shall
22 be for a period not exceeding 66 years. The port shall use the
23 proceeds from a transfer of development rights solely for the
24 furtherance of the purposes specified by this act, which include
25 the preservation of a historic pier or historic structure. For purposes
26 of effectuating this section, the port is authorized to submit to the
27 procedures for transfer of development rights set forth in the city's
28 planning code.

29 ~~SEC. 7.~~

30 *SEC. 8.* The Legislature finds and declares that unique
31 circumstances exist at the San Francisco waterfront as described
32 in Section 2 of this act, and that therefore this act sets no precedent
33 for any other location or project in the state.

34 ~~SEC. 8.~~

35 *SEC. 9.* The following map is a part of this act:

1 ~~SEC. 9.~~

2 *SEC. 10.* Notwithstanding any other law, for purposes of
3 Chapter 660 and the Burton Act, the terms “historic pier,” “historic
4 structure,” and “preservation” shall have the same meaning as
5 those terms are defined in Section 1 of the act adding this section.

6 ~~SEC. 10.~~

7 *SEC. 11.* The Legislature finds and declares that, because of
8 the unique circumstances applicable only to the lands described
9 in this act, a statute of general applicability cannot be enacted
10 within the meaning of subdivision (b) of Section 16 of Article IV
11 of the California Constitution. Therefore, this special statute is
12 necessary.

13 ~~SEC. 11.~~

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

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26 **CORRECTIONS:**

27 **Text—Page 11.**

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