

CALENDAR ITEM

81

A Statewide

08/19/15

S Statewide

S. Pemberton

CONSIDER ADOPTING AN OPPOSE UNLESS AMENDED POSITION ON SB 399 (HALL) THAT WOULD AMEND THE STATUTORY TRUST GRANT TO THE CITY OF LOS ANGELES TO EXPAND THE MAXIMUM LEASE TERM THE CITY MAY ENTER INTO TO 75 YEARS BY INCLUDING A RIGHT OF RENEWAL CAPPED AT 25 YEARS

SUMMARY:

SB 399 addresses sovereign lands that the Legislature transferred to the City of Los Angeles (City) in 1911 for public trust purposes and subject to terms and conditions to ensure that the lands will be maintained and improved in furtherance of the Public Trust and in the state's best interest. The City's legislative grant restricts the term of a franchise, permit, or lease for use of the granted lands to a limited term not to exceed 50 years. SB 399 provides the City with the authority to grant a right of renewal not to exceed 25 years, thereby increasing the duration of a lease or franchise from 50 years to 75 years.

BACKGROUND:

In 1911, the California Legislature granted all the right, title, and interest of the state in the sovereign lands within the boundaries of the City in trust to the City for certain uses and purposes, including the promotion of commerce, navigation and fishing (Chapter 656, Statutes of 1911, and as amended). The City holds these sovereign lands in trust for the state's beneficiaries; the people of California. Under existing law, the City is prohibited from granting, conveying, giving, or alienating any part of these lands to any entity for any purpose. This prohibition on alienation is standard in each of the state's approximately 70 statutory trust grants. The California Constitution, statutory law, and the common law Public Trust Doctrine, as interpreted and developed by the courts, all contain very stringent restraints on the alienation of state sovereign lands.

Although the City may not alienate these lands, it may grant franchises and permits for limited terms, not to exceed 50 years, for the furtherance of commerce, navigation and fishing and for certain other purposes specified in the granting statute.

The authorization to lease sovereign lands for limited periods for certain trust consistent uses is standard in virtually every granting statute and generally necessary for the proper administration of these lands. Unless otherwise specified in a particular grant, such as the City's, the lands may be leased for a maximum period of 66 years (Civil Code § 718). The majority of trust grants,

CALENDAR ITEM NO. 81 (CONT'D)

including the grants underlying the Ports of Oakland, San Francisco, Long Beach, and San Diego, limit lease terms to 66 years. The State Lands Commission itself has adopted regulations limiting the issuance of leases for terms no longer than 49 years.

The City's statutory trust grant was amended in 1951 to extend the maximum lease term from 30 to 50 years. In 2002, the City's granting statute was amended to expand the allowable uses of its public trust lands beyond the development of a port and harbor to include trust consistent commercial, retail, open-space and other visitor-serving uses that connect the public with its waterfront.

ANALYSIS:

Presently, there are isolated areas of visitor-oriented commercial development along the Port of Los Angeles waterfront and there are many sites that are abandoned, vacant, and underused. In an effort to address these issues, Los Angeles City Councilman Joe Buscaino, in cooperation with Mayor Eric Garcetti and the Los Angeles Harbor Department, initiated the Los Angeles Waterfront planning and development program. The program is focused on establishing a framework for enhancing the San Pedro-Wilmington waterfront by providing waterfront access with landscaped boulevards, promenades, parks, and urban squares, as well as development opportunities intended to benefit tourists and residents.

According to the author's office and the sponsor of the bill, Los Angeles City Councilmember Joe Buscaino, the ability to exceed a 50-year lease term is necessary to facilitate waterfront planning and development at the Los Angeles Waterfront and in the Harbor area, including the San Pedro and Wilmington communities that border the Port of Los Angeles. The author and sponsor state that major stakeholders have concluded that the ability to exceed the current 50-year lease term maximum for these lands is necessary to secure funds for the redevelopment of the Los Angeles Waterfront, and in particular, the Ports O' Call project. To support this assertion, the author and sponsor reference a Los Angeles County Economic Development Corporation draft report that contains this conclusion. At this time, the draft report is not on the Los Angeles County Economic Development Corporation's website. Commission staff has requested the report from the author and sponsor, but it has not been provided.

Commission staff recognizes the need to redevelop and revitalize the San Pedro and Wilmington waterfront and provide connectivity with the Port of Los Angeles to facilitate the statewide public's enjoyment and use of the waterfront. Commission staff also understands the need to secure funding to support this endeavor, but believes that leasing the state's public trust lands for 75-year periods under the same lease terms is poor public policy for a number of

CALENDAR ITEM NO. 81 (CONT'D)

reasons. Based on the Commission's own experience with long-term legacy leases, 75-year leases will not reflect and keep pace with evolving environmental policies and practices, contemporary liability, insurance and indemnification provisions, market rates, modern land and resource management principles, and current public trust needs. Examples include sea level rise and climate change, which were not well known decades ago and thus not accounted for in older lease terms and conditions. It is also Commission staff's experience that development that requires a longer lease term, such as 75 years, is typically development that is inconsistent with the common law Public Trust Doctrine and the applicable legislative trust grant. If the City requires a longer lease term to facilitate waterfront redevelopment, Commission staff suggests a maximum lease term of 66 years, which is an adequate maximum lease term for typical public trust uses and when managing waterfront property on the state's behalf.

A maximum lease term of 66 years is also consistent with the majority of the approximately 70 legislative trust grants to local jurisdictions throughout the state, including the lands underlying the Ports of San Francisco, Oakland, Long Beach and San Diego. These major ports are all actively redeveloping their waterfront and a 66-year lease term is sufficient for their purposes. Staff believes that a maximum lease term of 66 years is also sufficient for the City to attract appropriate waterfront development consistent with its granting statute and the common law Public Trust Doctrine. To be consistent with the state's other trustees of sovereign land, and with current law, Commission staff recommends that SB 399 be amended to remove the 25-year right of renewal and change the maximum lease term to 66 years.

It is also staffs' understanding that a purpose of this bill is to achieve parity with the Port of Long Beach. This parity argument is misplaced because the language in SB 399 is not consistent with the Port of Long Beach granting statute. Additionally, public trust needs vary depending on the unique characteristics of the particular lands and resources within each trust grant and are governed by the individual granting statutes specific to that particular trust grant. Each trustee has a duty to administer its trust grant based on the unique public needs of the lands and resources under its care. Further, while the Port of Long Beach has a granting statute that allows a 25-year right of renewal, it is a narrow statute for specific purposes and its use is conditioned on certain factors, such as a competitive bidding requirement. SB 399 does not attach the conditions in the Port of Long Beach granting statute to the 25-year renewal right, nor does it limit its application to the narrow circumstances permitted in the Port of Long Beach granting statute. Additionally, the Port of Long Beach staff has represented to Commission staff that they adhere to a 66-year maximum lease term and with any given lease, their practice is to not exceed 50-year lease terms.

CALENDAR ITEM NO. **81** (CONT'D)

OTHER PERTINENT INFORMATION:

The substantive language involving the City was amended into SB 399 on June 25, 2015, after the bill moved out of the Senate to the Assembly. The bill is thus a “gut-and-amend.” SB 399 was subsequently referred to the Assembly Natural Resources and Local Government Committees and approved by them on July 13 and July 15, respectively. SB 399 is sponsored by Council Member Joe Buscaino, City of Los Angeles, and supported by Mayor Eric Garcetti, Mayor Los Angeles, the Los Angeles Chamber of Commerce, the Los Angeles/Orange Counties Building and Construction Trades Council, the San Pedro Chamber of Commerce, and SBCC Thrive LA.

STAFF RECOMMENDATION:

Commission staff recommends that the Commission adopt an oppose unless amended position on SB 399, consistent with staff’s analysis in this staff report.

EXHIBIT:

- A. Copy of SB 399 (Hall)

RECOMMENDED ACTION:

It is recommended that the Commission:

1. Adopt an oppose unless amended position on SB 399 (Hall), consistent with this staff report.

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JUNE 25, 2015

SENATE BILL

No. 399

Introduced by Senator Hall

February 25, 2015

An act to amend Section 1 of Chapter 651 of the Statutes of 1929, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Hall. Tidelands and submerged lands: City of Los Angeles.

Existing law grants to the City of Los Angeles all the right, title, and interest of the State of California in and to all tidelands and submerged lands situated below the line of mean high tide of the Pacific Ocean within the boundaries of the city in trust for certain purposes, including promotion of commerce, navigation, and fishery, and for certain specific uses relating to these purposes. Existing law authorizes the City of Los Angeles to grant franchises and permits on, and leases of, those lands, or any part thereof, for specified purposes and for a term not exceeding 50 years.

This bill would authorize the City of Los Angeles to renew a franchise or permit on, or lease of, those lands for those specified purposes for an additional ~~such term or terms~~ *term, not to exceed 25 years*.

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

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

1 SECTION 1. Section 1 of Chapter 651 of the Statutes of 1929,
2 as amended by Section 1 of Chapter 1130 of the Statutes of 2002,
3 is amended to read:

4 Sec. 1. There is hereby granted to the City of Los Angeles,
5 hereinafter called "city," a municipal corporation of the State of
6 California, and to its successors, all the right, title, and interest of
7 the State of California, held by the state by virtue of its sovereignty,
8 in and to all tidelands and submerged lands, whether filled or
9 unfilled, situated below the line of mean high tide of the Pacific
10 Ocean, within the present boundaries of the city, or of any harbor,
11 estuary, bay, or inlet within those boundaries, except as hereinafter
12 provided, to be forever held by the city, and by its successors, in
13 trust for the following uses and purposes, and upon the following
14 conditions:

15 (a) The lands shall be held by the city, and by its successors, in
16 accordance with the provisions of this act, for purposes in
17 connection with, or for the promotion and accommodation of,
18 commerce, navigation, and fishery, and for those purposes specified
19 in Section 3 of this act.

20 (b) Except as otherwise provided in this act, the city, or its
21 successors, shall not grant, convey, give, or alienate the lands, or
22 any part thereof, to any individual firm or corporation for any
23 purpose whatsoever; provided that the city, or its successors, may
24 grant franchises and permits thereon for ~~a limited terms, term,~~ not
25 to exceed 50 years, subject to the right of renewal by the city for
26 a further ~~such term or terms, term, not to exceed 25 years,~~ for
27 purposes in connection with, or for the promotion and
28 accommodation of, commerce, navigation, fishery, and for any
29 purposes specified in Section 3 of this act, and may lease the lands,
30 or any part ~~thereof thereof,~~ for ~~a limited terms, term,~~ not to exceed
31 50 years, subject to the right of renewal by the city for a further
32 ~~such term, or terms term, not to exceed 25 years,~~ for any and all
33 purposes which shall not interfere with the trusts upon which the
34 lands are held by the ~~State of California.~~ *state.*

35 (c) The tide and submerged lands shall be improved by the city
36 without expense to the state, and any harbor constructed thereon
37 shall always remain a public harbor for all purposes of commerce
38 and navigation, and the state shall have, at all times, the right to

1 use, without charge, all wharves, docks, piers, slips, quays, and
2 other improvements constructed by the city on the lands, or any
3 part thereof, for any vessel or other watercraft, or railroad, owned
4 or operated by the state.

5 (d) In the management, conduct, or operation of any harbor, or
6 of any of the utilities, structures, or appliances constructed in
7 connection therewith, no discrimination in rates, tolls, or charges,
8 or in facilities, for any use or service in connection therewith shall
9 ever be made, authorized, or permitted by the city, or by its
10 successors.

11 There is reserved in the people of the State of California the
12 absolute right to fish in the waters, with the right of convenient
13 access to the waters over the lands for those purposes. The grant
14 herein made shall not include those tidelands or submerged lands
15 within those certain areas known as the Westgate addition acquired
16 by the City of Los Angeles by annexation on June 14, 1916, or the
17 Santa Monica canyon addition acquired by the City of Los Angeles
18 by annexation on April 28, 1925, or the Venice addition acquired
19 by the City of Los Angeles by consolidation on November 25,
20 1925.

O