

CHAPTER 1333

An act authorizing the transfer in trust to the City and County of San Francisco the interest of the state in and to, and the control and management of, the Harbor of San Francisco, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 14, 1968. Filed with
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The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the "Burton Act."

SEC. 2. The Director of Finance is hereby authorized to negotiate with the City and County of San Francisco for the transfer, in conformity with the provisions of this act, to the City and County of San Francisco, a municipal corporation of the State of California, or to its successor, in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in this act, all of the right, title and interest held by the State of California and acquired by virtue of its sovereignty or otherwise, in and to the real property located in the City and County of San Francisco and presently under the jurisdiction and control of the San Francisco Port Authority, together with all improvements, rights, privileges, easements and appur-

tenances connected therewith or in anywise appertaining thereto, and any and all personal property of every kind and description owned or controlled by the State of California and used in connection with the operation and maintenance of San Francisco Harbor and including any deposits of funds held by or for the San Francisco Port Authority; excepting and reserving unto the State of California all subsurface mineral deposits, including oil and gas deposits, together with the right of ingress and egress on the properties conveyed to the City and County of San Francisco for exploration, drilling and extraction of such mineral, oil and gas deposits; and also reserving to the people of the State of California the right to hunt and fish in and over the waters of San Francisco Harbor. The negotiations shall be concluded by October 21, 1968, unless such time is extended by mutual agreement. Within three years after the effective date of this act, the State Lands Commission shall, at the cost of the Harbor Commission of the City and County of San Francisco, survey and monument the transferred lands, and record a description and plat thereof in the office of the recorder of the city and county. This act shall not apply to any property or interest in property, whether real or personal, owned by or under the jurisdiction or control of the Department of Public Works, Division of Highways, Division of Bay Toll Crossings, or the California Toll Bridge Authority. All that property described in Section 1770 of the Harbors and Navigation Code and transferred to the City and County of San Francisco by this act shall remain subject to any requirements of the Department of Public Works, Division of Bay Toll Crossings, Division of Highways, or the California Toll Bridge Authority for future right-of-way, or easement, or material for the construction, location, realignment, expansion and maintenance of bridges, highways or other transportation facilities without compensation to the City and County of San Francisco, except that in the event improvements, betterments or structures have been placed upon the property transferred, compensation shall be made to the City and County of San Francisco for the value of the improvements, betterments, or structures taken, and except property that was originally acquired for valuable consideration, in which case compensation shall be made to the City and County of San Francisco. The Director of Finance shall be assisted in such negotiations by the Secretary for Agriculture and Services and the San Francisco Port Authority.

SEC. 3. The City and County of San Francisco, through a Harbor Commission of the City and County of San Francisco, shall have complete authority, except as otherwise agreed to as a condition of the transfer and as provided in this act, to use, conduct, operate, maintain, manage, regulate, improve and control the harbor of San Francisco and to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, improvement and control of said harbor which are not prohibited by the laws of the

State of California or the Charter of the City and County of San Francisco and which are in conformance with the terms of this act, including, without limiting the generality of the foregoing, the following:

1. The improvement and conduct of the harbor and the construction, reconstruction, repair and operation of all works, buildings, facilities, utilities, structures and appliances, incidental, necessary or convenient for the promotion and accommodation of commerce and navigation;

2. The use for all commerce and industrial purposes and the construction, reconstruction, repair, maintenance of commercial and industrial buildings, plants and facilities;

3. The establishment, improvement and conduct of railroad and aviation facilities and all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and conduct of air commerce and navigation and railroad transportation;

4. The construction, reconstruction, repair, maintenance and operation of public buildings, parks, playgrounds, public educational and recreation facilities and all works, buildings, facilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses;

5. The preservation or restoration of marine resources consistent with the primary mission of the San Francisco Harbor;

6. The grant of franchises thereof for limited periods not exceeding 66 years for wharves and other public uses and purposes and the lease of said lands, facilities, or any part thereof for limited periods not exceeding 66 years, and the collection and retention of rents and other revenues from such leases, franchises, permits, licenses, and privileges. Such lease or leases, franchises, permits, licenses, and privileges shall be for purposes consistent with the trusts upon which the lands are held by the state and with the requirements of commerce and navigation, or if the Harbor Commission of the City and County of San Francisco determines that any portion of the transferred lands is not required for the foregoing uses described in this section, such lease or leases, franchises, permits, licenses, and privileges, may be for the purposes of such development and use as the commission finds will yield maximum profits to be used by the commission in the furtherance of commerce and navigation. The moneys derived from such lease or leases, franchises, permits, licenses, and privileges shall be used solely for the furtherance of the purposes specified by this act.

SEC. 4. The City and County of San Francisco shall establish a separate harbor trust fund or funds upon the transfer in such manner as may be prescribed by the Department of Finance; the city and county shall deposit in the fund or funds all moneys received directly from or indirectly attributable to facilities on the transferred lands in the harbor. An annual

statement of financial condition and operations, to conform with such requirements as the Department of Finance may prescribe, shall be submitted to the Department of Finance each year by the city and county on or before September 30th of each year for the preceding fiscal year.

SEC. 5. Notwithstanding any other provision of law to the contrary, the City and County of San Francisco, either acting alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the transferred lands for any or all of the following purposes, provided the same comply with the terms of the trust which are matters of statewide as distinguished from local or purely private interest and benefit:

1. The construction, reconstruction, improvement, repair, operation, maintenance, promotion, and protection of works, lands, waterways, and facilities necessary for the development of such transferred lands for highest and best use in the public interest, including commerce, navigation, fisheries, marinas, small boat harbors, marine stadiums, maritime museums, marine parks, beaches, and such streets, roadways, bridges, bridge approaches, earthfills, bulkheads, piers, supporting structures, buildings, recreational facilities, landscaping, and parking lots situated upon such transferred lands, or adjacent thereto and reasonably necessary to provide access to, or development of, such transferred lands;

2. The promotion, by advertising and such other means as may be reasonable and appropriate, of maximum public use of such transferred lands or to encourage private investment in development of such transferred lands for the highest and best use in the public interest;

3. Any other uses or purposes of state, as distinguished from purely local or private, interest and benefit, which are in fulfillment of those trust uses and purposes described in this act;

4. The acquisition of property and the rendition of services reasonably necessary to the carrying out of the foregoing uses and purposes, including the amortization or debt service of any capital improvement funding program which is consistent with the terms and conditions set forth in this act.

SEC. 6. Such revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

SEC. 7. As to the accumulation and expenditure of revenues for any single capital improvement on the transferred lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the City and County of San Francisco shall file with the Department of Finance a detailed description of such capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith, excepting preliminary planning. The Department of Finance may, within 90 days after the time of such filing, determine and notify the City and County of San Francisco that such capital improvement is not in the statewide in-

terest and benefit or is not authorized by any of the subdivisions in Section 5 of this act. The Department of Finance may request the opinion of the Attorney General on the matter, and if it does so, a copy of such opinion shall be delivered to the City and County of San Francisco with the notice of its determination. In the event the Department of Finance notifies the City and County of San Francisco that such capital improvement is not authorized, the City and County of San Francisco shall not disburse any revenue for or in connection with such capital improvement, unless and until permitted by an order or judgment of a court of competent jurisdiction in a suit brought for the purpose of determining whether such proposed capital improvement is in the statewide interest and benefit. The city and county may bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the Department of Finance and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in such suit, no costs shall be recovered against the state.

SEC. 8. At the end of each fiscal year, that portion of the San Francisco Harbor revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after necessary operating costs and expenditures directly related to the operation of the maritime activity of the port or the maintenance of non-maritime activities of the harbor have been made, shall be deemed excess revenue; provided, that any funds deposited in a reserve fund for future capital expenditures or any funds used to retire general obligation or revenue bond issues shall not be deemed excess revenue. Capital improvements for non-maritime activities may be considered as expenditures for the purpose of determining net revenues if they have the prior authorization of the Department of Finance. The question of what constitutes a maritime activity or a nonmaritime activity, for the purposes of this section, shall be one of the subjects for negotiation between the Director of Finance and the City and County of San Francisco pursuant to Section 2 of this act.

The excess revenue, as determined pursuant to this section, shall be divided as follows: 85 percent to the State General Fund, and 15 percent to the City and County of San Francisco to be deposited in the harbor trust fund and used for any purpose authorized by Sections 3 and 5 of this act.

SEC. 9. As express conditions to such transfer, the City and County of San Francisco shall agree to:

1. Indemnify, defend, and hold harmless the state with regard to all outstanding bonded indebtedness incurred for San Francisco Harbor improvements;

2. Transfer to the state amounts necessary to pay the amounts due upon such bonded indebtedness prior to the time such amounts are due; and

3. Assume the obligations and duties of the port authority under all other outstanding contracts, leases, franchises or agreements

4. Comply with the provisions of this act.

SEC 10 The transfer authorized by this act shall be deemed to take effect when the voters of the City and County of San Francisco, at an election duly held and conducted, have assented to the transfer under the terms and conditions specified in this act and the results of the election have been certified to according to law.

SEC. 11. Upon certification of the vote specified in Section 10, the authority, jurisdiction and control of San Francisco Port Authority over San Francisco Harbor and the facilities thereof shall be deemed transferred to the City and County of San Francisco and the port authority shall cease to function and be dissolved. The City and County of San Francisco shall thereupon assume control and jurisdiction over the San Francisco Harbor and facilities and shall have complete authority to use, operate, maintain, manage, regulate, improve and control the harbor of San Francisco and to do and perform all acts as may be deemed necessary in connection with the use, operation, maintenance, management, regulation, improvement and control of said harbor as may be prescribed.

SEC. 12. San Francisco Harbor and facilities shall be under the administration and control of the Harbor Commission of the City and County of San Francisco which shall be established in accordance with the provisions of the Charter of the City and County of San Francisco. The commission shall consist of five members, each member serving for a term of four years. Except as hereinafter provided, each of said members shall be appointed by the mayor, said appointment being subject to confirmation by the Board of Supervisors of the City and County of San Francisco. In order that there be no interruption in the orderly operation and management of San Francisco Harbor, the incumbent members of the San Francisco Port Authority shall serve as the initial members of the commission for periods corresponding to the unexpired portions of their respective terms as members of the San Francisco Port Authority. In addition to the appointive members, the Director of Finance and the Secretary for Agriculture and Services, or their designated deputies, shall be ex officio members of the commission.

SEC 13. The Department of Finance, at the request of the City and County of San Francisco, shall grant an extension of time, not to exceed 30 calendar days, for filing any report or statement required by this act which was not filed due to mistake or inadvertence.

SEC. 14. In the event that the City and County of San Francisco fails or refuses to file with the Department of Finance any report, statement, or document required by any provision of this act within the time period specified by this act,

or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of the transfer by which the lands were transferred to it pursuant to this act, the Attorney General shall, upon request of the Department of Finance, bring such judicial proceedings for correction and enforcement as are appropriate, and shall act to protect any properties and assets situated on the transferred lands or derived therefrom. The Department of Finance shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days of the occurrence of such failure or refusal and of actions taken as a result thereof.

SEC. 15. The Department of Finance shall, from time to time, recommend to the Legislature such amendments as it may deem necessary in the terms and conditions of this act.

SEC. 16. The Department of Finance shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with, and that all other applicable provisions of law concerning these specific transferred lands are being complied with in good faith.

SEC. 17. The Department of Finance shall, on or before December 31st of each year, report to the Chief Clerk of the Assembly and to the Secretary of the Senate, the full details of any transaction or condition reported to the department pursuant to this act which it deems in probable conflict with the requirements of this act, or with any other provision of law.

SEC. 18. The Legislature reserves the right to amend, modify, or revoke, in whole or in part, the transfer of lands in trust provided for in this act, provided that the state shall thereupon assume all lawful obligations related to such lands as may revert to the state by such action.

SEC. 19. The Attorney General, at his own instance, or upon formal request of the Department of Finance, or by resolution of either house of the Legislature, shall bring an action in the superior court of the city and county to declare that the transfer under which the city and county holds such transferred lands is revoked for gross and willful violation of the terms of such transfer or the provisions of this act or other legislative enactment, or to compel compliance with the terms and conditions of the transfer and any other provision of law including, but not limited to, this act.

SEC. 20. All persons actually employed in the service of the San Francisco Port Authority at the time this act takes effect and who at said date shall be entitled to the benefits of the civil service provisions of the State of California insofar as the same may be applicable to the employees of the San Francisco Port Authority, shall be continued in their respective positions and shall continue to hold their positions pursuant to the civil service provisions of the Charter of the City and County of San Francisco and they shall be entitled to all of the rights, benefits, and privileges which such persons might have or might have had, had such persons been originally

appointed to their respective positions under certification from the civil service commission of the City and County of San Francisco, and in the matter of seniority in service of such employees entitled to the benefits of said civil service provisions as herein provided, the seniority of each employee shall be reckoned from his first permanent appointment to employment under the State of California, and as to their respective positions such employees shall have preference over all other employees of the City and County of San Francisco. The employment rights of such state employees shall be fully protected at the time of the transfer authorized by this act. Salary, employment conditions, and benefits shall be no less than those received by the employees of the San Francisco Port Authority at the time of transfer. These rights and benefits include, but are not limited to: probationary or permanent civil service status, and any career executive appointments; retention of employees' positions on existing subdivisional and departmental promotional and eligible lists, as long as they are in effect; no less than the same wage and salary range for comparable classes; overtime and shift premium pay whenever and wherever applicable; callback and standby pay whenever and wherever applicable; continued membership in the Public Employees' Retirement System provided by the City and County of San Francisco, or any other retirement program in effect with the San Francisco Port Authority; retention of vacation and sick leave balances which such employees now have when they become employees of the City and County of San Francisco; waiver of residence requirements; and retention of the option to continue any present health insurance and group life coverage. Upon assent to the transfer of lands as authorized by this act by the City and County of San Francisco, any employee desiring to transfer to another state agency or to be placed on a state layoff list may do so within six months of such assent and shall retain all state civil service rights and benefits.

SEC. 21. If negotiations are not concluded by October 21, 1968, unless such time is extended by mutual agreement, or if by December 31, 1970, the transfer authorized by this act has not been negotiated and the voters of the City and County of San Francisco have not assented to the transfer, the provisions of this act shall be of no further force or effect.

SEC. 22. Within 10 years from the effective date of this act, the lands transferred pursuant to this act shall be substantially improved by the city and county without expense to the state, and the city and county shall issue bonds in the amount of at least fifty million dollars (\$50,000,000) for harbor purposes. If the Department of Finance determines that the city and county has failed to improve the lands as herein required and issue such bonds as herein required, all right, title, and interest of the city and county in and to all such lands shall cease and the lands shall revert and rest in the state. The city and county shall also issue additional bonds in

the amount of at least fifty million dollars (\$50,000,000) for harbor purposes within 25 years from the effective date of this act, and if the Department of Finance determines that the city and county has failed to issue such additional bonds, all right, title, and interest of the city and county in and to all such lands shall cease and the lands shall revert and rest in the state.

SEC. 23. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

It is desirable that the voters of the City and County of San Francisco have an early opportunity to vote on the transfer authorized by this act. The earliest and most convenient opportunity for a vote by the people of the City and County of San Francisco on this matter is the forthcoming general election in November of this year. In order that there will be sufficient time available after the effective date of this act to prepare for such a vote on this matter at the forthcoming general election, it is necessary that this act shall go into immediate effect.
