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OAKLAND

CITY OF OAKLAND
BILL ANALYSIS



Date: 2818 MAY 30 PM 7:05
May 30, 2013

Bill Number: AB 1273

Bill Author: CA Assemblymember Phil Ting (San Francisco)

DEPARTMENT INFORMATION

Contact: Jennie Gerard, District 2, 510.238.7023
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RECOMMENDED POSITION: OPPOSE AB 1273 (Ting)

Summary of the Bill:

AB 1273 would authorize the Port of San Francisco to approve a mixed-use development on the San Francisco waterfront at Pier 30-32. The development would include a multipurpose venue for events and public assembly, if certain conditions are met. Owners of the Golden State Warriors, who are the backers of the proposed development, expect to move the team's home base to a new arena to be built on these two piers.

More about this bill:

Passage of AB 1273 would facilitate the move of the Golden State Warriors from the Oracle Arena, resulting in a significant blow to Oakland's economy. The Warriors' home games (43 at a minimum) and the internationally recognized performances that their presence attracts to the Arena provide an important number of jobs. More than 800 part-time workers support each Warriors' home game, according to the Coliseum Authority. Loss of those jobs in Alameda County would impact the already high unemployment rate. Sales tax revenue would be diminished, too, another blow to the City of Oakland.

Additionally, the land use restrictions of the Public Trust Doctrine and the limitations on the use of tidelands property such as Pier 30-32 would be violated by the passage of AB 1273, as noted by the Pacific Merchant Shipping Association: "(1) the primary land use proposed is not water-dependent or directly related to water-dependent or directly related to water-dependent uses, such as commerce, navigation, fisheries or open space preservation; and (2) the primary land use proposed is for a quasi-municipal purpose unconnected with trust uses". Instead, AB 1273 "substitutes legislative pronouncement of the appropriate use of granted tidelands trust for traditional trust purposes of commerce, navigation and open space preservation".

Positive Factors for Oakland if AB 1273 is Defeated:

The Warriors as the anchor tenant of the Oakland Arena and a draw for other performances result in a significant, positive economic impact on Oakland's economy and the City's tax revenue. Defeat of AB 1273 may increase the chances of the Golden State Warriors continuing to use the Arena in Oakland as its home base.

Item: _____
Rules & Legislation Comte.
June 6, 2013

Negative Factors for Oakland if AB 1273 is Enacted:

According to Alameda County's Sacramento Legislative Office, the existing licensing agreement specifies that the Warriors contribute up to \$7.4 million annually toward debt service for capital improvements made to the Arena. As of 2017, approximately \$66 million in outstanding debt on the Arena bonds will remain. If the team were to move from the Arena and associated jobs were lost, the economic loss resulting from elimination of jobs and decrease in sales tax revenue would eclipse these payments.

Registered Support /Opposition (as of 4/24/13)

Support

City and County of San Francisco [SPONSOR]
A Philip Randolph Institute, San Francisco and Western Region
Asbestos, Lead and Old Laborers, Local Union No. 67
Bay Area Council
Boys and Girls Clubs of San Francisco
Bricklayers and Allied Craftworkers Local 3, California
Brightline Defense Project
Building Owners and Managers Association of San Francisco
California Labor Federation
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
CAL Insurance & Associates, Inc.
Charity Cultural Services Center
Golden State Warriors
Hotel Council of San Francisco
International Brotherhood of Electrical Workers, Local Union 6
International Union of Operating Engineers, Local Union No. 3
Laborers' International Union of North America, Local Union No. 261
Mission Hiring Hall
San Francisco Chamber of Commerce
San Francisco Citizens Initiative for Technology & Innovation [sf citi]
San Francisco Deputy Sheriff's Foundation
San Francisco Fire Department
San Francisco Travel Association
Sign Display and Allied Crafts, Local Union No, 510
State Building and Construction Trades Council of California
Sustainable Futures
United Association of Plumbers, Pipefitters, and Sprinkler Fitters, Local Union No. 483
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry
United Brotherhood of Carpenters and Joiners of America, Local Union 22
Western States Council of Sheet Metal Workers
Young Community Developers, Inc.
Individual letters (7)

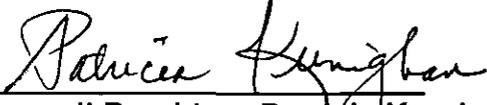
Opposition

Mayors of the Cities of Berkeley, Oakland, Richmond and San Leandro
San Francisco BayKeeper
San Francisco Tomorrow
San Francisco Waterfront Alliance
Save the Bay
Sierra Club California

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or None (do not review with City Council, position not required)

Respectfully Submitted,


Council President Patricia Kernighan

Date of Hearing: May 1, 2013

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

KiL "Katcho" Achadjian, Chair

~~AB 1273 (King)~~ As Amended: April 24, 2013

SUBJECT: Tidelands and submerged lands: City and County of San Francisco: Pier 30-32: multipurpose venue.

SUMMARY: Authorizes the Port of San Francisco to approve a mixed-use development on the San Francisco waterfront at Pier 30-32 that includes a multipurpose venue for events and public assembly, if certain conditions are met. Specifically, this bill:

- 1) Establishes the Pier 30-32 Revitalization Act.
- 2) Amends Section 5 of Chapter 489 of Statutes of 2001, as amended by Section 2 of Chapter 68 of the Statutes of 2003, as follows:
 - a) States that the Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at Pier 30-32 on the San Francisco waterfront and the considerable statewide public benefit and promotion of the public trust that will be brought about by the preservation, improvement, and modernization of the pier related to the construction of a new multipurpose venue for events and public assembly, establishment of maritime uses, improved public access, public use and enjoyment of the site, establishment of venue-supporting or trust retail uses on the side, and additional public trust benefits, hereby authorizes the Port to approve a mixed-use development on the San Francisco waterfront at Pier 30-32 that includes a multipurpose venue for events and public assembly if the Port finds that all of the following conditions are met:
 - i) The mixed-use development is designed to attract people to the waterfront, increase public enjoyment of the San Francisco Bay, encourage public trust activities, and enhance public use of trust assets and resources on the waterfront;
 - ii) The mixed-use development is designed to provide multiple significant views of the Bay Bridge and the San Francisco Bay from a variety of elevations and vantage points, including significant views of the Bay Bridge and the San Francisco Bay from the interior concourses of the multipurpose venue and views of the Bay Bridge from certain seating areas within the multipurpose venue;
 - iii) The multipurpose venue facility is located to minimize interference with public views of San Francisco Bay to the extent feasible;
 - iv) The multipurpose venue facility provides free public access to patrons and nonpatrons alike to exterior portions of the building from which the public can view the San Francisco Bay, subject to reasonable limitations based on security. In addition, to encourage the public to come to the bay's edge, the design of the multipurpose venue shall provide significant free public views of the inside of the multipurpose venue from the outside, and the operator of the multipurpose venue shall be required to

allow the public to view the inside of the multipurpose venue from the outside during events whenever feasible;

- v) The mixed-use development is designed to achieve and enhance maximum feasible public access to and minimum fill in the bay in a manner that is consistent, as determined by Bay Conservation and Development Commission in its separate permit process, with the Special Area Plan, the McAteer-Petris Act, and the Bay Plan;
- vi) The mixed-use development includes significant public plazas open to the public on a substantially permanent basis that can be accessed via public pedestrian promenades at the site that encourage public use of the site and provide a variety of views of the San Francisco Bay and the San Francisco cityscape;
- vii) The mixed-use development includes continuous public access around the perimeter of Pier 30-32 open to the public year round, with limited exceptions for temporary safety-, security- and maritime-based interruptions, and includes an interpretive program to enhance the public's enjoyment of the site;
- viii) The mixed-use development includes a significant and appropriate maritime program, which shall be consistent with the Special Area Plan and shall include, but is not limited to:
 - (1) A city fire station and berthing facilities for city fire boats, or in lieu thereof, one or more other maritime uses on the north side of Pier 30-32;
 - (2) Facilities for berthing at the east end of Pier 30-32, including facilities that can accommodate periodic use by cruise or other deep draft vessels, or other facilities that promote the deep water berth at Pier 30-32
 - (3) Facilities that enable direct public access to the water by human-powered vessels or swimmers, if feasible, on the south side of Pier 30-32, or water-oriented recreational uses facing the Brannan Street Wharf open water basin; and,
 - (4) Water-transit docking or berthing facilities for water taxis, ferries, or both.
- ix) Any nonmaritime office space on Pier 30-32 is limited to 70,000 square feet, and any nonmaritime office space provided on Pier 30-32 is for use only by the primary tenants of the multipurpose venue for events and public assembly, the venue, supporting or trust retail uses on Pier 30-32, and the operation and management of the open space and other public facilities on Pier 30-32;
- x) All retail venues on Pier 30-32 are limited to venue-supporting or trust-retail uses;
- xi) Any parking included on Pier 30-32 is limited to 500 spaces, located under active uses on Pier 30-32, substantially screened from public view, and designed so that ingress and egress avoids material interference with pedestrian, wheelchair, and bicycle traffic along Herb Caen Way and material interference with the public's access to and use of the open space on the surface of the pier. Parking shall be

designed to accommodate visitors to the site and shall not be reserved for residential use;

- xii) Public trust-consistent events, uses, and programming are offered regularly at the site of the mixed-use development. The site shall be made available to the Port or its designee for those events on at least 15 days per year, including at least three days on which the multipurpose venue shall be made available to the Port or its designee for those events. These events shall include free and low-cost visitor-serving events
- xiii) A public community room is available at the site for free or low-cost use by members of the public statewide, without preference to local residents or organizations;
- xiv) The development of the site is required to be consistent with a plan to address anticipated sea-level rise through year 2050, which shall include enforceable strategies incorporating an adaptive management approach to sea-level rise for the duration of the ground lease term;
- xv) The development approved for Seawall Lot 330 includes a hotel or other visitor-serving uses that the Port finds will materially enhance public trust uses on Pier 30-32 and the San Francisco waterfront;
- xvi) If a multipurpose venue for events and public assembly is approved and constructed on Pier 30-32, the Port shall submit and present at a properly noticed public State Lands Commission meeting a trust program report to the State Lands Commission, no later than five years from the date of the opening of the multipurpose venue, and every five years thereafter through the term of the ground lease for the multipurpose venue, that contains all of the following information:
 - (1) A list and description of the trust-related events and programming that have occurred at the site of the mixed-use development and in the multipurpose venue over the preceding five-year period, including the dates on which the events occurred or the multipurpose venue was made available for those events, and identifying any free and low-cost visitor-serving events;
 - (2) A description of the efforts made by the Port, its tenants, and subtenants to publicize the availability of Pier 30-32, including the multipurpose venue, for trust-related events and other efforts undertaken to solicit such events;
 - (3) A description of the maritime program on those portions of Pier 30-32 within the purview of the Port or the City, including a list of the facilities constructed, identification of any tenants, licensees, or other operators of the maritime facilities, and a description of the nature and frequency of the maritime use;
 - (4) A description of the tenants and use of the nonmaritime office space and the use of the public community room on Pier 30-32; and,

- (5) Any other information specifically requested by the State Lands Commission that pertains to the City or Port program of trust uses for Pier 30-32 and that is reasonable obtainable by the City or Port.
 - xvii) The Port, and the City, if applicable, shall work cooperatively with the executive officer of the State Lands Commission to develop an implementation plan if the executive officer, upon review of the trust program report, determines both of the following:
 - (1) That Pier 30-32 is not being used for at least 13 trust-related events annually at the site as a whole or is not being used for at least three trust-related events annually at the multipurpose venue, as specified; or that the City or the Port has not implemented the maritime program for Pier 30-32 for its intended purpose; and,
 - (2) That the Port, or the City, as applicable has not taken effective action to achieve the objectives specified in (1) above.
 - xviii) The executive officer of the State Lands Commission shall provide written notice to the Port and the City of a determination requiring the development of an implementation plan, including the bases for that determination. An implementation plan shall ensure that the objectives are met for the next five-year reporting period and shall be consistent with the terms and conditions set forth in governmental approvals for development of the project and in then-existing leases and other contracts affecting use of the site, including rights of leasehold mortgagees under those contracts.
 - xix) In conjunction with the Port's report, the tenant of the multipurpose venue shall submit and, if requested by the executive officer of the State Lands Commission, present at a property noticed Commission meeting, an informational report to the Commission describing how the event program at the multipurpose venue is meeting the objectives for use of that venue, as specified.
- b) Deletes requirements relating to the cruise ship terminal and the Brannan Street Wharf
- 3) Amends Section 4 of Chapter 489 of the Statutes of 2001, as follows:
- a) Adds findings and declarations to this section that declares unique circumstances at Pier 30-32 on the San Francisco waterfront and that the act sets no precedent for any other location or project in the state, including on the San Francisco waterfront or in San Francisco Bay, as follows:
 - i) The pier is an approximately 13-acre facility centrally located along the waterfront and with a natural deep water berth along its east face. However the poor structural condition of Pier 30-32 currently limits the use of the pier to automobile parking and occasional, temporary use as a tertiary berth for cruise ships and other deep draft vessels. The pier has a limited remaining useful life. The Port estimates that the cost of removing the pier would exceed \$45 million.

- ii) Preserving Pier 30-32 requires a substantial capital investment to improve the piles and decking to modern seismic standards. The Port estimates that the cost of rehabilitating the pier substantially exceeds the Port's estimates of the pier's fair market value. The Port does not have adequate funding in its 10-year capital plan for the costs to improve or to remove the pier due to limited Port resources and competing Port priorities, including the completion of a new international cruise terminal at Pier 27 and the preservation of historic maritime resources in the Port's jurisdiction. The Port must conserve Port revenue to support those maritime uses and public improvement for which private investment is not economical.
- iii) Over the past decade, the Port has sought to preserve and develop Pier 30-32 through public-private partnerships. In 2001, the Legislature authorized the development of Pier 30-32 with a new cruise ship terminal, office space, and retail space. The Port's 1998 assessment evaluated alternative locations for a new cruise ship terminal and concluded that Pier 30-32 was the most viable site for a new cruise terminal in San Francisco because of its position adjacent to deep water, site configuration, and development considerations. The Port solicited proposals and selected a developer for a cruise ship terminal at Pier 30-32. The developer subsequently abandoned that project after determining that the financial investment required to improve the substructure of Pier 30-32 was cost prohibitive, and no other developer could be found who was willing to accept assignment of the development rights for the project. The Port has since identified Pier 27 as the preferred location for its new cruise ship terminal in San Francisco, and construction of the terminal building is currently underway.
- iv) In 2011, the America's Cup Event Authority proposed to improve Pier 30-32 to host racing teams and hospitality facilities during the America's Cup in 2013, and to acquire long-term development rights to Pier 30-32. Those planned facilities were ultimately relocated to other piers due primarily to the cost of rehabilitation the substructure of Pier 30-32.
- v) The Port now proposes a mixed-use development at Pier 30-32, which will further public use, access, and enjoyment of the tidelands and surrounding water at this location by providing a multipurpose venue for events and public assembly, coupled with public access, open space, and venue-supporting or trust retail uses; significant maritime facilities, including an occasional berthing area for large vessels; bay-oriented recreational activities; and limited ancillary parking as reasonable necessary to meet the visitor-serving needs of the mixed-use development, including the multipurpose venue, all of which are designed to preserve and improve public and visual access to the bay and its shoreline.
- vi) Pier 30-32 is ideally situated to provide public access to and enjoyment of the waterfront and bay. It is within walking distance of the Ferry Building, the San Francisco Giants baseball stadium, and regional transit hubs, including the Transbay Transit Center, which is under construction, has unmatched views of the Bay and the Bay Bridge, and is immediately adjacent to the Brannan Street Wharf project, which will provide a 58,700 square foot pile supported park over the bay, consistent with the Special Area Plan. The Brannan Street Wharf project is currently under construction and is anticipated to be completed by June 2013. The value of the Brannan Street

Wharf as a recreational resource is diminished by the current condition and use of Pier 30-32, which cannot support dedicated public access on the pier and full realization of the Brannan Street Wharf Open Water Basin.

- vii) The inclusion of significant public access improvements, maritime facilities, and venue-supporting or trust retail uses, together with a multipurpose venue for events that bring people from around the state to the waterfront to use and enjoy the public trust assets of San Francisco, enhances and promotes the trust uses of the tidelands location.
 - viii) The Port estimates the cost of the construction of the substructure and related improvements required to make Pier 30-32 useable for the proposed mixed-use development is in excess of \$120 million, which significantly exceeds the Port's appraised fair market value of the pier. The Port plans to finance the substructure costs with private capital and the following public revenue sources: the proceeds from the sale or lease of Seawall Lot 330 pursuant to AB 418, rent credits for the lease of Pier 30-32 to the developer of the venue, property tax increment from an infrastructure financing district, and possibly special taxes from a community facilities district. Construction of the multipurpose venue structure will be entirely privately financed and will not require any expenditure of money from the city's general fund, or from other city or Port funds.
 - ix) There are presently few visitor-serving amenities in the vicinity of Pier 30-32. The Port's efforts to develop its property for hotel use have been unsuccessful. The development of the multipurpose venue at Pier 30-32 and the termination of the trust use restrictions at Seawall Lot 330 would create substantial new demand for visitor-serving uses at that location and would make those uses financially feasible as part of an overall residential and mixed-use development at Seawall Lot 330. Also, Seawall Lot 330 presents an opportunity to enhance the trust value of the project on Pier-32 by attracting more people to the waterfront and providing accommodations to the people from both the San Francisco region and other areas of the state through visitor-serving uses, which may include visitor-serving retail, restaurants or hotel use, or any combination of these.
- b) Deletes findings and declarations related to Pier 30-32's use as a cruise ship terminal.
- 4) Amends Section 7 of Chapter 489 of the Statutes of 2001, as amended by Section 3 of Chapter 68 of the Statutes of 2003, to read:
- a) Any legislative or regulatory requirement for findings of consistency with the public trust doctrine or the Burton Act trust under the Special Area Plan, the Bay Plan, or any other applicable statute, regulation, or plan shall be deemed satisfied if the Port has made a finding that the Pier 30-32 development is consistent with the requirements of Section 5 of this act. Except with respect to a finding of consistency with the public trust doctrine, nothing in this act is intended to limit the authority and discretion of BCDC to approve or deny permits for the multiuse development plan on Pier 30-32, as specified, including the authority and discretion of BCDC to impose conditions on the permits for the project. This act shall not limit the authority and discretion of BCDC to enforce permits issued for the projects in this act.

- 5) Amends Section 14 of Chapter 489 of the Statutes of 2001 to specify that this act does not alter the obligations of the city or the Port under the California Environmental Quality Act (CEQA), including any obligation to consider alternatives to a project proposed for Pier 30-32 or Seawall Lot 330.
- 6) Provides that if a mixed-use development at Pier 30-32 that includes a multipurpose venue for events and public assembly has not been approved within 10 years of the effective date of this act, the provisions of specified sections of this act shall become inoperative as of the date that is 10 years from the effective date of this act.
- 7) Makes the following changes to definitions section contained in the bill:
 - a) Defines "AB 418" to mean Chapter 477 of the Statutes of 2011;
 - b) Defines "America's Cup" to mean the 34th America's Cup;
 - c) Deletes the definition of "boundary of the Port of San Francisco;"
 - d) Revises "McAteer-Petris Act" to mean Title 7.2 of the Government Code, as that act may be amended from time to time;
 - e) Revises "public trust" or "trust" to mean the common law public trust for commerce, navigation, and fisheries;
 - f) Revises the definition of "Seawall Lot 330" to mean any portion of the parcel, as specified; and,
 - g) Defines "trust retail uses" to mean visitor-serving retail and restaurant establishments and similar retail uses that facilitate and encourage public use of the waterfront.
- 8) Finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable only to the trust lands described in this act.

EXISTING LAW:

- 1) Protects, pursuant to the common law doctrine of the public trust (Public Trust Doctrine), the public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities. The public trust doctrine provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (i.e. public trust lands) are to be held in trust by the state for the benefit of the people of California.
- 2) Requires the State Lands Commission (Commission) to be the steward and manager of the state's public trust lands. The Commission has direct administrative control over the state's public trust lands and oversight authority over public trust lands granted by the Legislature to local public agencies.

- 3) Grants, in trust, state public trust lands to over 80 local public agencies to be managed for the benefit of all the people of the state and pursuant to the Public Trust Doctrine and terms of the applicable granting statutes.
- 4) Pursuant to the Burton Act, grants to the Port, in trust, the public trust lands in the harbor of San Francisco for purposes of commerce, navigation, and fisheries and subject to other terms and conditions specified in the act.
- 5) Pursuant to Chapter 489 of the Statutes of 2001 (AB 1389, Shelley) and Chapter 68 of the Statutes of 2003 (AB 605, Yee), authorizes the Port to approve a cruise ship terminal development on the San Francisco waterfront at Pier 30-32, which would include general office and retail use.
- 6) Pursuant to Chapter 477 of the Statutes of 2011 (AB 418, Ammiano), frees the public trust restrictions from Seawall Lot 330 (which is across the Embarcadero from Pier 30-32) and authorizes the transfer of the property to a private party subject to specified conditions.
- 7) Pursuant to the McAteer-Petris Act, establishes the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC) to include, among other things, the San Francisco Bay and a shoreline band consisting of all territory located between the shoreline of San Francisco Bay and a line 100 feet landward of and parallel with that line.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) The primary purpose of this bill is to have the Legislature authorize a mixed-use development project, which, among other things, includes a multipurpose venue (the Golden State Warriors' basketball arena) and on a pier built on tide and submerged lands (public trust lands) located in San Francisco. The project proposed in this bill includes two related components on separate Port parcels: Piers 30-32 and Seawall Lot 330. These parcels are located along the San Francisco waterfront between the Bay Bridge and AT&T Park.

Pier 30-32 consists of an approximately 553,778-square foot (about 13 acres) pile-supported structure along The Embarcadero roadway. The Pier 30-32 platform consists of obsolete, pile-supported pier structures that are physically no longer capable of serving most trust-related purposes without substantial modification and repair. Preserving the pier requires a substantial capital investment to improve the piles and decking to modern seismic standards.

According to a feasibility study prepared for the City and County of San Francisco, the proposed project will involve the Golden State Warriors rehabilitating Piers 30-32 and constructing a new privately financed, state-of-the-art multi-purpose venue with seating for 17,000 to 19,000 persons, capable of being used as an event venue and for other public assembly uses, including conventions, Warriors' home games, performing arts, and other purposes, along with public open space (at least 50 percent of Piers 30-32), waterfront access improvements, parking facilities (630 parking spaces), visitor-serving retail and restaurants (105,000 square feet), maritime access, and other related uses. The Golden State Warriors also plan to build a team practice facility (21,000 square feet), plus a community room (10,000 square feet) and event management and team operations space (40,000 square feet)

on Piers 30-32. The Warriors will finance and build these improvements under a fair market rent ground lease from the Port, and complete them by the fall 2017.

Seawall Lot 330, which is across the Embarcadero roadway from Piers 30-32, is approximately 101,330 square feet (about 2.3 acres) of filled tidelands. In 2011, AB 418 (Ammiano) terminated the public trust use restrictions from Seawall Lot 330, declaring that the parcel is not necessary for public trust purposes.

As part of the project, the Golden State Warriors will construct improvements on the undeveloped portion of Seawall Lot 330. The Port will convey fee title to Seawall Lot 330 to the Warriors for fair market value consideration if certain conditions are met; otherwise, the Port will enter into a 75 year ground lease with the Warriors for the appraised fair market rent consideration for that site. The Warriors' preliminary plans for this parcel include retail (33,000 to 34,000 square feet), parking (200 to 300 spaces), residential units (100 to 130 units), and a hotel (200 to 250 rooms).

- 2) The bill asserts that the project is consistent with the common law public trust. The challenge with this assertion is that the common law Public Trust Doctrine, as interpreted by the U.S. Supreme Court, places limitations on the Legislature's authority to use trust lands for nontrust purposes. A basketball arena, which is a major feature of the project, is not a traditional public trust use—it does not involve water related commerce, navigation, or fishing. However, there are examples of nontrust uses on public trust lands that have been deemed legitimate by the courts because they are incidental to and accommodate other trust uses. Additionally, the courts have recognized that the public trust doctrine is flexible to address changing public needs related to public trust lands.

Please see the Assembly Natural Resources Committee analysis for the full discussion on common law public trust issues. Significant amendments were taken in that Committee in order to make the project consistent with the Public Trust Doctrine and to maximize public access to and public views of the San Francisco waterfront and the Bay..

- 3) According to the author, "The Port of San Francisco, through the City and County of San Francisco, holds 7.5 miles of the San Francisco Bay waterfront, including the Piers 30-32 site, in trust for the people of the State of California. As a local trust grantee, the Port ensures that uses of trust lands are consistent with commerce, navigation, and recreation, or incidental uses that directly promote trust uses and public enjoyment of waterfront areas, such as restaurants, hotels, and visitor-serving retail.

"The Port has made several attempts over the past decade to utilize public-private partnerships for preservation and economic development of Piers 30-32. In 2001, the legislature enacted AB 1389 to facilitate the development of a cruise ship terminal and large mixed use office space at the site. However, the project never began construction due to the site's poor structural condition and higher than projected substructure improvement costs. The cruise ship terminal project has since been relocated to Pier 27. In 2011, the America's Cup Event Authority proposed to rehabilitate Piers 30-32 to host its racing teams, but similarly relocated construction to other piers due to the site's high substructure improvement costs.

"As it now stands, Piers 30-32 has a remaining useful life of less than 10 years and would require either \$68 million in preservation and seismic upgrades to maintain public safety, or \$45 million to remove the decaying piers entirely. In light of these circumstances, the City and County of San Francisco has determined that a recent proposal to locate a multi-purpose venue at Piers 30-32 is the best option to promote public enjoyment of the waterfront and provides the needed revenue to preserve the site in furtherance of the public trust. The design of the proposed multi-purpose venue is guided by public trust principles in consultation with the State Lands Commission and the San Francisco Bay Conservation and Development Commission, as well as by examples of successful public assembly uses built on tidelands and piers over water throughout the state. The proposed multi-purpose venue would rehabilitate the pier, modernize maritime facilities, and create new opportunities for open space and public access to the waterfront, all while generating approximately 8,000 new jobs and \$500 million in annual economic output for the region."

- 4) In May of 2012, the Golden State Warriors, NBA Commissioner David Stern and San Francisco Mayor Ed Lee officially announced that the Bay Area's only NBA team is trying to move back to San Francisco. According to news reports, the earliest the team could leave Oakland would be 2017, when the lease at Oracle Arena is up.
- 5) A joint opposition letter from the Mayors of several East Bay Cities (Berkeley, Oakland, Richmond, and San Leandro) notes that this bill diminishes the authority of both the State Lands Commission and the Bay Conservation and Development Commission in the project approval process. The letter states that "removing from BCDC or the State Lands Commission any real role in scrutinizing a massive commercial development on the Bay would run directly contrary to the very purposes of these two bodies, each of which has decades of experience balancing the sometimes competing interests of developing and preserving the waters, tidelands and submerged lands under their jurisdictions."
- 6) State Lands Commission issued a letter on April 26, 2013 to the author of this bill in relation to several statements made about the State Lands Commission's role in the proposed mixed use development project at Piers 30-32. The letter from the Executive Officer of the Commission states:

While the Commission has not taken a formal position on AB 1273 at this time and staff remains neutral on the bill, the purpose of this letter is to provide context concerning the Commission's jurisdiction relating to sovereign land granted in trust to local jurisdictions, and in particular, the proposed development at Piers 30-32 addressed on AB 1273...

Under the Burton Act, the Port of San Francisco is not generally statutorily required to obtain Commission approval for a project proposed on granted public trust lands under the Port's jurisdiction, including the proposed development at Piers 30-32 addressed in AB 1273. Only on rare occasions has specific Commission approval been required for activities undertaken by the Port. However, the City and Port of San Francisco and Commission staff have a long history of working together in a cooperative and collaborative manner to further and enhance public trust purposes along the San Francisco waterfront. Examples include the Giants Ballpark, the Ferry Building, Pier 1, Piers 1 ½, 3 & 5, the Exploratorium at Piers 15-17, and the development at Candlestick/Hunters Point and Treasure Island

Consistent with this past history, City and Port staff initiated discussions with Commission staff early on in the development of the proposed project addressed in AB 1273. Given the Legislature's previous involvement on Piers 30-32 through Chapter 489, Statutes of 2001, as amended in 2003, as well as its involvement in Seawall Lot 330 across the Embarcadero from Piers 30-32, and the significant complexities of the proposed mixed use development Commission staff believes it is appropriate for the City to seek legislative authorization for the development of Piers 30-32, which includes a multipurpose public assembly venue. Your office and City and Port staff have worked closely with Commission staff on drafting language for AB 1273 to ensure that the bill promotes public trust purposes. While there are still some outstanding issues to be resolved, given our past history with the City and Port, as well as assurances by your office and City and Port staff, I am confident that we will continue to work closely on future amendments to AB 1273 to ensure that the bill furthers public trust needs and purposes at Piers 30-32 and is in the best interests of the people of California.

- 8) The San Francisco Water Alliance, in opposition, writes that "This legislation enables an entertainment complex to be built over San Francisco Bay waters. Yet, San Francisco Bay waters are not the exclusive toy of any one City or County that touches its shores. Some nine counties, dozens of cities, and their millions of citizens have an interest in, and the right to be heard and substantively consulted about, what happens in or on our Bay waters. That regional right is enshrined in the McAteer-Petris Act which declares "*the bay operates as a delicate physical mechanism in which changes that affect one part of the bay may also affect all other parts.*" With regard to tidelands, the regional nature of bay-related decisions is demonstrated by the control given to the State Lands Commission to ensure consistency with the public trust doctrine that governs shoreline development.

"Under AB 1273, members of County Boards of Supervisors, interested Mayors, and local officials are deprived of the opportunity to fully participate in the evidentiary and routine processes of the State Lands Commission, the state agency specifically established to deal with important regional shoreline issues. The proponents of this bill seek to avoid the need to obtain a finding of "Public Trust Consistency" from the State Lands Commission. Instead, they ask the legislature to intervene in a local land use decision and empower the local project sponsor to make a public trust consistency finding -- but do not constrain the project sponsor to adhere to a process that is even substantially similar to what would be required in a proceeding before the State Lands Commission. This would set bad precedent."

- 7) Support arguments: Supporters argue that the construction and ongoing maintenance of this new state-of-the-art sports and entertainment facility will be a major contributor for the Bay Area economy, as it is expected to create a large number of construction related jobs and the many ongoing related service jobs.

Opposition arguments: Opponents argue that the bill does not protect public access on Piers 30-32 and public enjoyment of the Bay and that the bill is premature given that no detailed project or rationale has yet been examined and vetted through any public process.

- 9) This bill was heard in the Assembly Natural Resources Committee on April 15, 2013, and passed on a 7-2 vote.

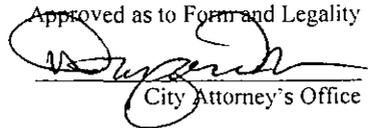
REGISTERED SUPPORT / OPPOSITION :Support

City and County of San Francisco [SPONSOR]
A Philip Randolph Institute, San Francisco and Western Region
Asbestos, Lead and Old Laborers, Local Union No. 67
Bay Area Council
Boys and Girls Clubs of San Francisco
Bricklayers and Allied Craftworkers Local 3, California
Brightline Defense Project
Building Owners and Managers Association of San Francisco
California Labor Federation
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
CAE Insurance & Associates, Inc.
Charity Cultural Services Center
Golden State Warriors
Hotel Council of San Francisco
International Brotherhood of Electrical Workers, Local Union 6
International Union of Operating Engineers, Local Union No. 3
Laborers' International Union of North America, Local Union No. 261
Mission Hiring Hall
San Francisco Chamber of Commerce
San Francisco Citizens Initiative for Technology & Innovation [sf.citi]
San Francisco Deputy Sheriff's Foundation
San Francisco Fire Department
San Francisco Travel Association
Sign Display and Allied Crafts, Local Union No, 510
State Building and Construction Trades Council of California
Sustainable Futures
United Association of Plumbers, Pipefitters, and Sprinkler Fitters, Local Union No. 483
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry
United Brotherhood of Carpenters and Joiners of America, Local Union 22
Western States Council of Sheet Metal Workers
Young Community Developers, Inc.
Individual letters (7)

Opposition

Mayors of the Cities of Berkeley, Oakland, Richmond and San Leandro
San Francisco BayKeeper
San Francisco Tomorrow
San Francisco Waterfront Alliance
Save the Bay
Sierra Club California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

City Attorney's Office

2013 MAY 30 PM 5:09

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Council President Patricia Kernighan

RESOLUTION IN OPPOSITION TO AB 1273 (TING) AUTHORIZING THE PORT OF SAN FRANCISCO TO APPROVE A MIXED-USE DEVELOPMENT ON PIERS 30-32 THAT INCLUDES A MULTIPURPOSE VENUE FOR EVENTS AND PUBLIC ASSEMBLY

WHEREAS, the owners of the Golden State Warriors seek to build a basketball arena on the San Francisco Waterfront and move the team from the Oracle Arena in Oakland to a new arena for the team's home games; and

WHEREAS, AB 1273 (Ting) would authorize the Port of San Francisco to approve a mixed-use development on Piers 30-32 that includes a multipurpose venue for Golden State Warrior games among other uses; and

WHEREAS, the Golden State Warriors are the anchor tenant of the Oracle Arena and an attraction for other world class entertainment events there; and

WHEREAS, the 50 games each regular season and other games when the team is in post-season playoffs provide good working class jobs in Alameda county that would be eliminated; and

WHEREAS, the Golden State Warriors' licensing agreement specifies that the Warriors contribute up to \$7.4 million annually toward debt service for capital improvements at the Oracle Arena, and as of 2017 there will be approximately \$66 million in outstanding debt on the Arena bonds; and

WHEREAS, a Warriors move from the Oracle Arena would cause a significant economic loss of events and thus jobs, which would eclipse these payments; and

WHEREAS, Public Trust Doctrine as interpreted by the U.S. Supreme Court places limitations on the California Legislature's authority to use trust lands for nontrust purposes, and a basketball arena, the major feature of the project, is not a traditional public trust use – it does not involve water related commerce, navigation or fishing; and

WHEREAS, building an entertainment venue on Piers 30-32 would substantially reduce maritime use and associated jobs on this part of the San Francisco waterfront; now therefore be it resolved

RESOLVED: that the Oakland City Council opposes AB 1273 because of the negative impact on jobs at the Oracle Arena and debt repayment on the bonds on the arena; and be it

FURTHER RESOLVED: that the Oakland City Council hereby directs the City Administrator to instruct the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GIBSON McELHANEY, GALLO, KALB, KAPLAN, REID, SCHAFF,
and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California