

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2797**

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**Introduced by Assembly Member Chiu**

February 19, 2016

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An act to amend ~~Section 10200 of the Public Resources Code, relating to agricultural land. Sections 4 and 7 of Chapter 660 of the Statutes of 2007, relating to tidelands and submerged lands.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2797, as amended, Chiu. ~~The California Farmland Conservancy Program Act. City and County of San Francisco: Mission Bay South Project: redevelopment plan.~~

*Existing law grants to the City and County of San Francisco the right, title, and interest of the state 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 that, until January 1, 2094, 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, and authorizes the San Francisco Port Commission to lease all or a portion of the designated seawall lots for nontrust uses if specified conditions are met, including that the lease shall terminate no later than January 1, 2094.*

*This bill would revise those conditions to specify that a nontrust lease shall terminate no later than January 1, 2094, or the date that is 75*

years after the date the port first issues a certificate of occupancy for the improvements on the site. The bill would also prescribe the boundaries of a specified seawall lot for purposes of the Mission Bay South redevelopment plan.

This bill would make legislative findings and declarations as to the necessity of a special statute for the waterfront property at the Mission Bay South redevelopment area in the City and County of San Francisco.

~~Existing law prescribes procedures for the establishment of agricultural conservation easements intended to preserve and protect certain agricultural lands in the state. Existing law provides that this law shall be known, and may be cited, as the California Farmland Conservancy Program Act.~~

~~This bill would make technical, nonsubstantive changes to this latter provision.~~

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

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

- 1     SECTION 1. For the purposes of this act the following terms
- 2     have the following meanings:
- 3     (a) “Assembly Bill 26” means Chapter 5 of the First
- 4     Extraordinary Session of the Statutes of 2011, in which certain
- 5     provisions were amended by Chapter 26 of the Statutes of 2012,
- 6     effective as provided in California Redevelopment Assn. v.
- 7     Matosantos (2011) 53 Cal.4th 231.
- 8     (b) “Assembly Bill 2649” means Chapter 757 of the Statutes of
- 9     2012.
- 10    (c) “Board of supervisors” means the Board of Supervisors of
- 11    the City and County of San Francisco.
- 12    (d) “Burton Act” means Chapter 1333 of the Statutes of 1968,
- 13    as amended, which authorized the state to convey to the city, in
- 14    trust and subject to certain terms, conditions, and reservations,
- 15    the state’s interest in certain tidelands, including filled lands.
- 16    (e) “Burton Act lands” means the tidelands that the state
- 17    granted to the city under the Burton Act, including the San
- 18    Francisco waterfront from the Hyde Street pier to India Basin.
- 19    (f) “Burton Act transfer agreement” means the agreement dated
- 20    January 24, 1969, between the state and the city, relating to the

1 *transfer of the Burton Act lands from the state to the city, and any*  
2 *amendments to that agreement in accordance with its terms.*

3 (g) *“Burton Act trust” means the statutory trust imposed by the*  
4 *Burton Act on Burton Act lands and lands dedicated to or acquired*  
5 *by the city as assets of the trust.*

6 (h) *“Capital plan” means the 10-year capital plan for port land*  
7 *prepared in accordance with Sections 2.30 and 2.31 of the San*  
8 *Francisco Administrative Code, adopted in 2007 by the board of*  
9 *supervisors, as amended.*

10 (i) *“City” means the City and County of San Francisco, a*  
11 *charter city and county, and includes the port.*

12 (j) *“Commission” means the State Lands Commission.*

13 (k) *“Designated seawall lot” or “designated seawall lots”*  
14 *means any of those parcels of real property situated in the city*  
15 *that are defined as designated seawall lots in Senate Bill 815 or*  
16 *Assembly Bill 2649, as those parcels may be modified by Section*  
17 *3 of this act.*

18 (l) *“Mission Bay developer” means an “owner,” as defined in*  
19 *the Mission Bay South owner participation agreement.*

20 (m) *“Mission Bay South owner participation agreement” means*  
21 *the agreement between the redevelopment agency and Catellus*  
22 *Development Corporation, dated November 16, 1998, as amended.*

23 (n) *“Mission Bay South redevelopment plan” means the*  
24 *Redevelopment Plan for the Mission Bay South Project adopted*  
25 *by the board of supervisors on October 26, 1998, as amended.*

26 (o) *“Mission Bay South redevelopment project area” means*  
27 *the area in the city subject to the Mission Bay South redevelopment*  
28 *plan.*

29 (p) *“Oversight board” means the body that the board of*  
30 *supervisors created to oversee the fiscal management of the*  
31 *successor agency in accordance with Assembly Bill 26.*

32 (q) *“Parcel P20” means a parcel owned by the port within the*  
33 *Mission Bay South redevelopment project area that lies partially*  
34 *within the southern portion of Seawall Lot 337.*

35 (r) *“Port of San Francisco,” “port commission,” or “port”*  
36 *means the city acting by and through the San Francisco Port*  
37 *Commission.*

38 (s) *“Public trust” or “trust” means the common law public*  
39 *trust for commerce, navigation, and fisheries.*

1 (t) “Redevelopment agency” means the San Francisco  
2 redevelopment agency, that the board of supervisors formed under  
3 the former California Community Redevelopment Law and that  
4 was dissolved on February 1, 2012, by operation of Assembly Bill  
5 26.

6 (u) “San Francisco Bay” or “bay” means those areas defined  
7 by Section 66610 of the Government Code.

8 (v) “San Francisco waterfront” means the portions of San  
9 Francisco Bay that the state transferred to the city under the  
10 Burton Act.

11 (w) “Seawall Lot 337” means that parcel of real property in  
12 the city known as Seawall Lot 337, as shown on that certain map  
13 entitled “revised map of designed seawall lots,” which is on file  
14 with the port.

15 (x) “Seawall Lot 337 developer” means the person selected by  
16 the port to negotiate exclusively with the port for the master  
17 development of Seawall Lot 337 and Pier 48, and its successors  
18 and authorized assigns.

19 (y) “Senate Bill 815” means Chapter 660 of the Statutes of  
20 2007, in which certain provisions were amended by Chapter 208  
21 of the Statutes of 2009 and Assembly Bill 2649.

22 (z) “State” means the State of California.

23 (aa) “Successor agency” means the San Francisco Office of  
24 Community Investment and Infrastructure, which the board of  
25 supervisors created in accordance with Assembly Bill 26 to serve  
26 as the successor to the redevelopment agency.

27 (ab) “Successor agency commission” means the San Francisco  
28 Commission on Community Investment and Infrastructure.

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

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

33 (a) San Francisco Bay is a valuable public trust asset of the  
34 state that provides special maritime, navigational, recreational,  
35 cultural, and historical benefits to the people of the region and  
36 the state. Tidelands in California are held in trust for enjoyment  
37 and use by the people of the state under the common law public  
38 trust doctrine. Public trust lands may be used for water-related  
39 purposes, including commerce, navigation, fishing, swimming,  
40 recreation, open space, and wildlife habitat.

1     **(b)** *The San Francisco waterfront consists primarily of sovereign*  
2 *tidelands that the state granted to the city pursuant to the Burton*  
3 *Act. Under the Burton Act and the city's charter, the port holds*  
4 *and manages the granted lands. The Burton Act authorizes the*  
5 *port to use, conduct, operate, maintain, manage, regulate, improve,*  
6 *and control the San Francisco waterfront consistent with the public*  
7 *trust and the Burton Act trust.*

8     **(c)** *The San Francisco waterfront provides special maritime,*  
9 *navigational, recreational, cultural, and historical benefits to the*  
10 *entire San Francisco Bay area and serves as a unique destination*  
11 *for the public from throughout the region.*

12     **(d)** *A unique feature of the San Francisco shoreline is the*  
13 *numerous historic maritime resources present on port property,*  
14 *many of which are in need of major structural repairs and are not*  
15 *currently available for the use and enjoyment of the public. The*  
16 *Legislature has previously found that rectifying the deteriorating*  
17 *conditions along the San Francisco waterfront, the preservation*  
18 *of the numerous historic piers and other historic structures on*  
19 *port land, and the construction of waterfront plazas and open*  
20 *space are matters of statewide importance that will further the*  
21 *purposes of the public trust and the Burton Act trust.*

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

32     **(f) (1)** *In Senate Bill 815, the Legislature found all of the*  
33 *following:*

34     **(A)** *The designated seawall lots are, in whole or in part, no*  
35 *longer necessary for the purposes of the public trust or Burton Act*  
36 *trust.*

37     **(B)** *Costs to implement the port's capital plan exceed projected*  
38 *revenues of the port available for these purposes, in part due to*  
39 *the port's inability to make optimal use of the designated seawall*  
40 *lots.*

1 (C) Future revenues from the development and leasing of the  
2 designated seawall lots are an essential source of funds to preserve  
3 the port's numerous historic piers and historic structures, construct  
4 and maintain waterfront plazas and open space, and improve  
5 public access to the waterfront.

6 (2) Senate Bill 815 lifted the use restrictions of the public trust  
7 and Burton Act trust from the designated seawall lots and  
8 authorized the port to enter into nontrust leases of the lands,  
9 subject to certain conditions and subject to the requirement that  
10 the nontrust lease revenues be used for specified trust purposes.

11 (g) Seawall Lot 337, the largest of the designated seawall lots,  
12 is located just south of China Basin and is presently used as a  
13 surface parking lot. Senate Bill 815 depicts Seawall Lot 337 as  
14 bounded by Mission Rock Street, Terry A. Francois Boulevard,  
15 and Third Street. Following an extensive community process led  
16 by a citywide advisory panel and a solicitation process to identify  
17 qualified developers, the port commission entered into exclusive  
18 negotiations with the Seawall Lot 337 developer for the lease,  
19 construction, and operation of the proposed project at Seawall  
20 Lot 337, a portion of Terry A. Francois Boulevard, Pier 48, and  
21 the marginal wharf between Pier 48 and Pier 50. The proposed  
22 project would include a mix of uses, such as commercial retail  
23 and office, market-rate and affordable residential, rehabilitation  
24 of Pier 48, new parks, expansion of the existing China Basin Park  
25 with a portion of Terry A. Francois Boulevard, and new and  
26 expanded shoreline access. The Legislature finds that the  
27 revitalization of Seawall Lot 337 and Pier 48 through mixed-use  
28 development is of particular importance to the state for the reasons  
29 stated in Senate Bill 815.

30 (h) The Mission Bay area surrounding Seawall Lot 337 is the  
31 site of a major mixed-use redevelopment project. As a result of  
32 Assembly Bill 26, the redevelopment agency was dissolved on  
33 February 1, 2012, and the successor agency assumed certain  
34 executory obligations of the redevelopment agency. The successor  
35 agency commission exercises land use, development, and design  
36 approval authority for the remaining projects of the former  
37 redevelopment agency, including Mission Bay.

38 (i) The Mission Bay South redevelopment project area,  
39 established in 1998 by the board of supervisors' adoption of the  
40 Mission Bay South redevelopment plan, lies to the west and south

1 of Seawall Lot 337. Parcel P20 is a narrow, undeveloped strip of  
2 land within the Mission Bay South redevelopment project area  
3 that is bounded on the north by the northern line of Mission Rock  
4 Street in its former location, and overlaps a portion of Seawall  
5 Lot 337, as depicted in Senate Bill 815. In accordance with the  
6 Mission Bay South redevelopment plan, the Mission Bay developer  
7 has since realigned Mission Rock Street from its northeasterly  
8 orientation to an east-west orientation, such that a portion of  
9 Parcel P20 and the former Mission Rock Street right of way now  
10 lie north of the northerly line of Mission Rock Street. The  
11 development proposal for Seawall Lot 337 includes this portion  
12 of Parcel P20 and former Mission Rock Street.

13 (j) Under its development proposal, the Seawall Lot 337  
14 developer would realign Terry A. Francois Boulevard and use  
15 part of the northern section of the street to expand China Basin  
16 Park. The remaining portion of the realigned Terry A. Francois  
17 Boulevard would be a working waterfront street that would support  
18 active maritime, industrial, and production uses at the waterfront.  
19 Terry A. Francois Boulevard would include areas for social spaces  
20 and loading zones serving proposed buildings, a pedestrian  
21 throughway, a shared zone, and the Blue Greenway adjacent to  
22 the Bay and Piers 48 and 50, contributing to uninterrupted public  
23 access along San Francisco's eastern waterfront.

24 (k) This act clarifies that the boundaries of Seawall Lot 337  
25 extend to the line of Mission Rock Street and to the line of Terry  
26 A. Francois Boulevard, as those streets have been or may be  
27 realigned, and to the boundary of China Basin Park as finally  
28 established, such that Seawall Lot 337 includes those portions of  
29 Parcel P20 and the former Mission Rock Street right of way  
30 embraced within those boundaries. This act also allows the  
31 successor agency to remove Parcel P20 from the Mission Bay  
32 South redevelopment plan and related documents and agreements  
33 without the need for Department of Finance or Controller  
34 approval.

35 SEC. 3. For purposes of Senate Bill 815 and Assembly Bill  
36 2649, the boundaries of Seawall Lot 337 extend to the line of, but  
37 do not include, Third Street on the west, Mission Rock Street on  
38 the south, and Terry A. Francois Boulevard on the east, as those  
39 streets are ultimately constructed, realigned, or reconfigured in  
40 connection with the Mission Bay South redevelopment plan and

1 *the development of Seawall Lot 337. If there is any conflict between*  
 2 *this section and the diagram in Section 15 of Senate Bill 815 or*  
 3 *Section 9 of Assembly Bill 2649, this section shall control.*

4 *SEC. 4. Subdivisions (c), (d), and (f) of Section 34163 of the*  
 5 *Health and Safety Code, and subdivisions (a) and (b) of Section*  
 6 *34164 of the Health and Safety Code, shall not apply to, and no*  
 7 *action of the Department of Finance or the Controller shall be*  
 8 *required for, any action taken by the oversight board, the successor*  
 9 *agency commission, the board of supervisors, or any other*  
 10 *governmental body required to act to amend the Mission Bay South*  
 11 *redevelopment plan to remove Parcel P20 from the Mission Bay*  
 12 *South redevelopment project area, or to amend any related*  
 13 *documents or agreements to delete regulatory requirements, zoning*  
 14 *controls, and the Mission Bay developer’s obligations with respect*  
 15 *to Parcel P20.*

16 *SEC. 5. Section 4 of Chapter 660 of the Statutes of 2007 is*  
 17 *amended to read:*

18 *Sec. 4. Subject to the applicable terms and conditions in Section*  
 19 *6 pertaining to ~~seawall~~ ~~Hot Seawall Lot 337~~, the port may enter into*  
 20 *a lease of all or any portion of the designated seawall lots free from*  
 21 *the use requirements established by the public trust, the Burton*  
 22 *Act trust, and the Burton Act transfer agreement (nontrust lease),*  
 23 *provided all of the following conditions are met:*

24 *(a) Notwithstanding the Burton Act, Section 718 of the Civil*  
 25 *Code, Section 37384 of the Government Code, or any other*  
 26 *provision of law to the contrary, the term of any individual nontrust*  
 27 *lease, including any extension of the term allowed by right of*  
 28 *renewal, ~~does shall not exceed 75 years, and the years. Each~~*  
 29 *nontrust lease ~~will shall~~ terminate no later than January 1, ~~2094.~~*  
 30 *2094, or the date that is 75 years after the date that the port first*  
 31 *issues a certificate of occupancy for the improvements on the leased*  
 32 *site. Nothing in this section shall be construed as limiting the term*  
 33 *of any lease, or portion thereof, that is for uses consistent with the*  
 34 *public trust and the Burton Act.*

35 *(b) (1) Except as provided in this subdivision, all revenues*  
 36 *received by the port from the nontrust lease will be deposited in a*  
 37 *separate account in the harbor fund to be expended for the*  
 38 *preservation of historic piers and historic structures, or for the*  
 39 *construction and maintenance of waterfront plazas and open space*  
 40 *required by the special area plan. Revenues shall not be expended*

1 under this subdivision for historic piers or historic structures on  
2 land subject to public trust use restrictions unless the executive  
3 officer of the commission has approved the proposed uses of the  
4 pier or structure.

5 (2) The port may annually transfer from the separate account  
6 and deposit in the general account of the harbor fund, to be used  
7 for any purpose consistent with the public trust and the Burton  
8 Act, an amount equal to the sum of the baseline revenue streams  
9 for each designated seawall lot subject to a nontrust lease (hereafter  
10 leased seawall lot), less any revenues received by the port, for the  
11 year preceding the transfer of funds, from any portion or portions  
12 of the leased seawall lots that were not subject to a nontrust lease.  
13 For purposes of this subdivision, the baseline revenue stream for  
14 a designated seawall lot is the average annual revenue received by  
15 the port from that seawall lot over the five years prior to January  
16 1, 2008, adjusted for inflation.

17 (3) For purposes of this subdivision, the term “revenue” shall  
18 exclude any costs incurred by the port to administer the lease and  
19 to operate and maintain the leased property and any improvements  
20 thereon.

21 (4) For each nontrust lease of a designated seawall lot, the port  
22 shall maintain a separate accounting of all revenues transferred  
23 pursuant to paragraph (2), all costs excluded pursuant to paragraph  
24 (3), and all revenues deposited into the separate account.

25 (5) If the funds in the separate account exceed the amount  
26 needed for the preservation of historic piers and historic structures  
27 and for construction of waterfront plazas and open space, the excess  
28 funds shall be deposited in the harbor fund to be used for purposes  
29 consistent with the public trust and the Burton Act.

30 (c) The nontrust lease is for fair market value and on terms  
31 consistent with prudent land management practices as determined  
32 by the port and subject to approval by the commission as provided  
33 in paragraph (1).

34 (1) Prior to executing the nontrust lease, the port shall submit  
35 the proposed lease to the commission for its consideration, and  
36 the commission shall grant its approval or disapproval in writing  
37 within 90 days of receipt of the lease and supporting  
38 documentation, including documentation related to value. In  
39 approving a nontrust lease, the commission shall find that the lease  
40 meets all of the following:

- 1 (A) Is for fair market value.
- 2 (B) Is consistent with the terms of the public trust and the Burton
- 3 Act trust, other than their restrictions on uses.
- 4 (C) Is otherwise in the best interest of the state.

5 (2) Whenever a nontrust lease is submitted to the commission  
 6 for its consideration, the costs of any study or investigation  
 7 undertaken by or at the request of the commission, including  
 8 reasonable reimbursement for time incurred by commission staff  
 9 in processing, investigating, and analyzing such submittal, shall  
 10 be borne by the port; however, the port may seek payment or  
 11 reimbursement for these costs from the proposed lessee.

12 *SEC. 6. Section 7 of Chapter 660 of the Statutes of 2007 is*  
 13 *amended to read:*

14 *Sec. 7. Sections ~~3, 4~~, 3 and 6 of this act shall be inoperative*  
 15 *on January 1, 2094, after which date the use of the designated*  
 16 *seawall lots shall be consistent with the public trust, the Burton*  
 17 *Act trust, and the Burton Act transfer agreement. No later than*  
 18 *January 1, 2094, all structures, buildings, and appurtenances on*  
 19 *the designated seawall lots not consistent with the purposes of the*  
 20 *public trust, the Burton Act trust, and Burton Act transfer*  
 21 *agreement agreement, except those subject to a lease as provided*  
 22 *in subdivision (a) of Section 4, shall be removed repurposed or*  
 23 *modified, including any necessary restoration or remediation of*  
 24 *the seawall lots, to facilitate public trust uses.*

25 *SEC. 7. If any provision of this act, or its application to any*  
 26 *person, property, or circumstance, is held invalid by any court,*  
 27 *the invalidity or inapplicability of that provision shall not affect*  
 28 *any other provision of this act or the application of that provision*  
 29 *to any other person, property, or circumstance, and the remaining*  
 30 *portions of this act shall continue in full force and effect, unless*  
 31 *enforcement of this act as so modified by and in response to that*  
 32 *invalidation would be grossly inequitable under all of the*  
 33 *circumstances, or would frustrate the fundamental purposes of*  
 34 *this act.*

35 *SEC. 8. The Legislature finds and declares that, because of*  
 36 *the unique circumstances applicable only to the lands described*  
 37 *in this act in the City and County of San Francisco, a statute of*  
 38 *general applicability cannot be enacted within the meaning of*  
 39 *subdivision (b) of Section 16 of Article IV of the California*  
 40 *Constitution.*

1 SECTION 1. ~~Section 10200 of the Public Resources Code is~~  
2 ~~amended to read:~~  
3 ~~10200. This division shall be known, and may be cited, as the~~  
4 ~~California Farmland Conservancy Program Act. Any reference in~~  
5 ~~this division to the Agricultural Land Stewardship Program Act~~  
6 ~~of 1995 shall mean the California Farmland Conservancy Program~~  
7 ~~Act.~~

O