

AMENDED IN ASSEMBLY APRIL 5, 2016  
AMENDED IN ASSEMBLY MARCH 29, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2797**

---

---

**Introduced by Assembly Member Chiu**

February 19, 2016

---

---

An act to amend Sections 4 and 7 ~~of~~ *of*, and to add Section 4.5 to, Chapter 660 of the Statutes of 2007, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2797, as amended, Chiu. 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 initial occupancy date for the improvements on the site.~~ *leased site or development parcel.* The bill would also prescribe the boundaries of a specified seawall lot for purposes of the Mission Bay South redevelopment plan. *The bill would authorize the port to use its nontrust lease revenues from specified development parcels in a specified seawall lot to make port advances, as defined, to fund specified infrastructure if the commission makes specified findings related to the use of the development parcels and complies with certain procedures for the disposition of those parcels, as prescribed.*

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.

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

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

- 1 SECTION 1. For the purposes of this act the following terms
- 2 have the following meanings:
- 3 (a) “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, the
- 15 state’s interest in certain tidelands, including filled lands.
- 16 (e) “Burton Act lands” means the tidelands that the state granted
- 17 to the city under the Burton Act, including the San Francisco
- 18 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) “CFD law” means the *Mello-Roos Community Facilities*  
11 *Act of 1982 (Chapter 2.5 (commencing with Section 53311)) of*  
12 *Part 1 of Division 2 of Title 5 of the Government Code) or the San*  
13 *Francisco Special Tax Financing Law (San Francisco Admin.*  
14 *Code Ch. 43, Art. X), as applicable.*

15 (j)

16 (j) “City” means the City and County of San Francisco, a charter  
17 city and county, and includes the port.

18 (k)

19 (k) “Commission” means the State Lands Commission.

20 (l)

21 (l) “Designated seawall lot” or “designated seawall lots” means  
22 any of those parcels of real property situated in the city that are  
23 defined as designated seawall lots in Senate Bill 815 or Assembly  
24 Bill 2649, as those parcels may be modified by Section 3 of this  
25 act.

26 (m) “Development parcel” means a portion of a designated  
27 seawall lot that is subdivided for construction improvements, or  
28 rehabilitation of historic buildings for reuse, and that will be used  
29 for nontrust land uses.

30 (n) “IFD law” means the *Infrastructure Financing Districts*  
31 *law set forth in Chapter 2.8 (commencing with Section 53395) of*  
32 *Part 1 of Division 2 of Title 5 of the Government Code, which*  
33 *authorizes the use of property tax increment to finance*  
34 *infrastructure.*

35 (o) “Infrastructure costs” or “costs of infrastructure” means  
36 the cost of constructing the Seawall Lot 337 infrastructure,  
37 including related costs of planning and design work and a return  
38 on developer equity, as provided in a plan of finance in a  
39 disposition and development agreement for which the commission

- 1 *has made findings in accordance with paragraph (3) of subdivision*  
 2 *(a) of Section 4.5 of Senate Bill 815.*  
 3 *(p) “Initial occupancy date” means the date on which the port*  
 4 *issues the first certificate of occupancy for a building on the leased*  
 5 *seawall lot or development parcel in Seawall Lot 337, as*  
 6 *applicable.*  
 7 ~~(t)~~  
 8 *(q) “Mission Bay developer” means an “owner,” as defined in*  
 9 *the Mission Bay South owner participation agreement.*  
 10 ~~(m)~~  
 11 *(r) “Mission Bay South owner participation agreement” means*  
 12 *the agreement between the redevelopment agency and Catellus*  
 13 *Development Corporation, dated November 16, 1998, as amended.*  
 14 ~~(n)~~  
 15 *(s) “Mission Bay South redevelopment plan” means the*  
 16 *Redevelopment Plan for the Mission Bay South Project adopted*  
 17 *by the board of supervisors on October 26, 1998, as amended.*  
 18 ~~(o)~~  
 19 *(t) “Mission Bay South redevelopment project area” means the*  
 20 *area in the city subject to the Mission Bay South redevelopment*  
 21 *plan.*  
 22 *(u) “Nontrust lease revenues” means revenues that the port*  
 23 *receives from nontrust leases of designated seawall lots or*  
 24 *development parcels in Seawall Lot 337, as applicable.*  
 25 *(v) “Nontrust sources” means sources of consideration other*  
 26 *than nontrust lease revenues or moneys in the port’s harbor fund.*  
 27 *Nontrust sources include, without limitation, fee credits that may*  
 28 *be applied to offset local impact fees or exactions, special taxes,*  
 29 *tax increment, proceeds of general obligation bonds, proceeds of*  
 30 *community facilities bonds, and proceeds of tax allocation bonds.*  
 31 ~~(p)~~  
 32 *(w) “Oversight board” means the body that the board of*  
 33 *supervisors created to oversee the fiscal management of the*  
 34 *successor agency in accordance with Assembly Bill 26.*  
 35 ~~(q)~~  
 36 *(x) “Parcel P20” means a parcel owned by the port within the*  
 37 *Mission Bay South redevelopment project area that lies partially*  
 38 *within the southern portion of Seawall Lot 337.*  
 39 *(y) “Port advances” means nontrust lease revenues that the*  
 40 *port uses to pay directly or to reimburse the Seawall Lot 337*

1 *developer or any district providing project-based public financing*  
2 *for costs of infrastructure in accordance with the terms and*  
3 *conditions of this act. Port advances do not include nontrust lease*  
4 *revenues that the port uses to pay directly for the preservation of*  
5 *historic piers and historic structures or for purposes that are*  
6 *otherwise authorized by this act.*

7 (t)

8 (z) “Port of San Francisco,” “port commission,” or “port” means  
9 the city acting by and through the San Francisco Port Commission.

10 (aa) “Project-based public financing” means special taxes from  
11 development parcels in community facilities district project areas  
12 formed under CFD law, property tax increment from development  
13 parcels in infrastructure financing district project areas established  
14 under the IFD law, bond proceeds secured by special taxes, tax  
15 increment, or both, and any other mechanisms available to finance  
16 infrastructure and public facilities that rely on revenues produced  
17 by the area to be improved.

18 (s)

19 (ab) “Public trust” or “trust” means the common law public  
20 trust for commerce, navigation, and fisheries.

21 (t)

22 (ac) “Redevelopment agency” means the San Francisco  
23 redevelopment agency, that the board of supervisors formed under  
24 the former California Community Redevelopment Law and that  
25 was dissolved on February 1, 2012, by operation of Assembly Bill  
26 26.

27 (u)

28 (ad) “San Francisco Bay” or “bay” means those areas defined  
29 by Section 66610 of the Government Code.

30 (v)

31 (ae) “San Francisco waterfront” means the portions of San  
32 Francisco Bay that the state transferred to the city under the Burton  
33 Act.

34 (w)

35 (af) “Seawall Lot 337” means that parcel of real property in the  
36 city known as Seawall Lot 337, as shown on that certain map  
37 entitled “revised map of designed seawall lots,” which is on file  
38 with the ~~port~~ port, as those boundaries may be modified by Section  
39 3 of this act.

40 (x)

1 (ag) “Seawall Lot 337 developer” means the person selected  
2 by the port to negotiate exclusively with the port for the master  
3 development of Seawall Lot 337 and Pier 48, and its successors  
4 and authorized assigns.

5 (ah) “Seawall Lot 337 infrastructure” means infrastructure  
6 and other public facilities that serve Seawall Lot 337 and are  
7 located on Seawall Lot 337 or on lands immediately adjacent to  
8 the seawall lot area, such as water, sewer, stormwater  
9 management, and other utility installations, streets, roadways,  
10 sidewalks, parks, public access and open space areas, shoreline  
11 improvements, and other public facilities.

12 ~~(y)~~  
13 (ai) “Senate Bill 815” means Chapter 660 of the Statutes of  
14 2007, ~~in which certain provisions were~~ as amended by Chapter  
15 208 of the Statutes of ~~2009 and 2009~~, Assembly Bill ~~2649~~, 2649,  
16 and this act.

17 ~~(z)~~

18 (aj) “State” means the State of California.

19 ~~(aa)~~

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

24 ~~(ab)~~

25 (al) “Successor agency commission” means the San Francisco  
26 Commission on Community Investment and Infrastructure.

27 (am) “Termination date” means the date determined in  
28 accordance with subdivision (a) of Section 4 of Senate Bill 815  
29 for the termination of a nontrust lease.

30 ~~(ae)~~

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

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

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

1 commerce, navigation, fishing, swimming, recreation, open space,  
2 and wildlife habitat.

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

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

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

24 (e) *The San Francisco shoreline is a valuable public trust asset,*  
25 *a vibrant and world-renowned tourist destination, and a vital*  
26 *component of the regional, state, and national economies. The*  
27 *success of the port's efforts to revitalize the waterfront depends,*  
28 *in part, on strategies for optimizing uses of and increasing revenues*  
29 *and other public trust benefits from port lands in addition to using*  
30 *funding sources other than the port harbor fund to finance*  
31 *development on port lands.*

32 (e)

33 (f) The seawall lots are tidelands that were filled and cut off  
34 from the waterfront by the construction of the great seawall, now  
35 occupied by the Embarcadero and other roadways, in the late 19th  
36 and early 20th centuries. Over time, some of the seawall lots,  
37 including the designated seawall lots, have ceased to be useful in  
38 whole or in part for the promotion of the public trust and the Burton  
39 Act trust, except for the production of revenue to support the  
40 purposes of the Burton Act trust. The designated seawall lots are

1 presently either vacant or leased on an interim basis, primarily for  
2 commuter parking.

3 ~~(f)~~

4 (g) (1) In Senate Bill 815, the Legislature found all of the  
5 following:

6 (A) The designated seawall lots are, in whole or in part, no  
7 longer necessary for the purposes of the public trust or Burton Act  
8 trust.

9 (B) Costs to implement the port’s capital plan exceed projected  
10 revenues of the port available for these purposes, in part due to  
11 the port’s inability to make optimal use of the designated seawall  
12 lots.

13 (C) Future revenues from the development and leasing of the  
14 designated seawall lots are an essential source of funds to preserve  
15 the port’s numerous historic piers and historic structures, construct  
16 and maintain waterfront plazas and open space, and improve public  
17 access to the waterfront.

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

23 ~~(g)~~

24 (h) Seawall Lot 337, the largest of the designated seawall lots,  
25 is located just south of China Basin and is presently used as a  
26 surface parking lot. Senate Bill 815 depicts Seawall Lot 337 as  
27 bounded by Mission Rock Street, Terry A. Francois Boulevard,  
28 and Third Street. Following an extensive community process led  
29 by a citywide advisory panel and a solicitation process to identify  
30 qualified developers, the port commission entered into exclusive  
31 negotiations with the Seawall Lot 337 developer for the lease,  
32 construction, and operation of the proposed project at Seawall Lot  
33 337, a portion of Terry A. Francois Boulevard, Pier 48, and the  
34 marginal wharf between Pier 48 and Pier 50. The proposed project  
35 would include a mix of uses, such as commercial retail and office,  
36 market-rate and affordable residential, rehabilitation of Pier 48,  
37 new parks, expansion of the existing China Basin Park with a  
38 portion of Terry A. Francois Boulevard, and new and expanded  
39 shoreline access. The Legislature finds that the revitalization of  
40 Seawall Lot 337 and Pier 48 through mixed-use development is

1 of particular importance to the state for the reasons stated in Senate  
2 Bill 815.

3 (h)

4 (i) The Mission Bay area surrounding Seawall Lot 337 is the  
5 site of a major mixed-use redevelopment project. As a result of  
6 Assembly Bill 26, the redevelopment agency was dissolved on  
7 February 1, 2012, and the successor agency assumed certain  
8 executory obligations of the redevelopment agency. The successor  
9 agency commission exercises land use, development, and design  
10 approval authority for the remaining projects of the former  
11 redevelopment agency, including Mission Bay.

12 (i)

13 (j) The Mission Bay South redevelopment project area,  
14 established in 1998 by the board of supervisors' adoption of the  
15 Mission Bay South redevelopment plan, lies to the west and south  
16 of Seawall Lot 337. Parcel P20 is a narrow, undeveloped strip of  
17 land within the Mission Bay South redevelopment project area  
18 that is bounded on the north by the northern line of Mission Rock  
19 Street in its former location, and overlaps a portion of Seawall Lot  
20 337, as depicted in Senate Bill 815. In accordance with the Mission  
21 Bay South redevelopment plan, the Mission Bay developer has  
22 since realigned Mission Rock Street from its northeasterly  
23 orientation to an east-west orientation, such that a portion of Parcel  
24 P20 and the former Mission Rock Street right of way now lie north  
25 of the northerly line of Mission Rock Street. The development  
26 proposal for Seawall Lot 337 includes this portion of Parcel P20  
27 and former Mission Rock Street.

28 (j)

29 (k) Under its development proposal, the Seawall Lot 337  
30 developer would realign Terry A. Francois Boulevard and use part  
31 of the northern section of the street to expand China Basin Park.  
32 The remaining portion of the realigned Terry A. Francois  
33 Boulevard would be a working waterfront street that would support  
34 active maritime, industrial, and production uses at the waterfront.  
35 Terry A. Francois Boulevard would include areas for social spaces  
36 and loading zones serving proposed buildings, a pedestrian  
37 throughway, a shared zone, and the Blue Greenway adjacent to  
38 the Bay and Piers 48 and 50, contributing to uninterrupted public  
39 access along San Francisco's eastern waterfront.

1     *(l) In connection with the project, a substantial investment in*  
2 *new infrastructure and public facilities is necessary for the port*  
3 *to fully realize the public benefits of those portions of Seawall Lot*  
4 *337 that will be used for trust purposes, and to maximize the value*  
5 *of development parcels that will be subject to nontrust leases. The*  
6 *infrastructure costs for Seawall Lot 337 are expected to exceed*  
7 *one hundred fifty million dollars (\$150,000,000). The development*  
8 *proposal for Seawall Lot 337 provides for the Seawall Lot 337*  
9 *developer to construct the needed infrastructure and public*  
10 *facilities, which would be funded by developer equity to the extent*  
11 *that port advances and project-based public financing are not then*  
12 *available. Project-based public financing would be used to pay*  
13 *directly or to reimburse the Seawall Lot 337 developer for its*  
14 *equity advances and the port for port advances for infrastructure*  
15 *costs under the CFD law, IFD law, and other applicable laws.*

16     *(m) Because special taxes, property tax increment, and other*  
17 *nontrust funding sources arising from the project may not become*  
18 *available until well after the port receives nontrust lease revenues*  
19 *from development parcels in Seawall Lot 337, it is critical that the*  
20 *port be able to use those revenues to pay Seawall Lot 337*  
21 *infrastructure costs to minimize the cost of development capital*  
22 *and maximize the land value that the port is able to realize for*  
23 *preservation of its historic piers and historic structures, and for*  
24 *other public trust uses. This act authorizes the port to make*  
25 *advances of nontrust lease revenues from Seawall Lot 337 to pay*  
26 *Seawall Lot 337 infrastructure costs, subject to the requirements*  
27 *of this act.*

28     ~~(k)~~

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

39     *(o) This act also amends Senate Bill 815 to provide that the*  
40 *75-year limitation on the term of authorized nontrust leases for*

1 *designated seawall lots and development parcels at Seawall Lot*  
2 *337, as applicable, begins to run on the initial occupancy date for*  
3 *the leased site.*

4 SEC. 3. For purposes of Senate Bill 815 and Assembly Bill  
5 2649, the boundaries of Seawall Lot 337 extend to the line of, but  
6 do not include, Third Street on the west, Mission Rock Street on  
7 the south, and Terry A. Francois Boulevard on the east, as those  
8 streets are ultimately constructed, realigned, or reconfigured in  
9 connection with the Mission Bay South redevelopment plan and  
10 the development of Seawall Lot 337. If there is any conflict  
11 between this section and the diagram in Section 15 of Senate Bill  
12 815 or Section 9 of Assembly Bill 2649, this section shall control.

13 SEC. 4. Subdivisions (c), (d), and (f) of Section 34163 of the  
14 Health and Safety Code, and subdivisions (a) and (b) of Section  
15 34164 of the Health and Safety Code, shall not apply to, and no  
16 action of the Department of Finance or the Controller shall be  
17 required for, any action taken by the oversight board, the successor  
18 agency commission, the board of supervisors, or any other  
19 governmental body required to act to amend the Mission Bay South  
20 redevelopment plan to remove Parcel P20 from the Mission Bay  
21 South redevelopment project area, or to amend any related  
22 documents or agreements to delete regulatory requirements, zoning  
23 controls, and the Mission Bay developer's obligations with respect  
24 to Parcel P20.

25 SEC. 5. Section 4 of Chapter 660 of the Statutes of 2007 is  
26 amended to read:

27 ~~Sec. 4. Subject to the applicable terms and conditions in Section~~  
28 ~~6 pertaining to~~ *Except for Seawall Lot 337, the port may enter into*  
29 *a lease of all or any portion of the designated seawall lots free from*  
30 *the use requirements established by the public trust, the Burton*  
31 *Act trust, and the Burton Act transfer agreement (nontrust lease);*  
32 ~~provided all of the following conditions are met: (nontrust lease)~~  
33 *subject to the requirements of this section. For Seawall Lot 337,*  
34 *the port may enter into nontrust leases of development parcels,*  
35 *subject to the requirements of this section, if the commission has*  
36 *made all of the findings in paragraph (3) of subdivision (a) of*  
37 *Section 4.5, and if all of the conditions of Section 6 are met.*

38 (a) Notwithstanding the Burton Act, Section 718 of the Civil  
39 Code, Section 37384 of the Government Code, or any other  
40 provision of law to the contrary, the term of any individual nontrust

1 lease, including any extension of the term allowed by right of  
2 renewal, shall not exceed ~~75 years.~~ *years from the initial occupancy*  
3 *date for the leased site or development parcel.* Each nontrust lease  
4 shall terminate no later than *the date that is the later of* January 1,  
5 2094, or the date that is 75 years after the date that the port first  
6 issues a certificate of occupancy for the improvements on the  
7 leased ~~site.~~ *site or development parcel.* Nothing in this section  
8 shall be construed as limiting the term of any lease, or portion  
9 thereof, that is for uses consistent with the public trust and the  
10 Burton Act.

11 (b) (1) (A) Except as provided in this subdivision, all *nontrust*  
12 *lease* revenues received by the port ~~from the nontrust lease will~~  
13 *shall* be deposited in a separate account in the harbor fund to be  
14 expended for the preservation of historic piers and historic  
15 structures, or for the construction and maintenance of waterfront  
16 plazas and open ~~space required by the special area plan.~~ Revenues  
17 *space.*

18 (B) *The port may use its nontrust lease revenues from*  
19 *development parcels in Seawall Lot 337 to make port advances to*  
20 *fund Seawall Lot 337 infrastructure, except for facilities for which*  
21 *expenditures are authorized under subparagraph (A), if the*  
22 *commission has made the findings under paragraph (3) of*  
23 *subdivision (a) of Section 4.5.*

24 (C) *Revenues shall not be expended under this subdivision for*  
25 *historic piers or historic structures on land subject to public trust*  
26 *use restrictions unless the executive officer of the commission has*  
27 *approved the proposed uses of the pier or ~~structure.~~ structure or,*  
28 *for Pier 48 and related historic structures, the executive officer of*  
29 *the commission has made the findings under paragraph (3) of*  
30 *subdivision (a) of Section 4.5 and has otherwise complied with*  
31 *this act.*

32 (2) The port may annually transfer from the separate account  
33 and deposit in the general account of the harbor fund, to be used  
34 for any purpose consistent with the public trust and the Burton  
35 Act, an amount equal to the sum of the baseline revenue streams  
36 for each designated seawall lot subject to ~~a one or more nontrust~~  
37 ~~lease (hereafter leased leases (leased seawall lot), lots),~~ less any  
38 revenues received by the port, for the year preceding the transfer  
39 of funds, from any portion or portions of the leased seawall lots  
40 that were not subject to a nontrust lease. For purposes of this

1 subdivision, the baseline revenue stream for a designated seawall  
2 lot is the average annual revenue received by the port from that  
3 seawall lot over the five years prior to January 1, 2008, adjusted  
4 for inflation.

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

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

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

18 (c) ~~The~~ A nontrust lease ~~is~~ shall be for fair market value and on  
19 terms consistent with prudent land management practices as  
20 determined by the port and subject to approval by the commission  
21 as provided in paragraph (1).

22 (1) Prior to executing ~~the~~ a nontrust lease, the port shall submit  
23 the proposed lease to the commission for its consideration, and  
24 the commission shall grant its approval or disapproval in writing  
25 within 90 days of receipt of the lease and supporting  
26 documentation, including documentation related to value. In  
27 approving a nontrust lease, the commission shall find that the lease  
28 meets all of the following:

29 (A) Is for fair market value.

30 (B) Is consistent with the terms of the public trust and the Burton  
31 Act trust, other than their restrictions on uses.

32 (C) Is otherwise in the best interest of the state.

33 (2) Whenever a nontrust lease is submitted to the commission  
34 for its consideration, the costs of any study or investigation  
35 undertaken by or at the request of the commission, including  
36 reasonable reimbursement for time incurred by commission staff  
37 in processing, investigating, and analyzing such submittal, shall  
38 be borne by the port; however, the port may seek payment or  
39 reimbursement for these costs from the proposed lessee.

1 SEC. 6. Section 4.5 is added to Chapter 660 of the Statutes of  
2 2007, to read:

3 Sec. 4.5. (a) For nontrust leases of Seawall Lot 337 that are  
4 entered into in accordance with the terms of a disposition and  
5 development agreement for the master development of Seawall  
6 Lot 337, the commission shall consider whether the port will  
7 receive consideration equal to the fair market value on terms  
8 consistent with prudent land management practices based on, and  
9 in accordance with, all of the following procedures:

10 (1) At least 30 days prior to approval by the board of supervisors  
11 of the development project for Seawall Lot 337, the port shall  
12 submit the proposed disposition and development agreement  
13 between the master developer and the port governing the master  
14 development of Seawall Lot 337 and the following information, to  
15 the extent not contained in the agreement, to the commission for  
16 its consideration:

17 (A) The proposed procedures for the disposition of nontrust  
18 development parcels and including the proposed plan of finance  
19 for the development project that describes the proposed port  
20 advances for Seawall Lot 337 infrastructure costs.

21 (B) The proposed procedures for establishing the fair market  
22 value of each nontrust lease of a development parcel, consistent  
23 with the land uses permitted under the disposition and development  
24 agreement, including the appraisal instructions.

25 (C) A description of the nontrust sources that the port expects  
26 to receive for the project and how these nontrust sources will be  
27 applied to the project.

28 (D) A description of the manner by which the port will select  
29 the developer of each development parcel, including the form of  
30 ground lease.

31 (2) Following approval of the development project for Seawall  
32 Lot 337 by the board of supervisors, the port shall submit to the  
33 commission the project documents described in paragraph (1) as  
34 finally approved by the board of supervisors.

35 (3) Within 75 days after approval of the project by the board  
36 of supervisors and receipt of all required documentation from the  
37 port, the commission shall consider whether to make all of the  
38 following findings:

39 (A) The disposition and development agreement, including the  
40 plan of finance and use of port advances, the procedures for

1 *establishing rent for future nontrust leases of individual*  
2 *development parcels, including appraisal instructions, and other*  
3 *consideration to the port will provide the port with fair market*  
4 *value.*

5 *(B) The submitted documentation identifies the projected amount*  
6 *of port advances and the nontrust sources projected to repay port*  
7 *advances with interest. If port advances are not projected to be*  
8 *repaid with interest within 40 years after the port makes its first*  
9 *port advance, the projections and other evidence shall demonstrate*  
10 *the availability and viability of those sources for full repayment*  
11 *within an additional period that the commission finds reasonable*  
12 *and consistent with subparagraph (E).*

13 *(C) The master development on the whole is consistent with the*  
14 *port study required by Section 6.*

15 *(D) The use of port advances will not substantially interfere*  
16 *with trust uses and purposes and will reduce Seawall Lot 337*  
17 *infrastructure financing costs.*

18 *(E) The port advances will generate increased revenues for the*  
19 *trust, including revenues available for historic pier and historic*  
20 *structure preservation.*

21 *(F) The master development is consistent with the terms of the*  
22 *public trust and the Burton Act trust, other than their restrictions*  
23 *on uses.*

24 *(G) The development is otherwise in the best interest of the*  
25 *state.*

26 *(4) If the commission does not make the findings under*  
27 *paragraph (3), the port advances from nontrust lease revenues for*  
28 *Seawall Lot 337 infrastructure shall not be allowed.*

29 *(5) The port shall bear the costs of any study or investigation*  
30 *that the commission undertakes or requests, including reasonable*  
31 *reimbursement for commission staff time in processing,*  
32 *investigating, and analyzing the port's submittal. The port's*  
33 *reimbursement obligation does not affect its ability to seek payment*  
34 *or reimbursement for these costs from the master developer.*

35 *(b) In addition to any statement of expenditures and revenues*  
36 *that the port is required by law to submit to the commission*  
37 *annually, the port shall provide a separate accounting of all*  
38 *consideration from nontrust sources and other port revenues spent*  
39 *on Seawall Lot 337, including any port advances and any revenues*  
40 *from nontrust sources received by the port to repay those advances.*

1 (c) The port shall provide the commission with copies of the  
 2 final audit report for each phase of the project and the final audit  
 3 report for the project within 90 days after the port receives each  
 4 audit report.

5 (d) If, within 20 years after the first port advance, the port has  
 6 not submitted an audit report to the commission indicating that  
 7 all of the port advances have been repaid, the port shall report to  
 8 the commission the total amount of revenues from nontrust leases  
 9 that the port used to fund port advances, the amount that the port  
 10 has received to repay port advances, the projected sources to repay  
 11 any balance still owing on account of port advances, and the  
 12 expected timing of repayment of the balance still owing. Thereafter,  
 13 the port shall provide supplemental reports containing updates to  
 14 this information to the commission every five years.

15 (e) If, by the date 40 years after the first port advance, the  
 16 amount of port advances still exceeds the repayments and other  
 17 consideration from nontrust sources received by the port for its  
 18 advances, then the commission, following consultation with the  
 19 port, may require the port to take actions to remedy any shortfall  
 20 as may be in the best interest of the state. In determining the  
 21 amount of repayments that the port has received under this  
 22 subdivision, the commission may consider all forms of  
 23 consideration from nontrust sources received by the port after the  
 24 first port advance has been made.

25 ~~SEC. 6.~~

26 SEC. 7. Section 7 of Chapter 660 of the Statutes of 2007 is  
 27 amended to read:

28 Sec. 7. Sections ~~3 and~~ 3, 4, 4.5, and 6 of this act shall be  
 29 inoperative as to a designated seawall lot on the later of (a) the  
 30 last termination date of any nontrust lease on the site, or (b) on  
 31 January 1, 2094, after which later date the use of the designated  
 32 seawall ~~lots~~ lot shall be consistent with the public trust, the Burton  
 33 Act trust, and the Burton Act transfer agreement. No later than  
 34 January 1, 2094, or the last termination date of any nontrust lease  
 35 on the site, whichever is later, all structures, buildings, and  
 36 appurtenances on ~~the~~ a designated seawall ~~lots~~ lot not consistent  
 37 with the purposes of the public trust, the Burton Act trust, and  
 38 Burton Act transfer agreement, ~~except those subject to a lease as~~  
 39 ~~provided in subdivision (a) of Section 4,~~ shall be repurposed or

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

3 ~~SEC. 7.~~

4 *SEC. 8.* If any provision of this act, or its application to any  
5 person, property, or circumstance, is held invalid by any court, the  
6 invalidity or inapplicability of that provision shall not affect any  
7 other provision of this act or the application of that provision to  
8 any other person, property, or circumstance, and the remaining  
9 portions of this act shall continue in full force and effect, unless  
10 enforcement of this act as so modified by and in response to that  
11 invalidation would be grossly inequitable under all of the  
12 circumstances, or would frustrate the fundamental purposes of this  
13 act.

14 ~~SEC. 8.~~

15 *SEC. 9.* The Legislature finds and declares that, because of the  
16 unique circumstances applicable only to the lands described in this  
17 act in the City and County of San Francisco, a statute of general  
18 applicability cannot be enacted within the meaning of subdivision  
19 (b) of Section 16 of Article IV of the California Constitution.