

AMENDED IN ASSEMBLY APRIL 13, 2016

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, 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 initial occupancy date for the 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~~ *has approved the port advances* 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. Code
14 Ch. 43, Art. X), as applicable.

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

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

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

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

27 (n) “IFD law” means the Infrastructure Financing Districts law
28 set forth in Chapter 2.8 (commencing with Section 53395) of Part
29 1 of Division 2 of Title 5 of the Government Code, which
30 authorizes the use of property tax increment to finance
31 infrastructure.

32 (o) “Infrastructure costs” or “costs of infrastructure” means the
33 cost of constructing the Seawall Lot 337 infrastructure, including
34 related costs of planning and design work and a return on developer
35 equity, as provided in a plan of finance in a disposition and
36 development ~~agreement for which the commission has made~~
37 ~~findings in accordance with paragraph (3) of subdivision (a) of~~
38 ~~Section 4.5 of Senate Bill 815:~~ *agreement.*

- 1 (p) “Initial occupancy date” means the date on which the port
2 issues the first certificate of occupancy for a building on the leased
3 seawall lot or development parcel in Seawall Lot 337, as applicable.
- 4 (q) “Mission Bay developer” means an “owner,” as defined in
5 the Mission Bay South owner participation agreement.
- 6 (r) “Mission Bay South owner participation agreement” means
7 the agreement between the redevelopment agency and Catellus
8 Development Corporation, dated November 16, 1998, as amended.
- 9 (s) “Mission Bay South redevelopment plan” means the
10 Redevelopment Plan for the Mission Bay South Project adopted
11 by the board of supervisors on October 26, 1998, as amended.
- 12 (t) “Mission Bay South redevelopment project area” means the
13 area in the city subject to the Mission Bay South redevelopment
14 plan.
- 15 (u) “Nontrust lease revenues” means revenues that the port
16 receives from nontrust leases of designated seawall lots or
17 development parcels in Seawall Lot 337, as applicable.
- 18 (v) “Nontrust sources” means sources of consideration other
19 than nontrust lease revenues or moneys in the port’s harbor fund.
20 Nontrust sources include, without limitation, fee credits that may
21 be applied to offset local impact fees or exactions, special taxes,
22 tax increment, proceeds of general obligation bonds, proceeds of
23 community facilities bonds, and proceeds of tax allocation bonds.
- 24 (w) “Oversight board” means the body that the board of
25 supervisors created to oversee the fiscal management of the
26 successor agency in accordance with Assembly Bill 26.
- 27 (x) “Parcel P20” means a parcel owned by the port within the
28 Mission Bay South redevelopment project area that lies partially
29 within the southern portion of Seawall Lot 337.
- 30 (y) “Port advances” means *a loan of trust assets where the port*
31 *uses nontrust lease revenues that the port uses to pay directly or*
32 *to reimburse the Seawall Lot 337 developer or any district*
33 *providing project-based public financing for costs of infrastructure*
34 *in accordance with the terms and conditions of this act. Port*
35 *advances do not include nontrust lease revenues that the port uses*
36 *to pay directly for the preservation of historic piers and historic*
37 *structures or for purposes that are otherwise authorized by this act.*
- 38 (z) “Port of San Francisco,” “port commission,” or “port” means
39 the city acting by and through the San Francisco Port Commission.

1 (aa) “Project-based public financing” means special taxes from
2 development parcels in community facilities district project areas
3 formed under CFD law, property tax increment from development
4 parcels in infrastructure financing district project areas established
5 under the IFD law, bond proceeds secured by special taxes, tax
6 increment, or both, and any other mechanisms available to finance
7 infrastructure and public facilities that rely on revenues produced
8 by the area to be improved.

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

11 (ac) “Redevelopment agency” means the San Francisco
12 redevelopment agency, that the board of supervisors formed under
13 the former California Community Redevelopment Law and that
14 was dissolved on February 1, 2012, by operation of Assembly Bill
15 26.

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

18 (ae) “San Francisco waterfront” means the portions of San
19 Francisco Bay that the state transferred to the city under the Burton
20 Act.

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

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

30 (ah) “Seawall Lot 337 infrastructure” means infrastructure and
31 other public facilities that serve Seawall Lot 337 and are located
32 on Seawall Lot 337 or on lands immediately adjacent to the seawall
33 lot area, such as water, sewer, stormwater management, and other
34 utility installations, streets, roadways, sidewalks, parks, public
35 access and open space areas, shoreline improvements, and other
36 public facilities.

37 (ai) “Senate Bill 815” means Chapter 660 of the Statutes of
38 2007, as amended by Chapter 208 of the Statutes of 2009,
39 Assembly Bill 2649, and this act.

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

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

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

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

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

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

14 (a) San Francisco Bay is a valuable public trust asset of the state
15 that provides special maritime, navigational, recreational, cultural,
16 and historical benefits to the people of the region and the state.
17 Tidelands in California are held in trust for enjoyment and use by
18 the people of the state under the common law public trust doctrine.
19 Public trust lands may be used for water-related purposes, including
20 commerce, navigation, fishing, swimming, recreation, open space,
21 and wildlife habitat.

22 (b) The San Francisco waterfront consists primarily of sovereign
23 tidelands that the state granted to the city pursuant to the Burton
24 Act. Under the Burton Act and the city’s charter, the port holds
25 and manages the granted lands. The Burton Act authorizes the port
26 to use, conduct, operate, maintain, manage, regulate, improve, and
27 control the San Francisco waterfront consistent with the public
28 trust and the Burton Act trust.

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

33 (d) A unique feature of the San Francisco shoreline is the
34 numerous historic maritime resources present on port property,
35 many of which are in need of major structural repairs and are not
36 currently available for the use and enjoyment of the public. The
37 Legislature has previously found that rectifying the deteriorating
38 conditions along the San Francisco waterfront, the preservation of
39 the numerous historic piers and other historic structures on port
40 land, and the construction of waterfront plazas and open space are

1 matters of statewide importance that will further the purposes of
2 the public trust and the Burton Act trust.

3 (e) The San Francisco shoreline is a valuable public trust asset,
4 a vibrant and world-renowned tourist destination, and a vital
5 component of the regional, state, and national economies. The
6 success of the port's efforts to revitalize the waterfront depends,
7 in part, on strategies for optimizing uses of and increasing revenues
8 and other public trust benefits from port lands in addition to using
9 funding sources other than the port harbor fund to finance
10 development on port lands.

11 (f) The seawall lots are tidelands that were filled and cut off
12 from the waterfront by the construction of the great seawall, now
13 occupied by the Embarcadero and other roadways, in the late 19th
14 and early 20th centuries. Over time, some of the seawall lots,
15 including the designated seawall lots, have ceased to be useful in
16 whole or in part for the promotion of the public trust and the Burton
17 Act trust, except for the production of revenue to support the
18 purposes of the Burton Act trust. The designated seawall lots are
19 presently either vacant or leased on an interim basis, primarily for
20 commuter parking.

21 ~~(g) (1) In Senate Bill 815, the Legislature found all of the~~
22 ~~following:~~

23 ~~(A) The designated seawall lots are, in whole or in part, no~~
24 ~~longer necessary for the purposes of the public trust or Burton Act~~
25 ~~trust.~~

26 ~~(B) Costs to implement the port's capital plan exceed projected~~
27 ~~revenues of the port available for these purposes, in part due to~~
28 ~~the port's inability to make optimal use of the designated seawall~~
29 ~~lots.~~

30 ~~(C) Future revenues from the development and leasing of the~~
31 ~~designated seawall lots are an essential source of funds to preserve~~
32 ~~the port's numerous historic piers and historic structures, construct~~
33 ~~and maintain waterfront plazas and open space, and improve public~~
34 ~~access to the waterfront.~~

35 ~~(2) Senate Bill 815 lifted the use restrictions of the public trust~~
36 ~~and Burton Act trust from the designated seawall lots and~~
37 ~~authorized the port to enter into nontrust leases of the lands, subject~~
38 ~~to certain conditions and subject to the requirement that the nontrust~~
39 ~~lease revenues be used for specified trust purposes.~~

40 (h)

1 (g) Seawall Lot 337, the largest of the designated seawall lots,
 2 is located just south of China Basin and is presently used as a
 3 surface parking lot. Senate Bill 815 depicts Seawall Lot 337 as
 4 bounded by Mission Rock Street, Terry A. Francois Boulevard,
 5 and Third Street. Following an extensive community process led
 6 by a citywide advisory panel and a solicitation process to identify
 7 qualified developers, the port commission entered into exclusive
 8 negotiations with the Seawall Lot 337 developer for the lease,
 9 construction, and operation of the proposed project at Seawall Lot
 10 337, a portion of Terry A. Francois Boulevard, Pier 48, and the
 11 marginal wharf between Pier 48 and Pier 50. The proposed project
 12 would include a mix of uses, such as commercial retail and office,
 13 market-rate and affordable residential, rehabilitation of Pier 48,
 14 new parks, expansion of the existing China Basin Park with a
 15 portion of Terry A. Francois Boulevard, and new and expanded
 16 shoreline access. The Legislature finds that the revitalization of
 17 Seawall Lot 337 and Pier 48 through mixed-use development is
 18 of particular importance to the state for the reasons stated in Senate
 19 Bill 815.

20 (i)

21 (h) The Mission Bay area surrounding Seawall Lot 337 is the
 22 site of a major mixed-use redevelopment project. As a result of
 23 Assembly Bill 26, the redevelopment agency was dissolved on
 24 February 1, 2012, and the successor agency assumed certain
 25 executory obligations of the redevelopment agency. The successor
 26 agency commission exercises land use, development, and design
 27 approval authority for the remaining projects of the former
 28 redevelopment agency, including Mission Bay.

29 (j)

30 (i) The Mission Bay South redevelopment project area,
 31 established in 1998 by the board of supervisors' adoption of the
 32 Mission Bay South redevelopment plan, lies to the west and south
 33 of Seawall Lot 337. Parcel P20 is a narrow, undeveloped strip of
 34 land within the Mission Bay South redevelopment project area
 35 that is bounded on the north by the northern line of Mission Rock
 36 Street in its former location, and overlaps a portion of Seawall Lot
 37 337, as depicted in Senate Bill 815. In accordance with the Mission
 38 Bay South redevelopment plan, the Mission Bay developer has
 39 since realigned Mission Rock Street from its northeasterly
 40 orientation to an east-west orientation, such that a portion of Parcel

1 P20 and the former Mission Rock Street right of way now lie north
2 of the northerly line of Mission Rock Street. The development
3 proposal for Seawall Lot 337 includes this portion of Parcel P20
4 and former Mission Rock Street.

5 ~~(k)~~

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

17 ~~(l)~~

18 (k) In connection with the project, a substantial investment in
19 new infrastructure and public facilities is necessary for the port to
20 fully realize the public benefits of those portions of Seawall Lot
21 337 that will be used for trust purposes, and to maximize the value
22 of development parcels that will be subject to nontrust leases. The
23 infrastructure costs for Seawall Lot 337 are expected to exceed
24 one hundred fifty million dollars (\$150,000,000). The development
25 proposal for Seawall Lot 337 provides for the Seawall Lot 337
26 developer to construct the needed infrastructure and public
27 facilities, which would be funded by developer equity to the extent
28 that port advances and project-based public financing are not then
29 available. Project-based public financing would be used to pay
30 directly or to reimburse the Seawall Lot 337 developer for its equity
31 advances and the port for port advances for infrastructure costs
32 under the CFD law, IFD law, and other applicable laws.

33 ~~(m)~~

34 (l) Because special taxes, property tax increment, and other
35 nontrust funding sources arising from the project may not become
36 available until well after the port receives nontrust lease revenues
37 from development parcels in Seawall Lot 337, it is critical that the
38 port be able to ~~use~~ *loan* those revenues to pay Seawall Lot 337
39 infrastructure costs to minimize the cost of development capital
40 and maximize the land value that the port is able to realize for

1 preservation of its historic piers and historic structures, and for
2 other public trust uses. This act authorizes the port to make *port*
3 advances of nontrust lease revenues from Seawall Lot 337 to pay
4 Seawall Lot 337 infrastructure costs, subject to the requirements
5 of this act.

6 ~~(n)~~

7 (m) This act clarifies that the boundaries of Seawall Lot 337
8 extend to the line of Mission Rock Street and to the line of Terry
9 A. Francois Boulevard, as those streets have been or may be
10 realigned, and to the boundary of China Basin Park as finally
11 established, such that Seawall Lot 337 includes those portions of
12 Parcel P20 and the former Mission Rock Street right of way
13 embraced within those boundaries. This act also allows the
14 successor agency to remove Parcel P20 from the Mission Bay
15 South redevelopment plan and related documents and agreements
16 without the need for Department of Finance or Controller approval.

17 ~~(o)~~

18 (n) This act also amends Senate Bill 815 to provide that the
19 75-year limitation on the term of authorized nontrust leases for
20 designated seawall lots and development parcels at Seawall Lot
21 337, as applicable, begins to run on the initial occupancy date for
22 the leased site.

23 SEC. 3. For purposes of Senate Bill 815 and Assembly Bill
24 2649, the boundaries of Seawall Lot 337 extend to the line of, but
25 do not include, Third Street on the west, Mission Rock Street on
26 the south, and Terry A. Francois Boulevard on the east, as those
27 streets are ultimately constructed, realigned, or reconfigured in
28 connection with the Mission Bay South redevelopment plan and
29 the development of Seawall Lot 337. If there is any conflict
30 between this section and the diagram in Section 15 of Senate Bill
31 815 or Section 9 of Assembly Bill 2649, this section shall control.

32 SEC. 4. Subdivisions (c), (d), and (f) of Section 34163 of the
33 Health and Safety Code, and subdivisions (a) and (b) of Section
34 34164 of the Health and Safety Code, shall not apply to, and no
35 action of the Department of Finance or the Controller shall be
36 required for, any action taken by the oversight board, the successor
37 agency commission, the board of supervisors, or any other
38 governmental body required to act to amend the Mission Bay South
39 redevelopment plan to remove Parcel P20 from the Mission Bay
40 South redevelopment project area, or to amend any related

1 documents or agreements to delete regulatory requirements, zoning
2 controls, and the Mission Bay developer's obligations with respect
3 to Parcel P20.

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

6 Sec. 4. Except for Seawall Lot 337, the port may enter into a
7 lease of all or any portion of the designated seawall lots free from
8 the use requirements established by the public trust, the Burton
9 Act trust, and the Burton Act transfer agreement (nontrust lease)
10 subject to the requirements of this section. For Seawall Lot 337,
11 the port may enter into nontrust leases of development parcels,
12 subject to the requirements of this section, if the commission has
13 ~~made all of the findings in~~ *approved port advances pursuant to*
14 paragraph (3) of subdivision (a) of Section 4.5, and if all of the
15 conditions of *this section and* Section 6 are met.

16 (a) Notwithstanding the Burton Act, Section 718 of the Civil
17 Code, Section 37384 of the Government Code, or any other
18 provision of law to the contrary, the term of any individual nontrust
19 lease, including any extension of the term allowed by right of
20 renewal, shall not exceed 75 years from the initial occupancy date
21 for the leased site or development parcel. Each nontrust lease shall
22 terminate no later than the date that is the later of January 1, 2094,
23 or the date that is 75 years after the date that the port first issues
24 a certificate of occupancy for the improvements on the leased site
25 or development parcel. Nothing in this section shall be construed
26 as limiting the term of any lease, or portion thereof, that is for uses
27 consistent with the public trust and the Burton Act.

28 (b) (1) (A) Except as provided in this subdivision, all nontrust
29 lease revenues received by the port shall be deposited in a separate
30 account in the harbor fund to be expended for the preservation of
31 historic piers and historic structures, or for the construction and
32 maintenance of waterfront plazas and open space.

33 (B) The port may use its nontrust lease revenues from
34 development parcels in Seawall Lot 337 to make port advances to
35 fund Seawall Lot 337 infrastructure, except for facilities for which
36 expenditures are authorized under subparagraph (A), if the
37 commission has ~~made the findings under~~ *approved port advances*
38 *under* paragraph (3) of subdivision (a) of Section 4.5.

39 (C) Revenues shall not be expended under this subdivision for
40 historic piers or historic structures on land subject to public trust

1 use restrictions unless the executive officer of the commission has
 2 approved the proposed uses of the pier or structure or, for Pier 48
 3 and related historic structures, the executive officer of the
 4 commission has made the findings under paragraph (3) of
 5 subdivision (a) of Section 4.5 and has otherwise complied with
 6 ~~this act.~~ *structure.*

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

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

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

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

32 (c) A nontrust lease shall be for fair market value and on terms
 33 consistent with prudent land management practices as determined
 34 by the port and subject to approval by the commission as provided
 35 in paragraph (1).

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

1 lease, the commission shall find that the lease meets all of the
2 following:

3 (A) Is for fair market value.

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

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

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

14 SEC. 6. Section 4.5 is added to Chapter 660 of the Statutes of
15 2007, to read:

16 Sec. 4.5. (a) For nontrust leases of Seawall Lot 337 that are
17 entered into in accordance with the terms of a disposition and
18 development agreement for the master development of Seawall
19 Lot 337, the commission shall consider whether the port will
20 receive consideration equal to the fair market value on terms
21 consistent with prudent land management practices based on, and
22 in accordance with, all of the following procedures:

23 (1) At least 30 days prior to approval by the board of supervisors
24 of the development project for Seawall Lot 337, the port shall
25 submit the proposed disposition and development agreement
26 between the master developer and the port governing the master
27 development of Seawall Lot 337 and the following information,
28 to the extent not contained in the agreement, to the commission
29 for its consideration:

30 (A) The proposed procedures for the disposition of nontrust
31 development parcels and including the proposed plan of finance
32 for the development project that describes the proposed port
33 advances for Seawall Lot 337 infrastructure costs.

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

38 (C) A description of the nontrust sources that the port expects
39 to receive for the project and how these nontrust sources will be
40 applied to the project.

1 (D) A description of the manner by which the port will select
2 the developer of each development parcel, including the form of
3 ground lease.

4 (2) Following approval of the development project for Seawall
5 Lot 337 by the board of supervisors, the port shall submit to the
6 commission the project documents described in paragraph (1) as
7 finally approved by the board of supervisors.

8 (3) Within 75 days after approval of the project by the board of
9 supervisors and receipt of all required documentation from the
10 port, the commission shall ~~consider whether to make all of the~~
11 ~~following findings: either approve or deny the port advances from~~
12 ~~nontrust lease revenues for Seawall Lot 337 infrastructure based~~
13 ~~on the information it is required to consider by this section and~~
14 ~~whether port advances are consistent with the goals of Senate Bill~~
15 ~~815.~~

16 (A) ~~The disposition and development agreement, including the~~
17 ~~plan of finance and use of port advances, the procedures for~~
18 ~~establishing rent for future nontrust leases of individual~~
19 ~~development parcels, including appraisal instructions, and other~~
20 ~~consideration to the port will provide the port with fair market~~
21 ~~value.~~

22 (B) ~~The submitted documentation identifies the projected~~
23 ~~amount of port advances and the nontrust sources projected to~~
24 ~~repay port advances with interest. If port advances are not projected~~
25 ~~to be repaid with interest within 40 years after the port makes its~~
26 ~~first port advance, the projections and other evidence shall~~
27 ~~demonstrate the availability and viability of those sources for full~~
28 ~~repayment within an additional period that the commission finds~~
29 ~~reasonable and consistent with subparagraph (E).~~

30 (C) ~~The master development on the whole is consistent with~~
31 ~~the port study required by Section 6.~~

32 (D) ~~The use of port advances will not substantially interfere~~
33 ~~with trust uses and purposes and will reduce Seawall Lot 337~~
34 ~~infrastructure financing costs.~~

35 (E) ~~The port advances will generate increased revenues for the~~
36 ~~trust, including revenues available for historic pier and historic~~
37 ~~structure preservation.~~

38 (F) ~~The master development is consistent with the terms of the~~
39 ~~public trust and the Burton Act trust, other than their restrictions~~
40 ~~on uses.~~

1 ~~(G) The development is otherwise in the best interest of the~~
2 ~~state.~~

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

6 ~~(5)~~

7 (4) The port shall bear the costs of any study or investigation
8 that the commission undertakes or requests, including reasonable
9 reimbursement for commission staff time in processing,
10 investigating, and analyzing the port's submittal. The port's
11 reimbursement obligation does not affect its ability to seek payment
12 or reimbursement for these costs from the master developer.

13 (b) In addition to any statement of expenditures and revenues
14 that the port is required by law to submit to the commission
15 annually, the port shall provide a separate accounting of all
16 consideration from nontrust sources and other port revenues spent
17 on Seawall Lot 337, including any port advances and any revenues
18 from nontrust sources received by the port to repay those advances.

19 (c) The port shall provide the commission with copies of the
20 final audit report for each phase of the project and the final audit
21 report for the project within 90 days after the port receives each
22 audit report.

23 (d) If, within 20 years after the first port advance, the port has
24 not submitted an audit report to the commission indicating that all
25 of the port advances have been repaid, the port shall report to the
26 commission the total amount of revenues from nontrust leases that
27 the port used to fund port advances, the amount that the port has
28 received to repay port advances, the projected sources to repay
29 any balance still owing on account of port advances, and the
30 expected timing of repayment of the balance still owing. Thereafter,
31 the port shall provide supplemental reports containing updates to
32 this information to the commission every five years.

33 ~~(e) If, by the date 40 years after the first port advance, the~~
34 ~~amount of port advances still exceeds the repayments and other~~
35 ~~consideration from nontrust sources received by the port for its~~
36 ~~advances, then the commission, following consultation with the~~
37 ~~port, may require the port to take actions to remedy any shortfall~~
38 ~~as may be in the best interest of the state. In determining the~~
39 ~~amount of repayments that the port has received under this~~
40 ~~subdivision, the commission may consider all forms of~~

1 ~~consideration from nontrust sources received by the port after the~~
2 ~~first port advance has been made.~~

3 *(e) The port shall ensure repayment, with interest, of each port*
4 *advance within 50 years after the port advance is made. The port*
5 *may extend the repayment period beyond 50 years subject to*
6 *commission approval. The commission shall base its approval on*
7 *whether the port is taking actions to remedy any shortfall in*
8 *repayment.*

9 SEC. 7. Section 7 of Chapter 660 of the Statutes of 2007 is
10 amended to read:

11 Sec. 7. Sections 3, 4, 4.5, and 6 of this act shall be inoperative
12 as to a designated seawall lot on the later of (a) the last termination
13 date of any nontrust lease on the site, or (b) on January 1, 2094,
14 after which later date the use of the designated seawall lot shall
15 be consistent with the public trust, the Burton Act trust, and the
16 Burton Act transfer agreement. No later than January 1, 2094, or
17 the last termination date of any nontrust lease on the site, whichever
18 is later, all structures, buildings, and appurtenances on a designated
19 seawall lot not consistent with the purposes of the public trust, the
20 Burton Act trust, and Burton Act transfer agreement, shall be
21 repurposed or modified, including any necessary restoration or
22 remediation of the seawall lot to facilitate public trust uses.

23 SEC. 8. If any provision of this act, or its application to any
24 person, property, or circumstance, is held invalid by any court, the
25 invalidity or inapplicability of that provision shall not affect any
26 other provision of this act or the application of that provision to
27 any other person, property, or circumstance, and the remaining
28 portions of this act shall continue in full force and effect, unless
29 enforcement of this act as so modified by and in response to that
30 invalidation would be grossly inequitable under all of the
31 circumstances, or would frustrate the fundamental purposes of this
32 act.

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

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