

AMENDED IN SENATE JUNE 22, 2016

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 *the term of 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. not exceed 75 years from the initial occupancy date of the improvements developed on the leased site or development parcel, and in no event shall the term of a nontrust lease extend beyond December 31, 2120.* 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 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) “Bay Plan” means the San Francisco Bay Plan as adopted
- 11 and administered by the San Francisco Bay Conservation and
- 12 Development Commission pursuant to the McAteer-Petris Act.
- 13 (d) “BCDC” means the San Francisco Bay Conservation and
- 14 Development Commission established pursuant to Section 66620
- 15 of the Government Code.
- 16 (e)

- 1 (e) “Board of supervisors” means the Board of Supervisors of
2 the City and County of San Francisco.
- 3 ~~(d)~~
- 4 (f) “Burton Act” means Chapter 1333 of the Statutes of 1968,
5 as amended, which authorized the state to convey to the city, in
6 trust and subject to certain terms, conditions, and reservations, the
7 state’s interest in certain tidelands, including filled lands.
- 8 ~~(e)~~
- 9 (g) “Burton Act lands” means the tidelands that the state granted
10 to the city under the Burton Act, including the San Francisco
11 waterfront from the Hyde Street pier to India Basin.
- 12 ~~(f)~~
- 13 (h) “Burton Act transfer agreement” means the agreement dated
14 January 24, 1969, between the state and the city, relating to the
15 transfer of the Burton Act lands from the state to the city, and any
16 amendments to that agreement in accordance with its terms.
- 17 ~~(g)~~
- 18 (i) “Burton Act trust” means the statutory trust imposed by the
19 Burton Act on Burton Act lands and lands dedicated to or acquired
20 by the city as assets of the trust.
- 21 ~~(h) “Capital plan” means the 10-year capital plan for port land
22 prepared in accordance with Sections 2.30 and 2.31 of the San
23 Francisco Administrative Code, adopted in 2007 by the board of
24 supervisors, as amended.~~
- 25 ~~(i)~~
- 26 (j) “CFD law” means the Mello-Roos Community Facilities
27 Act of 1982 (Chapter 2.5 (commencing with Section 53311)) of
28 Part 1 of Division 2 of Title 5 of the Government Code) or the San
29 Francisco Special Tax Financing Law (San Francisco Admin. Code
30 Ch. 43, Art. X), as applicable.
- 31 ~~(j)~~
- 32 (k) “City” means the City and County of San Francisco, a charter
33 city and county, and includes the port.
- 34 ~~(k)~~
- 35 (l) “Commission” means the State Lands Commission.
- 36 ~~(l)~~
- 37 (m) “Designated seawall lot” or “designated seawall lots” means
38 any of those parcels of real property situated in the city that are
39 defined as designated seawall lots in Senate Bill 815 or Assembly

1 Bill 2649, ~~as those parcels may be modified by Section 3 of this~~
 2 ~~act.~~
 3 ~~(m)~~
 4 (n) “Development parcel” means a portion of a designated
 5 seawall lot that is subdivided for construction of improvements,
 6 or rehabilitation of historic buildings for reuse, and that will be
 7 used for nontrust land uses.
 8 (o) “*Embarcadero Historic District*” means the portion of the
 9 *Burton Act lands from Pier 45 to Pier 48, which was listed on the*
 10 *National Register of Historic Places in 2006.*
 11 ~~(n)~~
 12 (p) “IFD law” means the ~~Infrastructure Financing Districts law~~
 13 ~~set forth in Chapter 2.8 (commencing with Section 53395) of Part~~
 14 ~~1 of Division 2 of Title 5 of the Government Code, which~~
 15 ~~authorizes the use of provisions of the Government Code~~
 16 ~~authorizing the formation of local financing districts authorized~~
 17 ~~to use property tax increment to finance infrastructure.~~
 18 ~~(o)~~
 19 (q) “Infrastructure costs” or “costs of infrastructure” means the
 20 cost of constructing the Seawall Lot 337 infrastructure, including
 21 related costs of planning and design work and a return on developer
 22 equity, as provided in a plan of finance in a disposition and
 23 development agreement.
 24 ~~(p)~~
 25 (r) “Initial occupancy date” means the date on which the port
 26 issues the first certificate of occupancy for a building ~~on the leased~~
 27 *under a nontrust lease of a designated seawall lot or of a*
 28 *development parcel in Seawall Lot 337, as applicable.*
 29 (s) “*McAteer-Petris Act*” means *Title 7.2 (commencing with*
 30 *Section 66600) of the Government Code.*
 31 ~~(q)~~
 32 (t) “Mission Bay developer” means an “owner,” as defined in
 33 the Mission Bay South owner participation agreement.
 34 ~~(r)~~
 35 (u) “Mission Bay South owner participation agreement” means
 36 the agreement between the redevelopment agency and Catellus
 37 Development Corporation, dated November 16, 1998, as amended.
 38 (s)

1 (v) “Mission Bay South redevelopment plan” means the
2 Redevelopment Plan for the Mission Bay South Project adopted
3 by the board of supervisors on October 26, 1998, as amended.

4 (~~t~~)

5 (w) “Mission Bay South redevelopment project area” means
6 the area in the city subject to the Mission Bay South redevelopment
7 plan.

8 (~~u~~)

9 (x) “Nontrust lease revenues” means revenues that the port
10 receives from ~~nontrust~~ leases of designated seawall lots or
11 development parcels in Seawall Lot 337, as ~~applicable~~: *applicable*,
12 *where the trust use restrictions have been lifted by a prior*
13 *legislative act for a designated period of time.*

14 (~~v~~)

15 (y) “Nontrust sources” means sources of consideration other
16 than nontrust lease revenues or moneys in the port’s harbor fund.
17 Nontrust sources include, without limitation, fee credits that may
18 be applied to offset local impact fees or exactions, special taxes,
19 tax increment, proceeds of general obligation bonds, proceeds of
20 community facilities bonds, and proceeds of tax allocation bonds.

21 (z) “*Northeastern waterfront*” means the area designated in
22 the special area plan as the land and water areas within port
23 jurisdiction from Pier 35 to China Basin.

24 (~~w~~)

25 (aa) “Oversight board” means the body that the board of
26 supervisors created to oversee the fiscal management of the
27 successor agency in accordance with Assembly Bill 26.

28 (~~x~~)

29 (ab) “Parcel P20” means a parcel owned by the port within the
30 Mission Bay South redevelopment project area that lies partially
31 within the southern portion of Seawall Lot 337.

32 (~~y~~)

33 (ac) “Port advances” means a loan of ~~trust assets where the port~~
34 ~~uses~~ nontrust lease revenues *from Seawall Lot 337 to a district or*
35 *other entity providing project-based public financing* to pay directly
36 or to reimburse the Seawall Lot 337 developer ~~or any district~~
37 ~~providing project-based public financing~~ for costs of infrastructure
38 in accordance with the terms and conditions of this act. Port
39 advances do not include nontrust lease revenues that the port uses

1 to pay directly for the preservation of historic piers and historic
 2 structures or for purposes that are otherwise authorized by this act.
 3 ~~(z)~~
 4 (ad) “Port of San Francisco,” “port commission,” or “port”
 5 means the city acting by and through the San Francisco Port
 6 Commission.
 7 ~~(aa)~~
 8 (ae) “Project-based public financing” means special taxes from
 9 development parcels in community facilities district project areas
 10 formed under CFD law, property tax increment from development
 11 parcels in infrastructure financing district project areas established
 12 under ~~the~~ IFD law, bond proceeds secured by special taxes, tax
 13 increment, or both, and any other mechanisms available to finance
 14 infrastructure and public facilities that rely on revenues produced
 15 by the area to be improved.
 16 ~~(ab)~~
 17 (af) “Public trust” ~~or “trust”~~ means the common law public trust
 18 for commerce, navigation, and fisheries.
 19 ~~(ac)~~
 20 (ag) “Redevelopment agency” means the San Francisco
 21 redevelopment agency, that the board of supervisors formed under
 22 the former California Community Redevelopment Law and that
 23 was dissolved on February 1, 2012, by operation of Assembly Bill
 24 26.
 25 ~~(ad)~~
 26 (ah) “San Francisco Bay” or “bay” means those areas defined
 27 by Section 66610 of the Government Code.
 28 ~~(ae)~~
 29 (ai) “San Francisco waterfront” means the portions of San
 30 Francisco Bay that the state transferred to the city under the Burton
 31 Act.
 32 (aj) “Seaport plan” means the San Francisco Bay Area Seaport
 33 Plan adopted by BCDC and the Metropolitan Transportation
 34 Commission, as amended in 2003.
 35 ~~(af)~~
 36 (ak) “Seawall Lot 337” means that parcel of real property in the
 37 city ~~known~~ *designated* as Seawall Lot 337, as shown on that certain
 38 map entitled “revised map of ~~designed~~ *designated* seawall lots,”
 39 which is on file with the port, as those boundaries may be modified
 40 by Section 3 of this act.

1 ~~(ag)~~

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

6 ~~(ah)~~

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

14 ~~(ai)~~

15 (an) “Senate Bill 815” means Chapter 660 of the Statutes of
16 2007, as amended by Chapter 208 of the Statutes of ~~2009,~~
17 ~~Assembly Bill 2649, and this act.~~ 2009.

18 (ao) “Southern waterfront” means the area designated in the
19 special area plan as the land and water areas within port
20 jurisdiction from China Basin to and including India Basin.

21 (ap) “Special area plan” means BCDC’s San Francisco
22 Waterfront Special Area Plan, adopted in 1975 as an amendment
23 to the Bay Plan, as amended.

24 ~~(aj)~~

25 (aq) “State” means the State of California.

26 ~~(ak)~~

27 (ar) “Successor agency” means the San Francisco Office of
28 Community Investment and Infrastructure, which the board of
29 supervisors created in accordance with Assembly Bill 26 to serve
30 as the successor to the redevelopment agency.

31 ~~(al)~~

32 (as) “Successor agency commission” means the San Francisco
33 Commission on Community Investment and Infrastructure.

34 ~~(am) “Termination date” means the date determined in~~
35 ~~accordance with subdivision (a) of Section 4 of Senate Bill 815~~
36 ~~for the termination of a nontrust lease.~~

37 ~~(an)~~

38 (at) “Tidelands” means the lands lying below the elevation of
39 ordinary high water, whether filled or unfilled, and includes
40 submerged lands.

1 (au) “Waterfront land use plan” means the Port of San
2 Francisco Waterfront Land Use Plan, including its waterfront
3 design and access element, adopted by the port commission in
4 1997, as amended.

5 SEC. 1.5. As used in Senate Bill 815 and Assembly Bill 2649,
6 each term set forth in Section 1 of this act shall have the meaning
7 ascribed to it in that section and, in the event of any conflict
8 between this act and Senate Bill 815 or Assembly Bill 2649, this
9 act shall prevail.

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

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

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

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

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

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

9 (f)

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

22 (g)

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

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

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

11 (i)
12 (c) The Mission Bay South redevelopment project—area,
13 established in 1998 by the board of supervisors' adoption of the
14 Mission Bay South redevelopment plan, *area* lies to the west and
15 south of Seawall Lot 337. Parcel ~~P20~~ P20, *based on the Mission*
16 *Bay South redevelopment plan*, 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: 337. In accordance with the
21 Mission Bay South redevelopment plan, the Mission Bay developer
22 has 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 *the* former Mission Rock Street.

28 (j)
29 (d) Under ~~its~~ *the* 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~~ bay and Piers 48 and 50, ~~contributing to~~ *facilitating*
39 uninterrupted public access along San Francisco's eastern
40 waterfront.

1 ~~(k) In connection with the project, a~~
2 ~~(e) A substantial investment in new infrastructure and public~~
3 ~~facilities is necessary for the port to fully realize the public benefits~~
4 ~~of those the portions of Seawall Lot 337 that will be used for public~~
5 ~~trust purposes, and to maximize the value of development parcels~~
6 ~~that will be subject to nontrust leases. The infrastructure costs for~~
7 ~~Seawall Lot 337 are expected to exceed one hundred fifty million~~
8 ~~dollars—(\$150,000,000): (\$150,000,000) based on estimates~~
9 ~~presented to the port commission when it endorsed a term sheet~~
10 ~~for the project in 2013. The development proposal for Seawall Lot~~
11 ~~337 provides for the Seawall Lot 337 developer to construct the~~
12 ~~needed necessary infrastructure and public facilities, which would~~
13 ~~be funded by developer equity to the extent that port advances and~~
14 ~~project-based public financing are not then available. land value~~
15 ~~is unavailable. Project-based public financing would be used to~~
16 ~~pay directly or to reimburse the Seawall Lot 337 developer for its~~
17 ~~equity advances and the port for port advances for infrastructure~~
18 ~~costs under the CFD law, IFD law, and other applicable laws.~~
19 ~~(l) Because special taxes, property tax increment, and other~~
20 ~~nontrust funding sources arising from the project may not become~~
21 ~~available until well after the port receives nontrust lease revenues~~
22 ~~from development parcels in Seawall Lot 337, it is critical that the~~
23 ~~port be able to loan those revenues to pay Seawall Lot 337~~
24 ~~infrastructure costs to minimize the cost of development capital~~
25 ~~and maximize the land value that the port is able to realize for~~
26 ~~preservation of its historic piers and historic structures, and for~~
27 ~~other public trust uses. This act authorizes the port to make port~~
28 ~~advances of nontrust lease revenues from Seawall Lot 337 to pay~~
29 ~~Seawall Lot 337 infrastructure costs, subject to the requirements~~
30 ~~of this act.~~
31 ~~(m) This act clarifies that the boundaries of Seawall Lot 337~~
32 ~~extend to the line of Mission Rock Street and to the line of Terry~~
33 ~~A. Francois Boulevard, as those streets have been or may be~~
34 ~~realigned, and to the boundary of China Basin Park as finally~~
35 ~~established, such that Seawall Lot 337 includes those portions of~~
36 ~~Parcel P20 and the former Mission Rock Street right-of-way~~
37 ~~embraced within those boundaries. This act also allows the~~
38 ~~successor agency to remove Parcel P20 from the Mission Bay~~
39 ~~South redevelopment plan and related documents and agreements~~
40 ~~without the need for Department of Finance or Controller approval.~~

1 ~~(n) This act also amends Senate Bill 815 to provide that the~~
2 ~~75-year limitation on the term of authorized nontrust leases for~~
3 ~~designated seawall lots and development parcels at Seawall Lot~~
4 ~~337, as applicable, begins to run on the initial occupancy date for~~
5 ~~the leased site.~~

6 *(f) Project-based public financing, which includes special taxes,*
7 *property tax increment, and other nontrust funding sources arising*
8 *from the project may not become available until after the port*
9 *receives nontrust lease revenues from development parcels in*
10 *Seawall Lot 337. The port may have the opportunity to loan*
11 *nontrust lease revenues for Seawall Lot 337 infrastructure costs*
12 *for the purpose of reducing financing costs and maximizing the*
13 *land value to the port to generate additional revenue that can be*
14 *used for preservation of the port's historic piers and structures*
15 *and for other public trust uses.*

16 *(g) In 1965, the Legislature adopted the McAteer-Petris Act to*
17 *protect and enhance San Francisco Bay and its natural resources.*
18 *Among other things, the McAteer-Petris Act grants BCDC*
19 *regulatory authority over further filling in San Francisco Bay and*
20 *limits that activity to: (1) water-oriented uses that meet specified*
21 *criteria; (2) minor fill that improves shoreline appearance or*
22 *public access; and (3) activities necessary for the health, safety,*
23 *and welfare of the public in the entire bay area. The McAteer-Petris*
24 *Act also directs BCDC to require the provision of maximum*
25 *feasible public access to the bay and its shoreline consistent with*
26 *a project.*

27 *(h) In 1969, the Legislature received and acted upon BCDC's*
28 *report and recommendations from a three-year study of San*
29 *Francisco Bay. The resulting Bay Plan includes BCDC's policies*
30 *to guide use and protection of all areas within BCDC's jurisdiction*
31 *and ensures that proposed projects minimize bay fill and provide*
32 *maximum feasible public access to the bay.*

33 *(i) Bay Plan policy concerning filling for bay-oriented*
34 *commercial recreation and bay-oriented public assembly on*
35 *privately owned or publicly owned property, also known as the*
36 *replacement fill policy, provides in part that BCDC may permit*
37 *fill on publicly owned land for bay-oriented commercial recreation*
38 *and bay-oriented public assembly if certain conditions are met,*
39 *including all of the following:*

1 (1) *The fill is a replacement pier that covers less of the bay than*
2 *the area that is being uncovered.*

3 (2) *The amount of bay-oriented commercial recreation or*
4 *bay-oriented public assembly use covers no more than 50 percent*
5 *of the area of the bay uncovered.*

6 (3) *The remainder of the replaced pier (50 percent) shall be*
7 *used for public recreation, public access, or open space, including*
8 *open water.*

9 (j) *The application of the replacement fill policy to the piers*
10 *along the northeastern waterfront created substantial challenges*
11 *to port and BCDC efforts to improve the waterfront. In part to*
12 *address this issue, BCDC and the port, together with the Save San*
13 *Francisco Bay Association and numerous community groups and*
14 *individuals, undertook a planning process that resulted in*
15 *amendments to the port's waterfront land use plan and BCDC's*
16 *special area plan. Those amendments focused on the northeastern*
17 *waterfront with the goal of achieving the following objectives:*

18 (1) *Reconnecting the city to its waterfront.*

19 (2) *Increasing open water, public access, and opportunities to*
20 *enjoy the San Francisco waterfront in a manner that completes*
21 *the open space and public access network in the northeastern*
22 *waterfront.*

23 (3) *Providing for new development that attracts people to the*
24 *bay and increases revenue to the port and the city.*

25 (4) *Preserving historic resources and waterfront urban form.*

26 (k) *The special area plan amendments focused primarily on the*
27 *northeastern waterfront and prescribed certain actions to*
28 *implement the plan, including all of the following:*

29 (1) *Establishing a joint design review process for projects on*
30 *the northeastern waterfront, leading to the creation of the*
31 *Waterfront Design Advisory Committee.*

32 (2) *Requiring the port to prepare a nomination of the*
33 *northeastern waterfront from Pier 35 to China Basin as an historic*
34 *district listed in the National Register of Historic Places.*

35 (3) *Authorizing BCDC, through its permitting authority, to set*
36 *aside otherwise applicable use limitations on new bay fill, including*
37 *the replacement fill policy, as a means to provide an integrated*
38 *package of public benefits that prescribed removal of specified*
39 *piers, restoration of significant open water areas, completion of*
40 *the waterfront-wide, integrated public access network, preservation*

1 of significant historic resources, and development of new uses in
2 the interests of the health, safety, or welfare of the public
3 throughout the bay area.

4 (l) The special area plan amendments did not affect the
5 application of the replacement fill policy to piers north of Pier 35
6 or south of China Basin. BCDC, the port, and other participants
7 assumed that then-dominant industrial and maritime activities
8 south of China Basin would continue and grow. The entire southern
9 waterfront, including Pier 48 and about six acres of Seawall Lot
10 337 adjacent to the piers, remained designated as a port priority
11 use area in the seaport plan to accommodate growth in neo-bulk
12 and break bulk cargo activities.

13 (m) At the time the special area plan amendments were being
14 drafted, it was not known that Pier 48 would be eligible for listing
15 on the National Register of Historic Places. In the course of
16 preparing the nomination report for the Embarcadero Historic
17 District, the port discovered that Pier 48 is a contributing resource
18 to the district. As a result, the district, which was listed in the
19 National Register of Historic Places in 2006, extends south of
20 China Basin to include Pier 48.

21 (n) The historic use of Pier 48 for break bulk cargo operations
22 is no longer viable due to a number of factors, including the
23 construction of the Embarcadero roadway and Terry A. Francois
24 Boulevard, elimination of rail service to the piers, and the inability
25 of finger piers to accommodate modern containerized cargo
26 operations. The port operates a break bulk facility at Pier 80,
27 which has unused capacity for break bulk cargo. Pier 48 maritime
28 berths are currently used for maritime industrial purposes.

29 (o) Pier 48 is ideally situated to provide public access to and
30 enjoyment of the waterfront and bay. It is within walking distance
31 of the Ferry Building, AT&T Park, and regional transit hubs,
32 including the Transbay Transit Center, which is under construction,
33 and has views of the bay, the San Francisco-Oakland Bay Bridge,
34 and the Brannan Street Wharf. The proposed reuse of Pier 48
35 includes visitor-serving uses, public access, historic rehabilitation
36 of the pier consistent with the United States Interior Secretary's
37 Standards for Rehabilitation, berthing facilities, and other uses.
38 This act amends the seaport plan and the special area plan to
39 allow Pier 48 to be treated similarly to the other finger piers in

1 *the Embarcadero Historic District and to remove the port priority*
2 *use area designation from Pier 48.*

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

12 *SEC. 3. If the adjacent streets and park areas are realigned*
13 *or reconfigured in connection with the development of Seawall*
14 *Lot 337, the boundaries of Seawall Lot 337 shall be revised to*
15 *conform to the realigned or reconfigured park or street boundaries,*
16 *if the new boundaries are approved by the executive officer of the*
17 *commission. The executive officer of the commission may require*
18 *that a legal description and record of survey be approved by the*
19 *commission in conjunction with the approvals required in*
20 *paragraph (3) of subdivision (a) of Section 4.5 of Senate Bill 815,*
21 *as added by this act.*

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

34 *SEC. 5. Notwithstanding anything to the contrary in Assembly*
35 *Bill 2649, (a) a nontrust lease of Seawall Lot 322-1 may be entered*
36 *into for the same duration as permitted for other designated*
37 *seawall lots, as provided in subdivision (a) of Section 4 of Senate*
38 *Bill 815, as amended by this act, (b) the operative date of Sections*
39 *3 to 5, inclusive, of Assembly Bill 2649 shall be coterminous with*
40 *the operative date of Sections 3, 4, 4.5, and 6 of Senate Bill 815,*

1 as provided in Section 7 of Senate Bill 815, as amended by this
2 act, and (c) the requirements pertaining to structures, buildings,
3 and appurtenances on Seawall Lot 322-1 shall be the same as for
4 other designated seawall lots as provided in Section 7 of Senate
5 Bill 815, as amended by this act.

6 SEC. 6. The Legislature, in the exercise of its retained power
7 as trustee of the public trust, and in view of the unique
8 circumstances existing at Seawall Lot 337 and Pier 48 on the San
9 Francisco waterfront, hereby authorizes the following:

10 (a) Pier 48, the wharf between Pier 48 and Pier 50, and the
11 portion of Seawall Lot 337 currently designated for port priority
12 use are no longer required for port priority use and shall be
13 deemed free of the port priority use area designation as of January
14 1, 2017. BCDC and the Metropolitan Transportation Commission
15 shall reprint the seaport plan to reflect the removal of the port
16 priority use designation from these areas, but this subdivision shall
17 apply regardless of whether the conforming changes have been
18 made.

19 (b) As of January 1, 2017, the special area plan is amended to
20 include Pier 48 in the northeastern waterfront, which shall be
21 deemed to serve the health, safety, and welfare of the entire bay
22 area, and BCDC is authorized to issue a major permit for a project
23 at Pier 48 applying the special area plan policies and other criteria
24 applicable to finger piers in the northeastern waterfront, including
25 that the replacement fill policy shall not apply to that project, if
26 the project will rehabilitate Pier 48 consistent with the United
27 States Interior Secretary's Standards for Rehabilitation. BCDC
28 shall reprint the special area plan to reflect the inclusion of Pier
29 48 in the northeastern waterfront, but this subdivision shall apply
30 to the Pier 48 project regardless of whether the conforming
31 changes have been made.

32 (c) Nothing in this act is intended to limit the authority and
33 discretion of BCDC to approve or deny permits for the mixed-use
34 development on Pier 48 and the marginal wharf between Pier 48
35 and Pier 50 generally described in this act in a manner consistent
36 with the McAteer-Petris Act or the policies of the Bay Plan and
37 the special area plan, as those policies are modified by subdivisions
38 (a) and (b), including the authority and discretion of BCDC to
39 impose conditions on the permits for the project. This act shall not

1 *limit the authority and discretion of BCDC to enforce permits*
2 *issued for the projects described in this act.*

3 ~~SEC. 5.~~

4 *SEC. 7.* 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~~

7 *(a) As used in this act, “nontrust lease” means a lease of all or*
8 *any portion of the designated seawall lots free from the use*
9 *requirements established by the public trust, the Burton Act trust,*
10 *and the Burton Act transfer agreement (nontrust lease) agreement.*

11 *(b) Except for Seawall Lot 337, the port may enter into a*
12 *nontrust lease subject to the requirements of this section. For*
13 *Seawall Lot 337, the port may enter into a nontrust leases of*
14 *development parcels; lease subject to the requirements of this*
15 *section, if the commission has approved port advances pursuant*
16 *to made all approvals required in paragraph (3) of subdivision (a)*
17 *of Section 4.5, and if all of the conditions of this section and in*
18 *Section 6 are met.*

19 ~~(a)~~

20 *(c) Notwithstanding the Burton Act, Section 718 of the Civil*
21 *Code, Section 37384 of the Government Code, or any other*
22 *provision of law to the contrary, the term of any individual nontrust*
23 *lease, including any extension of the term allowed by right of*
24 *renewal, shall not exceed 75 years from the initial occupancy date*
25 *for the of the improvements developed on the leased site or*
26 *development parcel. Each parcel, and in no event shall the term*
27 *of a nontrust lease shall terminate no later than the date that is the*
28 *later of January 1, 2094, or the date that is 75 years after the date*
29 *that the port first issues a certificate of occupancy for the*
30 *improvements on the extend beyond December 31, 2120. The port*
31 *shall provide the commission notice of the initial occupancy date*
32 *of the improvements developed on any leased site or development*
33 *parcel. Nothing in this section shall be construed as limiting the*
34 *term of any lease, or portion thereof, that is for uses consistent*
35 *with the public trust and the Burton Act.*

36 ~~(b)~~

37 *(d) (1) (A) Except as provided in this subdivision, all nontrust*
38 *lease revenues received by the port shall be deposited in a separate*
39 *account in the harbor fund to be expended for the preservation of*

1 historic piers and historic structures, or for the construction and
2 maintenance of waterfront plazas and open space.

3 (B) The port may use its nontrust lease revenues from
4 development parcels in Seawall Lot 337 to make port advances to
5 fund Seawall Lot 337 infrastructure, ~~except for facilities for which~~
6 ~~expenditures are authorized under subparagraph (A),~~ *infrastructure*
7 if the commission has approved *the* port advances under paragraph
8 (3) of subdivision (a) of Section 4.5. *This subparagraph shall not*
9 *limit the port's authority to use nontrust lease revenues for facilities*
10 *for which expenditures are authorized under subparagraph (A).*

11 (C) Revenues shall not be expended under this subdivision for
12 historic piers or historic structures on land subject to public trust
13 use restrictions unless the executive officer of the commission has
14 approved the proposed uses of the pier or structure.

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

27 (3) For purposes of this subdivision, the term "revenue" shall
28 exclude any costs incurred by the port to administer the lease and
29 to operate and maintain the leased property and any improvements
30 thereon.

31 (4) For each nontrust lease of a designated seawall lot, the port
32 shall maintain a separate accounting of all revenues transferred
33 pursuant to paragraph (2), all costs excluded pursuant to paragraph
34 (3), and all revenues deposited into the separate account. *Upon*
35 *request, the port shall submit to the commission a copy of the*
36 *accountings described in this paragraph.*

37 (5) If the funds in the separate account exceed the amount
38 needed for the preservation of historic piers and historic structures
39 and for construction of waterfront plazas and open space, the excess

1 funds shall be deposited in the harbor fund to be used for purposes
2 consistent with the public trust and the Burton Act.

3 (e)

4 (e) A nontrust lease shall be for fair market value and on terms
5 consistent with prudent land management practices as determined
6 by the port and subject to approval by the commission as provided
7 in paragraph ~~(1)~~. *(1) or as provided in Section 4.5 for a nontrust*
8 *lease for Seawall Lot 337.*

9 (1) Prior to executing a nontrust lease, the port shall submit the
10 proposed lease to the commission for its consideration, and the
11 commission shall grant its approval or disapproval in writing within
12 90 days of receipt of the lease and supporting documentation,
13 including documentation related to value. In approving a nontrust
14 lease, the commission shall find that the lease meets all of the
15 following:

16 (A) Is for fair market value.

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

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

20 (2) Whenever a nontrust lease is submitted to the commission
21 for its consideration, the costs of any study or investigation
22 undertaken by or at the request of the commission, including
23 reasonable reimbursement for time incurred by commission staff
24 in processing, investigating, and analyzing such submittal, shall
25 be borne by the port; however, the port may seek payment or
26 reimbursement for these costs from the proposed lessee.

27 ~~SEC. 6.~~

28 *SEC. 8.* Section 4.5 is added to Chapter 660 of the Statutes of
29 2007, to read:

30 *Sec. 4.5.* (a) For nontrust leases ~~of Seawall Lot 337 that are~~
31 ~~entered into in accordance with the terms of a disposition and~~
32 ~~development agreement for the master development of Seawall~~
33 ~~Lot 337, the commission shall consider whether the port will~~
34 ~~receive consideration equal to the fair market value on terms~~
35 ~~consistent with prudent land management practices based on, and~~
36 ~~in accordance with, all of the following procedures:~~

37 (1) At least 30 days prior to approval by the board of supervisors
38 of the development project for Seawall Lot 337, the port shall
39 submit the proposed disposition and development agreement
40 between the master developer and the port governing the master

1 development of Seawall Lot 337 and the following information,
2 to the extent not contained in the agreement, to the commission
3 for its consideration:

4 (A) The proposed procedures for the disposition of nontrust
5 development parcels and including the proposed plan of finance
6 for the development project that describes the proposed port
7 advances for Seawall Lot 337 infrastructure costs.

8 (B) The proposed procedures for establishing the fair market
9 value of each nontrust lease of a development parcel, ~~consistent~~
10 ~~with the land uses permitted under the disposition and development~~
11 ~~agreement~~, including the appraisal instructions.

12 (C) A description of the nontrust sources that the port expects
13 to receive for the project and how these nontrust sources will be
14 applied to the project.

15 (D) A description of the manner by which the port will select
16 the developer of each development parcel, including the form of
17 ground ~~lease~~: *lease, subject to minor modifications for each*
18 *development parcel lease permitted by the transaction documents.*

19 (2) Following approval of the development project for Seawall
20 Lot 337 by the board of supervisors, the port shall submit to the
21 commission the project documents described in paragraph (1) as
22 finally approved by the board of supervisors.

23 (3) Within 75 days after approval of the project by the board of
24 supervisors and receipt of all required documentation from the
25 port, the commission shall either approve or ~~deny the port advances~~
26 ~~from nontrust lease revenues for Seawall Lot 337 infrastructure~~
27 ~~based on the information it is required to consider by this section~~
28 ~~and whether port advances are consistent with the goals of Senate~~
29 ~~Bill 815: disapprove the procedures for establishing the fair market~~
30 *value of the development parcels, the form of ground lease, and*
31 *the port's use of port advances to pay for Seawall Lot 337*
32 *infrastructure costs. The commission may request additional*
33 *information or documentation from the port. The commission shall*
34 *not approve the port's use of port advances for the duration of the*
35 *project unless the commission determines that such use of port*
36 *advances as described in the documentation submitted by the port*
37 *is in the best interests of the state, will benefit the public trust, and*
38 *is on terms and conditions consistent with the port's fiduciary*
39 *duties as trustee. The commission may take into account*
40 *information required to be submitted pursuant to this section, the*

1 *benefits of the development to the state and to the public trust, the*
2 *substantial infrastructure investment required in Seawall Lot 337*
3 *infrastructure, and the contribution of nontrust sources to Seawall*
4 *Lot 337 infrastructure.*

5 (4) *Following the commission's approval in accordance with*
6 *paragraph (3), and prior to entering into a nontrust lease for*
7 *Seawall Lot 337, the port shall submit to the executive officer of*
8 *the commission a copy of the proposed nontrust lease. The port*
9 *may enter into the nontrust lease unless, within 30 days after the*
10 *submittal, the executive officer has provided the port with a written*
11 *determination that the nontrust lease is inconsistent with the*
12 *commission's original approval.*

13 ~~(4)~~

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

20 (b) *In addition to any statement of expenditures and revenues*
21 *that the port is required by law to submit to the commission*
22 *annually, the port shall provide a separate accounting of ~~all~~ all of*
23 *the following:*

24 (1) *All consideration from nontrust sources and other ~~port~~*
25 *revenues the port has received in connection with Seawall Lot 337.*

26 (2) *All other revenues that the port has spent on Seawall Lot*
27 *337, including any port ~~advances~~ and any advances.*

28 (3) *Any revenues from nontrust sources received by the port to*
29 *repay ~~those~~ port advances.*

30 (c) *The port shall provide the commission with copies of the*
31 *final audit report for each phase of the project and the final audit*
32 *report for the project within 90 days after the port receives each*
33 *audit report.*

34 (d) *The port shall periodically, and upon request of the*
35 *commission, submit to the commission a report detailing the*
36 *issuance and repayment of any port advances, or notify the*
37 *commission where the reports, including staff reports, may be*
38 *accessed electronically. If, within 20 years after the first port*
39 *advance, the port has not submitted an audit report to the*
40 *commission indicating that all of the port advances have been*

1 repaid, the port shall report to the commission the total amount of
2 revenues from nontrust leases that the port used to fund port
3 advances, the amount that the port has received to repay port
4 advances, the projected sources to repay any balance still owing
5 on account of port advances, and the expected timing of repayment
6 of the balance still owing. Thereafter, the port shall provide
7 supplemental reports containing updates to this information to the
8 commission every five years.

9 (e) The port shall ensure repayment, with interest, of each port
10 advance within 50 years after the port advance is made. The port
11 may extend the repayment period beyond 50 years subject to
12 commission approval. The commission shall base its ~~approval~~
13 *approval, in part*, on whether the port is taking actions ~~to remedy~~
14 *any shortfall in repayment. that ensure the trust is made whole,*
15 *consistent with its fiduciary duties as a trustee of the public trust.*

16 ~~SEC. 7.~~

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

19 ~~Sec. 7. Sections 3, 4, 4.5, and 6 of this act shall be inoperative~~
20 ~~as to a designated seawall lot on the later of (a) the last termination~~
21 ~~date of any nontrust lease on the site, or (b) on January 1, 2094,~~
22 ~~after which later date the use of the designated seawall lot shall~~

23 *Sec. 7. Upon the termination of the 75-year term for a*
24 *development parcel, the use of the development parcel shall be*
25 *consistent with the public trust, the Burton Act trust, and the Burton*
26 *Act transfer agreement. No later than January 1, 2094, or the last*
27 *termination date of any nontrust lease on the site, whichever is*
28 *later, agreement and all structures, buildings, and appurtenances*
29 *on a designated seawall lot the development parcel not consistent*
30 *with the purposes of the public trust, the Burton Act trust, and*
31 *Burton Act transfer agreement, shall be repurposed or modified,*
32 *including any necessary restoration or remediation of the seawall*
33 *lot to facilitate public trust uses. No subsequent nontrust lease*
34 *shall be granted for any development parcel.*

35 ~~SEC. 8.~~

36 *SEC. 10.* If any provision of this act, or its application to any
37 person, property, or circumstance, is held invalid by any court, the
38 invalidity or inapplicability of that provision shall not affect any
39 other provision of this act or the application of that provision to
40 any other person, property, or circumstance, and the remaining

1 portions of this act shall continue in full force and effect, unless
2 enforcement of this act as so modified by and in response to that
3 invalidation would be grossly inequitable under all of the
4 circumstances, or would frustrate the fundamental purposes of this
5 act.

6 ~~SEC. 9.~~

7 *SEC. 11. (a)* The Legislature finds and declares that, because
8 of the unique circumstances applicable only to the lands described
9 in this act in the City and County of San Francisco, a statute of
10 general applicability cannot be enacted within the meaning of
11 subdivision (b) of Section 16 of Article IV of the California
12 Constitution.

13 *(b)* The Legislature also finds and declares that the exemption
14 under Section 4 of this act from the laws governing the dissolution
15 of former redevelopment agencies is necessary to address the
16 unique circumstances relating to the development of Parcel P20,
17 including the fact that the parcel was never owned by a former
18 redevelopment agency and the fact that the transfer and use of
19 Parcel P20 for the Mission Bay South redevelopment project will
20 benefit the state by generating revenues from the various nontrust
21 leases of land within the parcel.