

Assembly Bill No. 2797

Passed the Assembly August 29, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 not exceed 75 years from the initial occupancy date, as defined, 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, 2105. 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.

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

SECTION 1. For the purposes of this act the following terms have the following meanings:

(a) “Assembly Bill 26” means Chapter 5 of the First Extraordinary Session of the Statutes of 2011, in which certain provisions were amended by Chapter 26 of the Statutes of 2012, effective as provided in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231.

(b) “Assembly Bill 2649” means Chapter 757 of the Statutes of 2012.

(c) “Bay Plan” means the San Francisco Bay Plan as adopted and administered by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act.

(d) “BCDC” means the San Francisco Bay Conservation and Development Commission established pursuant to Section 66620 of the Government Code.

(e) “Board of supervisors” means the Board of Supervisors of the City and County of San Francisco.

(f) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended, which authorized the state to convey to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands.

(g) “Burton Act lands” means the tidelands that the state granted to the city under the Burton Act, including the San Francisco waterfront from the Hyde Street pier to India Basin.

(h) “Burton Act transfer agreement” means the agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Burton Act lands from the state to the city, and any amendments to that agreement in accordance with its terms.

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

(j) “CFD law” means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311)) of

Part 1 of Division 2 of Title 5 of the Government Code) or the San Francisco Special Tax Financing Law (San Francisco Admin. Code Ch. 43, Art. X), as applicable.

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

(l) “Commission” means the State Lands Commission.

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

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

(o) “Embarcadero Historic District” means the portion of the Burton Act lands from Pier 45 to Pier 48, which was listed on the National Register of Historic Places in 2006.

(p) “IFD law” means the provisions of the Government Code authorizing the formation of local financing districts authorized to use property tax increment to finance infrastructure.

(q) “Infrastructure costs” or “costs of infrastructure” means the cost of constructing the Seawall Lot 337 infrastructure, including related costs of planning and design work and a return on developer equity, as provided in a plan of finance in a disposition and development agreement.

(r) “Initial occupancy date” means, for each designated seawall lot other Seawall Lot 337, and for each development parcel in Seawall Lot 337, the date on which the port issues the first certificate of occupancy for a building under the first nontrust lease of the designated seawall lot or of the development parcel in Seawall Lot 337, as applicable.

(s) “McAteer-Petris Act” means Title 7.2 (commencing with Section 66600) of the Government Code.

(t) “Mission Bay developer” means an “owner,” as defined in the Mission Bay South owner participation agreement.

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

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

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

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

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

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

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

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

(ac) “Port advances” means a loan of nontrust lease revenues from Seawall Lot 337 to a district or other entity providing project-based public financing to pay directly or to reimburse the Seawall Lot 337 developer for costs of infrastructure in accordance with the terms and conditions of this act. Port advances do not include nontrust lease revenues that the port uses to pay directly for the preservation of historic piers and historic structures or for purposes that are otherwise authorized by this act.

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

(ae) “Project-based public financing” means special taxes from development parcels in community facilities district project areas formed under CFD law, property tax increment from development

parcels in infrastructure financing district project areas established under IFD law, bond proceeds secured by special taxes, tax increment, or both, and any other mechanisms available to finance infrastructure and public facilities that rely on revenues produced by the area to be improved.

(af) “Public trust” means the common law public trust for commerce, navigation, and fisheries.

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

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

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

(aj) “Seaport plan” means the San Francisco Bay Area Seaport Plan adopted by BCDC and the Metropolitan Transportation Commission, as amended in 2003.

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

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

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

(an) “Senate Bill 815” means Chapter 660 of the Statutes of 2007, as amended by Chapter 208 of the Statutes of 2009.

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

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

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

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

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

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

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

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

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

(a) The seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall in the late 19th and early 20th centuries, and by the construction of the Embarcadero roadway which lies, in part, over a portion of the great seawall. Over time, some seawall lots, including the designated seawall lots, have ceased to be useful in whole or in part for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the Burton Act trust. The designated seawall lots are either vacant or leased on an interim basis, primarily for parking.

(b) Seawall Lot 337, the largest of the designated seawall lots, is located just south of China Basin and used as a surface parking lot. Senate Bill 815 depicts Seawall Lot 337 as bounded by Mission Rock Street, Terry A. Francois Boulevard, and Third Street. The

port commission entered into exclusive negotiations with the Seawall Lot 337 developer for the lease, construction, and operation of a proposed project at Seawall Lot 337, a portion of Terry A. Francois Boulevard, Pier 48, and the marginal wharf between Pier 48 and Pier 50. The Legislature finds that the revitalization of Seawall Lot 337 and Pier 48 is of particular importance to the state.

(c) The Mission Bay South redevelopment project area lies to the west and south of Seawall Lot 337. Parcel P20, based on the Mission Bay South redevelopment plan, is a narrow, undeveloped strip of land within the Mission Bay South redevelopment project area that is bounded on the north by the northern line of Mission Rock Street in its former location, and overlaps a portion of Seawall Lot 337. In accordance with the Mission Bay South redevelopment plan, the Mission Bay developer has since realigned Mission Rock Street from its northeasterly orientation to an east-west orientation, such that a portion of Parcel P20 and the former Mission Rock Street right of way now lie north of the northerly line of Mission Rock Street. The development proposal for Seawall Lot 337 includes this portion of Parcel P20 and the former Mission Rock Street.

(d) Under the development proposal, the Seawall Lot 337 developer would realign Terry A. Francois Boulevard and use part of the northern section of the street to expand China Basin Park. The remaining portion of the realigned Terry A. Francois Boulevard would be a working waterfront street that would support active maritime, industrial, and production uses at the waterfront. Terry A. Francois Boulevard would include areas for social spaces and loading zones serving buildings, a pedestrian throughway, a shared zone, and the Blue Greenway adjacent to the bay and Piers 48 and 50, facilitating uninterrupted public access along San Francisco's eastern waterfront.

(e) A substantial investment in new infrastructure and public facilities is necessary for the port to fully realize the public benefits of the portions of Seawall Lot 337 that will be used for public trust purposes, and to maximize the value of development parcels that will be subject to nontrust leases. The infrastructure costs for Seawall Lot 337 are expected to exceed one hundred fifty million dollars (\$150,000,000) based on estimates presented to the port commission when it endorsed a term sheet for the project in 2013.

The development proposal provides for the Seawall Lot 337 developer to construct the necessary infrastructure and public facilities, which would be funded by developer equity to the extent that port land value is unavailable. Project-based public financing would be used to pay directly or to reimburse the Seawall Lot 337 developer for its equity advances for infrastructure costs under CFD law, IFD law, and other applicable laws.

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

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

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

(i) Bay Plan policy concerning filling for bay-oriented commercial recreation and bay-oriented public assembly on privately owned or publicly owned property, also known as the replacement fill policy, provides in part that BCDC may permit fill on publicly owned land for bay-oriented commercial recreation

and bay-oriented public assembly if certain conditions are met, including all of the following:

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

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

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

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

(1) Reconnecting the city to its waterfront.

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

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

(4) Preserving historic resources and waterfront urban form.

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

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

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

(3) Authorizing BCDC, through its permitting authority, to set aside otherwise applicable use limitations on new bay fill, including the replacement fill policy, as a means to provide an integrated package of public benefits that prescribed removal of specified

piers, restoration of significant open water areas, completion of the waterfront-wide, integrated public access network, preservation of significant historic resources, and development of new uses in the interests of the health, safety, or welfare of the public throughout the bay area.

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

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

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

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

Pier 48 to be treated similarly to the other finger piers in the Embarcadero Historic District and to remove the port priority use area designation from Pier 48.

SEC. 3. If the adjacent streets and park areas are realigned or reconfigured in connection with the development of Seawall Lot 337, the boundaries of Seawall Lot 337 shall be revised to conform to the realigned or reconfigured park or street boundaries, if the new boundaries are approved by the executive officer of the commission. The executive officer of the commission may require that a legal description and record of survey be approved by the commission.

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

SEC. 5. Notwithstanding anything to the contrary in Assembly Bill 2649, (a) a nontrust lease of Seawall Lot 322-1 may be entered into for the same duration as permitted for other designated seawall lots, as provided in subdivision (c) of Section 4 of Senate Bill 815, as amended by this act, (b) the operative date of Sections 3 to 5, inclusive, of Assembly Bill 2649 shall be coterminous with the operative date of Sections 3, 4, 4.5, and 6 of Senate Bill 815, as provided in Section 7 of Senate Bill 815, as amended by this act, and (c) the requirements pertaining to structures, buildings, and appurtenances on Seawall Lot 322-1 shall be the same as for other designated seawall lots as provided in Section 7 of Senate Bill 815, as amended by this act.

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

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

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

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

SEC. 7. Section 4 of Chapter 660 of the Statutes of 2007 is amended to read:

Sec. 4. (a) As used in this act, "nontrust lease" means a lease of all or any portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement.

(b) Except for Seawall Lot 337, the port may enter into a nontrust lease subject to the requirements of this section. For Seawall Lot 337, the port may enter into a nontrust lease subject

to the requirements of this section, if the commission has made all approvals required in paragraph (3) of subdivision (a) of Section 4.5, and all of the conditions in Section 6 are met.

(c) Notwithstanding the Burton Act, Section 718 of the Civil Code, Section 37384 of the Government Code, or any other provision of law to the contrary, the term of any individual nontrust lease, including any extension of the term allowed by right of renewal, shall 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, 2105. The port shall provide the commission notice of the initial occupancy date of the improvements developed on any leased site or development parcel. Nothing in this section shall be construed as limiting the term of any lease, or portion thereof, that is for uses consistent with the public trust and the Burton Act.

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

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

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

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

nontrust lease. For purposes of this subdivision, the baseline revenue stream for a designated seawall lot is the average annual revenue received by the port from that seawall lot over the five years prior to January 1, 2008, adjusted for inflation.

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

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

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

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

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

(A) Is for fair market value.

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

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

(2) Whenever a nontrust lease is submitted to the commission for its consideration, the costs of any study or investigation undertaken by or at the request of the commission, including reasonable reimbursement for time incurred by commission staff in processing, investigating, and analyzing such submittal, shall

be borne by the port; however, the port may seek payment or reimbursement for these costs from the proposed lessee.

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

Sec. 4.5. (a) For nontrust leases of Seawall Lot 337, the commission shall consider whether the port will receive consideration equal to the fair market value based on, and in accordance with, all of the following procedures:

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

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

(B) The proposed procedures for establishing the fair market value of each nontrust lease of a development parcel, including the appraisal instructions.

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

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

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

(3) Within 75 days after approval of the project by the board of supervisors and receipt of all required documentation from the port, the commission shall either approve or disapprove the procedures for establishing the fair market value of the development parcels, the form of ground lease, and the port's use of port advances to pay for Seawall Lot 337 infrastructure costs. The commission shall request additional information or

documentation from the port, including evidence of financial assurances acceptable to the commission that the trust will be made whole. The commission shall not approve the port's use of port advances for the duration of the project unless the commission determines that such use of port advances as described in the documentation submitted by the port is in the best interests of the state, will benefit the public trust, and is on terms and conditions consistent with the port's fiduciary duties as trustee. The commission may only approve the port's use of port advances if it finds that there are sufficient assurances that the trust will be made whole. The commission may take into account information required to be submitted pursuant to this section, the benefits of the development to the state and to the public trust, the substantial investment required in Seawall Lot 337, and the contribution of nontrust sources to Seawall Lot 337 infrastructure that the commission determines benefits the trust.

(4) If the commission makes an approval pursuant to paragraph (3), the port, prior to entering into a nontrust lease for Seawall Lot 337, shall submit to the executive officer of the commission a copy of the proposed nontrust lease. The port may enter into the nontrust lease unless, within 30 days after the submittal, the executive officer has provided the port with a written determination that the nontrust lease is inconsistent with the commission's original approval.

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

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

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

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

(3) Any revenues from nontrust sources received by the port to repay port advances.

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

(d) The port shall periodically, and upon request of the commission, submit to the commission a report detailing the issuance and repayment of any port advances, and notify the commission where the reports, including staff reports, may be accessed electronically. If, within 20 years after the first port advance, the port has not submitted an audit report to the commission indicating that all of the port advances have been repaid, the port shall report to the commission the total amount of revenues from nontrust leases that the port used to fund port advances, the amount that the port has received to repay port advances, the projected sources to repay any balance still owing on account of port advances, and the expected timing of repayment of the balance still owing. Thereafter, the port shall provide supplemental reports containing updates to this information to the commission every five years.

(e) The port shall ensure repayment, with interest, of each port advance within 25 years after the port advance is made. The port may extend the repayment period beyond 25 years subject to commission approval. The commission shall base its approval, in part, on whether the port is taking actions that ensure the trust is made whole, consistent with its fiduciary duties as a trustee of the public trust.

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

Sec. 7. No later than 75 years from the initial occupancy date for a designated seawall lot or development parcel in Seawall Lot 337, and in no event later than December 31, 2105, the use of the designated seawall lot or development parcel shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement and all structures, buildings, and appurtenances on the designated seawall lot or development parcel not consistent with the public trust, the Burton Act trust, and Burton Act transfer agreement, shall be repurposed, modified, or removed, including any necessary restoration or remediation of the seawall lot to facilitate public trust uses.

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

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

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

Approved _____, 2016

Governor