

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2783 (Alvarez) – As Amended April 1, 2024

**SUBJECT:** San Diego Unified Port District.

**SUMMARY:** Makes numerous changes to the San Diego Unified Port District (District) Act (Act). Specifically, **this bill:**

- 1) Specifies that the City of San Diego shall make a good faith attempt to appoint at least one commissioner that resides in one of the City of San Diego neighborhoods of Barrio Logan, Logan Heights, Shelltown, Sherman Heights, or Southcrest.
- 2) Provides that a commissioner shall serve no more than three terms. A commissioner may continue to serve beyond an expired term for up to six months until a replacement has been appointed.
- 3) Specifies that a commissioner shall not lobby, contract with, or be employed by the board or the district for two years after serving as a commissioner.
- 4) Provides that a commissioner shall not serve as chairperson unless the commissioner has served on the board for at least one year. A commissioner who has served as chairperson shall not be elected chairperson for a second time unless all the commissioners have already served as chairperson. A commissioner who has served as vice chairperson shall not be elected vice chairperson for a second time unless all commissioners have already served as vice chairperson.
- 5) Specifies that if the board acts to censure or strip a commissioner of their duties based on alleged unethical or unlawful conduct, then the board shall disclose to the public all documents and evidence related to the alleged conduct in accordance with the requirements of the Ralph M. Brown Act and the California Public Records Act.
- 6) Requires that before the board acts to censure or strip a commissioner of their duties, the board shall provide at least 72 hours' notice of the proposed action to censure or strip a commissioner of their duties to the city council and the mayor of the city that appointed the commissioner.
- 7) Specifies that a commissioner shall receive compensation of \$100 for each day the commissioner attends a meeting or performs duties related to the district, as specified. A commissioner shall not receive more than \$600 of compensation in a month.
- 8) Requires the board to publish a report that contains both the following:
  - a) The name of each lobbyist employed or contracted by the district.
  - b) The amounts the district paid to each lobbyist.
- 9) Specifies that the board shall update the report required by 8) above, every 90 days and shall make the report available to the public by posting it on the district's internet website.

- 10) Provides that “lobbyist” has the same meaning as in the California Political Reform Act of 1974.
- 11) Specifies that the board shall adopt a code of ethics and shall accept and respond to ethics complaints.
- 12) Requires the board to establish a board of ethics, which shall provide independent ethics advice to the board.
- 13) Provides that the board of ethics shall consist of three members. The board shall appoint the members of the board of ethics during a properly noticed public meeting. The board shall not appoint a commissioner or a district employee to the board of ethics.
- 14) Requires the board of ethics to have diverse perspectives and areas of expertise, have experience appropriate for review of ethical matters, and be of good general reputation and character.
- 15) Specifies that the board of ethics shall meet at least once per year for an organizational meeting. It shall then meet as needed to address advisory questions pertaining to the application of the board’s code of ethics and to address an ethics complaint submitted to the board.
- 16) Requires the board to submit an ethics complaint to the board of ethics during an open meeting. The board may submit any other ethical matter to the board of ethics. The board and the board of ethics shall treat a matter submitted to the board of ethics as confidential until the board responds, as specified.
- 17) Specifies that the board of ethics shall provide advice on an ethics complaint to the board during a closed meeting.
- 18) Requires the board to respond to an ethics complaint in a public meeting after receiving advice from the board of ethics. The board shall make public the advice provided to the board within 24 hours of the conclusion of the public meeting during which it responds to the ethics complaint.
- 19) Specifies that upon the conclusion of an investigation into the conduct of a commissioner, the board of ethics shall provide all findings from the investigation to the city that appointed the commissioner that was subject to the investigation.
- 20) Requires the board to comply with the requirements of the Ralph M. Brown Act and the California Public Records Act.
- 21) Provides that in order to protect and enhance the economic benefits of import and export activities for the San Diego region and the state, it is necessary to provide incentives to communities that experience the adverse environmental, economic, quality of life, and other impacts that result from hosting a working waterfront, such as a decrease in recreational opportunities, the loss of municipal revenue opportunities, increased noise and traffic, and negative effects of air quality. These impacts are also described generally as “maritime industrial impacts.”

- 22) Specifies that in implementing the master plan adopted pursuant to the Act, the board shall include funding for cooperative infrastructure and capital projects on and off tidelands and submerged lands, consistent with the public trust doctrine, that directly addresses maritime industrial impacts by the port in the cities that host maritime terminals.
- 23) Requires cities that demonstrate all of the following to be eligible to receive maritime industrial impacts funding from the board for cooperative infrastructure and capital projects.
  - a) Host at least one maritime terminal.
  - b) Have census tracts near maritime terminals that exceed state standards for average annual particulate matter exposure and have been designated as environmental justice communities, as determined by the San Diego County Air Pollution Control District.
  - c) Have census tracts near maritime terminals that are less than or equal to 80 percent of regional median income.
  - d) Have a planning area near the maritime terminal, with residential zones that have restricted public access to the tidelands and submerged lands and waterfront that are within close proximity to the planning area.
- 24) Specifies that the board shall create the “Community Impact Fund” and deposit 1% of all nontax port district gross revenue into that fund. In addition to the funding required in 22) above, the board shall use the moneys in the fund to pay for projects that address maritime industrial impacts that are proposed by eligible cities.
- 25) Provides that the State Lands Commission (SLC) shall be the final arbiter of any disputes with regard to the eligibility and approval of projects, consistent with the commission’s authority over projects on and off tidelands and submerged lands, as specified. The SLC shall, to the extent feasible, rely on both of the following:
  - a) Existing local, state, and federal agency studies.
  - b) Port studies conducted on port impacts.
- 26) Requires the board to create the “Future Public Access Fund” and deposit 1% of eligible rents into that fund. The board shall use the moneys in the fund to convert industrial property in disadvantaged communities within the district to open space including, but not limited to, parks, plazas, and promenades.
- 27) Specifies that for the purposes of 26) above, the following terms have the following meanings:
  - a) “Disadvantaged community” means a community identified by the California Environmental Protection Agency pursuant to existing law.
  - b) “Eligible rents” means payments to the port district for the lease of real property located in the district and not located in a disadvantaged community.
- 28) Makes numerous other technical and clarifying changes.

- 29) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique geography and circumstances relative to the development of harbor and port facilities within the District.
- 30) Specifies that if the Commission on State mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

**EXISTING LAW:**

- 1) Protects, pursuant to the common law doctrine of the public trust (Public Trust Doctrine), the public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities. The Public Trust Doctrine provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (public trust lands) are to be held in trust by the state for the benefit of the people of California. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419)
- 2) Establishes that the SLC is the steward and manager of the state's public trust lands. The SLC has direct administrative control over the state's public trust lands and oversight authority over public trust lands granted by the Legislature to local public agencies (granted lands). [Public Resources Code (PRC) § 6009]
- 3) Authorizes the SLC to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if specified conditions are met. (PRC § 6307)
- 4) Specifies that a local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency, as defined, shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. [Government Code (GC) § 87406.3]
- 5) Provides that 4) above, does not apply to an individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency. (GC § 87406.3)
- 6) Specifies that 4) above, applies to an individual who is, at the time of the appearance or communication, an independent contractor of a local government agency or a public agency and is appearing or communicating on behalf of that agency.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state mandated local program.

**COMMENTS:**

- 1) **Public Trust.** The foundational principle of the common law Public Trust Doctrine is that it is an affirmative duty of the state to protect the people's common heritage in navigable waters for their common use. The traditional uses allowed under the Public Trust Doctrine were described as water-related commerce, navigation, and fisheries. As a common law doctrine, the courts have significantly shaped the Public Trust Doctrine in a number of important ways. Courts have found that the public uses to which sovereign lands are subject are sufficiently flexible to encompass changing public needs. According to the SLC, more recently, the doctrine has been broadened by various landmark court decisions to include the right to swim, boat, and engage in other forms of water recreation, and even to preserve lands in their natural state in order to protect scenic and wildlife habitat values. The Public Trust Doctrine provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California. The Public Trust Doctrine, as a common law doctrine, is not static but is continuously evolving to protect the public's use and needs in California's waterways.

For more than 100 years, the Legislature has granted public trust lands to local governments so the lands can be managed locally for the benefit of the people of California. There are more than 80 trustees in the state, including the ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. While these trust lands are managed locally, SLC has oversight authority to ensure those local trustees are complying with the Public Trust Doctrine and the applicable granting statutes.

- 2) **San Diego Unified Port District.** According to the District, the Port of San Diego was created by the California State Legislature to manage San Diego Bay and surrounding waterfront land on December 18, 1962 and the voters approved the District's creation. The Port of San Diego is the fourth largest of the 11 ports in California. The District includes five member cities, including San Diego, Chula Vista, Coronado, National City, and Imperial Beach. The District currently oversees two maritime cargo terminals, two cruise ship terminals, 22 public parks, the Harbor Police Department and the leases of hundreds of tenant and subtenant businesses around San Diego Bay. These include 17 hotels, 74 restaurants, three specialty retail centers and numerous other attractions including museums and bay tours.

Existing law establishes the District as the trustee of public lands within San Diego Bay. The Port District was created for the acquisition, construction, maintenance, operation, development and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation. The District is governed by a seven-member Board of Port Commissioners; one commissioner each is appointed by the city councils of Chula Vista, Coronado, Imperial Beach and National City, and three commissioners are appointed by the San Diego City Council.

The terms of each commissioner of the District is 4 years, and a commissioner may be removed from the board by a majority vote of the city council which appointed the

commissioner. The board must annually elect one of its members as chairperson and another as vice chairperson, and shall also elect annually a secretary, who may or may not be a member of the board. A majority of the board constitutes a quorum for the transaction of business, the board is required to make rules and regulations for its own government and procedure and must hold at least one regular meeting each month, and may hold any special meetings it deems necessary. The commissioners must be officers of the district and cannot receive salaries but can receive reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties.

The Act requires the board to draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which are conveyed to the district. A two-thirds vote of the board is required to adopt the plan and to amend the plan. According to the District, on February 28, 2024, the board unanimously certified the Final Program Environmental Impact Report and approved the Port Master Plan Update (PMPU). Next, District staff will process the PMPU document with the California Coastal Commission with the goal of certification in late 2024.

In 2010, the District created the Maritime Industrial Impact Fund (MIIF) with the aim of offsetting adverse impacts to neighboring communities from maritime industrial activity, spending more than \$2 million from the MIIF on projects. According to the District, in 2023, the board voted to increase the annual funding to 2% of the District's annual gross maritime industrial revenue. The District estimates that more than \$4.8 million will be placed into the MIIF over the next six years.

- 3) **Grand Jury Reports.** The San Diego County Grand Jury has issued three reports concerning the District in the last 40 years. The June 7, 2023 report proclaimed that, "The 2022-23 San Diego County Grand Jury (Grand Jury) is not alone in its concern over the lack of oversight, transparency and accountability of an organization with such far reaching power and jurisdiction. Over the last several decades, two separate San Diego County Grand Juries have reached similar conclusions, the earliest being the 1986-87 Grand Jury and more recently the 1997-98 Grand Jury.

"The 1986-87 Grand Jury Report concluded, 'An enterprise of the scope and importance of the Port District must include a strong concern for community relations, public input and accountability ... yet, in the public's mind, it conducts itself as does a private company, responsible only to its stockholders. The fact is that it is a public corporation, guarding a public trust and spending public money.' Similarly, the synopsis of the 1997-98 Grand Jury report concluded that the seven commissioners of the Port District 'are viewed as operating with almost unlimited discretion regarding how they spend money with minimal accountability. Commissioners are not required to gain approval for their actions from the voting public or even from the city councils which appoint them.'

"In practice, the Port District requires a fiduciary oath of its commissioners to act in the best interests of the Port District, and in its role as guardian of the public trust, to the benefit of the residents of California. As appointees of one of five Port District cities, each commissioner must also represent the perspectives of the city appointing them as commissioner.

“In representing the *interests* of the Port District but only the *perspectives* of the port cities appointing them, a dichotomy is created. The dichotomy allows port commissioners to manage the valuable resources of San Diego Bay in a unified, comprehensive manner but limits elected governments of the Port Cities and their constituents in making their views known or in determining the actions that are in their best interests. As a result, this dichotomy leads not only to voter disenfranchisement, but to a disconnection between elected municipal governments and their constituents, who must subordinate and subject their interests to the interpretations of the unelected Board of Port Commissioners.” (Citations omitted)

In the 2023 San Diego County Grand Jury report, 15 different recommendations were made to the city councils of the member cities of the District, the San Diego County Board of Supervisors, and the District board of commissioners. Among the recommendations were:

- a) Institute formal policies or procedures for appeal of any action taken by the District.
  - b) Consider placing a two-term limit on the number of terms a District commissioner can serve.
  - c) Institute ordinances or formal policies requiring the appointed commissioners to give regular updates to their respective city councils.
  - d) Institute formal polices to enable port cities and San Diego County to ratify the Port Master Plan, propose Port Master Plan Updates, or amendment to the Port Master Plan for planning districts within the boundaries of each city and county.
  - e) Explore an alternate form of governance for the District allowing for participation in, and oversight of, District activities, among others.
- 4) **District’s Response to 2023 Grand Jury Report.** In response to the 2023 San Diego County Grand Jury Report, the District proclaimed, “The Citizen Civil Grand Jury (Grand Jury) based many of its recommendations along philosophical lines, with an expressed desire for more control from San Diego County and the member cities of San Diego Unified Port (Port) by granting San Diego County oversight of the Port through State Legislation, or an alternative form of governance. However, this desire is at odds with the Public Trust Doctrine, the intent of the Legislature and the legal purpose of the Port.

“Consistent with the Public Trust Doctrine, the Port was created for the benefit of the entire State when in 1962, the Legislature enacted the San Diego Unified Port Act (Port Act) and the voters of San Diego County approved its creation. The Port serves all Californians, not only those from our region – to do otherwise would turn the Port Act, California Coastal Act, and most importantly, the Public Trust Doctrine on their heads. The Public Trust Doctrine provides the tidal and submerged lands and other navigable waterways (collectively, Tidelands), such as in and around San Diego Bay, are held to be in trust by the State for the benefit of the people of California and not limited to the benefit or interests of local municipalities adjacent to Tidelands. As found by the California Supreme Court in the long-held *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199 case, a grant of Tidelands is subject to the Public Trust for the benefit of the entire state and not a ‘municipal affair.’

“Many of the findings offered up by the Grand Jury may come from a lack of understanding and background about legal principles that dictate the Port’s governance pursuant to the Public Trust Doctrine and Port Act, the function of California State agencies such as the State Lands Commission and the California Coastal Commission, and other port commissions around California.” (Citations omitted)

- 5) **SB 1039 of 2010.** SB 1039 (Ducheny) of 2010 would have required District, as part of implementing its master plan, to include funding for cooperative infrastructure and capital projects on and off tidelands and submerged lands, consistent with the Public Trust Doctrine, that directly address maritime industrial impacts by the District in cities that host maritime terminals. SB 1039 contained similar provisions to this bill, but it differed in a noteworthy way. This bill requires the District to create the Community Impact Fund and deposit 1% of all nontax port district gross revenue into that fund, and requires the District to pay for projects to address maritime industrial impacts that are proposed by eligible cities. SB 1039 instead required the District to make a good faith effort to fund projects that address maritime industrial impacts that are proposed by eligible cities.

In the Assembly Local Government Committee analysis for SB 1039, the Committee noted that, “In the long-held 1955 *Mallon v. City of Long Beach* 44 Cal. 2d 199 case, the California Supreme Court found that the City of Long Beach's interest in the tidelands was acquired not as a ‘municipal affair,’ but subject to a public trust to develop its harbor and navigation facilities for the benefit of the entire state and was therefore subject to the control of the Legislature. The Court concluded that the expenditures by the City of Long Beach for storm drains, a city incinerator, a public library, public hospitals, public parks, a fire alarm system, and many other items were purely ‘municipal affairs’ within the meaning of California Constitution Article XI, § 6. Moreover, they were normal expenditures for a municipal corporation to make. Thus, the City of Long Beach was unable to use public monies for general municipal purposes because the monies were to be used to benefit the entire state and would therefore violate the prohibition against using public monies as a gift. SB 1039 would specifically require the Port to provide financial incentives to the Cities of National City and San Diego to help address maritime industrial impacts, including the loss of municipal revenue opportunities.” SB 1039 was not heard by the Assembly Local Government Committee.

- 6) **Lobbyist Reporting.** In 1974, California voters approved Proposition 9, also known as the Political Reform Act, which among other things, requires the disclosure of campaign contributions and expenditures and state lobbying activities. The requirements were enacted to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited, and that the activities of lobbyists are regulated and their finances disclosed in order that improper influences will not be directed at public officials.

The Political Reform Act requires individuals, businesses and other organizations that make or receive payments to influence state governmental decisions, such as advocating for or against legislative bills and state agency regulations, to register as lobbyists and submit periodic reports of their lobbying activity. However, the Political Reform Act does not regulate individuals or other entities that lobby the federal government, or city, county or other local government agencies.



- 7) **Recent Censure.** October 10, 2023, a District board commissioner was censured and stripped of the vice chair role. The formal reprimand was approved 6-0.

According to an October 11, 2023 *San Diego Union-Tribune* article, “Although specifics were not made known prior to the meeting, Naranjo is accused of making false accusations against a port staffer - likely Port General Counsel Thomas Russell, as revealed during the meeting. Naranjo also repeatedly retaliated against the employee, failed to make proper disclosures, obstructed staff 's efforts to obtain records of her external financial dealings, affected the agency's ability to enter into lawful contracts and violated the Brown Act, according to high-level findings released following a confidential personnel investigation conducted by HR Law Consultants.

"The remedy of censure is an appropriate remedy in this case as the investigator concluded that Commissioner Naranjo continues to exhibit retaliation in response to the district's actions,' said Sonia Carvalho, an outside attorney with Best & Krieger, who presented the board with the findings. 'In our opinion, the report obligates the port to act in an effort to stress to Commissioner Naranjo the seriousness of her actions and to deter further poor behavior, which could subject the district and individuals to liability.

“Naranjo was sworn into office in January 2021 and represents National City on the seven-member board. She served as vice chair of the board this year, until she was stripped of the role Tuesday. Commissioner Frank Urtasun was selected to replace Naranjo as vice chair. The vice chair role often leads to serving as board chair in the following year. Naranjo is a South Bay native and a self-described environmental justice activist. She received an avalanche of support from meeting attendees who praised her efforts to shape the agency's air quality policies and industrial practices, which often affect National City, Barrio Logan, Sherman Heights and Logan Heights neighborhoods.

“After pressure from public speakers, Port of San Diego Commissioners voted separately in closed session to release a redacted version of what was described as a lengthy and comprehensive investigation. The document is expected to be released to the public today. ‘We don't know what this report (says). They say they'll release it tomorrow. There's never going to be another meeting. My client is never going to get a chance to go and clear her name. So that part of this remains completely bogus,’ said Cory Briggs, the lawyer representing Naranjo in the matter. The National City Council will meet Thursday in closed session to discuss the matter.”

- 8) **Bill Summary.** This bill makes a number of changes to the Act. It requires the City of San Diego to make a good faith effort to appoint one of its three commissioners from one of five specified neighborhoods within the City. This bill also requires the District to adopt a code of ethics and to appoint a board of ethics to provide independent ethics advice, among other duties. Additionally, this bill prohibits a commissioner from lobbying, contracting with, or being employed by the District for 2 years after serving as a commissioner; requires the District to publish a report regarding its lobbying activities; limits commissioners to three terms; requires regular rotation of board chairpersons and vice chairpersons; requires the board, before acting to censure or strip a commissioner of their duties, to provide 72 hours' notice of the proposed action to the city council and mayor of the city that appointed the commissioner; and, requires the District to compensate a commissioner \$100 for each day that a commissioner attends a meeting, but not more than \$600 per month.

Lastly, this bill requires the creation of two funds: The Community Impact Fund and the Future Public Access Fund. The District is required to deposit 1% of all nontax port district gross revenue into the Community Impact Fund to pay for projects that address maritime industrial impacts that are proposed by specified eligible cities. The District is also required to place 1% of eligible rents into the Future Public Access Fund to convert industrial property in disadvantaged communities, as defined, within the District to open space, including, but not limited to, parks, plazas, and promenades. The author is the sponsor of this bill.

- 9) **Author's Statement.** According to the author, "The Port of San Diego was created by the State Legislature in 1962 to serve as a steward of San Diego Bay for the benefit of California. It is a unique Special District that includes multiple member-cities that appoints Port Commissioners to serve on their behalf and, despite being reviewed by no less than three grand jury reports in the past 35 years, has very little statutory oversight.

"AB 2783 provides needed transparency and oversight reforms to the Port of San Diego by adopting recommendations identified in the 2022-2023 Grand Jury report. Other Port Districts on the west coast have adopted similar governance and accountability measures, which recent incidents within the Port of San Diego suggest is needed. In the past year, the CEO and CFO have left for reasons that have not been publicly disclosed, one commissioner got an unprecedented censure, and the former Port Chairman abruptly resigned.

"Section 4, Article 10 of the California Constitution guarantees maximum public access and recreational opportunities on the coast. Since the State Legislature created the Port of San Diego in 1962, the Port has removed and limited opportunity for public access in favor of maritime industrial activity in the majority-minority communities along the Port. These communities have been heavily impacted by the maritime industrial activity, which is demonstrated in the CalEnviroScreen 4.0 scores: 94<sup>th</sup> percentile in exposure to Diesel Particulate Matter, 97<sup>th</sup> percentile in Poverty and 93<sup>rd</sup> Percentile in Asthma rate. AB 2783 addresses this issue by increasing the Port's set-aside for projects that help mitigate maritime industrial impacts.

"AB-2783 introduces an essential layer of independent oversight regarding ethical conduct and conflict of interest issues, institutes tenure restrictions, and enhance the Port's role as a collaborative stakeholder. These measures are designed to align decision-making processes more closely with the welfare of the State and its citizenry."

- 10) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Public Trust Doctrine.** The District is a state tidelands trustee and the tidelands are held in trust by the State for the benefit of the people of California. Uses of trust lands, whether granted to a local agency or administered by the state directly, are generally limited to those that are water dependent or related, and include commerce, fisheries, and navigation, environmental preservation and recreation. Additionally, the District's revenues generated from its public trust lands are subject to the Public Trust Doctrine. This bill states that it is necessary to provide incentives to communities that experience the adverse environmental, economic, quality of life, and other impacts that result from hosting a working waterfront, such as a decrease in recreational opportunities, the loss of municipal revenue opportunities, increased noise and traffic, and negative effects on air quality. Such impacts are described generally in this bill as "maritime industrial impacts."

However, some of these incentives may not be consistent with the Public Trust Doctrine or other state law. For example, would including “the loss of municipal revenue opportunities” interfere with the District’s ability to manage portions of its lands for environmental preservation, public access, or other water-related recreation if a city could claim that the trust land could instead be used for revenue generating projects? Given the existing limitations on the use of trust lands, the Committee may wish to consider if this bill could ultimately encourage projects in violation of the Public Trust Doctrine, and if additional clarity is needed.

- b) **District’s Discretion.** Local agencies are generally able to manage their resources through decisions made by their governing boards. While limitations on this discretion often do exist, this bill would further limit the District’s ability to decide how to administer its resources. According to the District, “The Port fundamentally opposes AB 2783 since the bill language would effectively remove the agency’s discretion to make decisions that balance the needs of the Port’s five member cities, its represented employees, its environmental mission, and protect the State’s tideland interests. Additionally, language in AB 2783 diverts existing Port revenues to ‘convert industrial property in disadvantaged communities within the Port to open space, including, but not limited to, parks, plazas, and promenades,’ effectively shifting the Port away from maritime operations and siphons state resources that are managed on behalf of the people of the State of California. Additionally, as one of eighteen military strategic ports in the nation, the Port and its terminals provides a vital service to the U.S.’s national security. Yet, the bill would require these terminals to be converted to open space.’ Given the concerns of the District, the Committee may wish to consider if the limitations this bill could place on the District’s decision-making authority strike a reasonable balance.
- c) **Term Limits.** This bill would limit the District board commissioners to three terms. The San Diego County Grand Jury recommended the implementation of a two-term limit. The Grand Jury asserted that term limits would foster democratic principles by providing more opportunities for diverse and talented individuals to serve, prevent the accumulation of influence, and uphold the public trust by keeping the commissioner responsive to the community. However, others may argue that the enactment of term limits could reduce the institutional knowledge and experience of those serving on the District’s governing board. The Committee may wish to consider if instituting term limits would be detrimental or beneficial to the governance of the District.
- d) **Which Revenue?** This bill would require the District to create the “Community Impact Fund” and deposit 1% of all nontax port district gross revenue into that fund. As currently drafted, it is not clear what revenue would be included when being deposited into the fund. Would this include grant or settlement revenue, state and federal funding, or other restricted revenue? The Committee may wish to consider if additional clarification is needed to ensure revenue is utilized in accordance with the District’s purpose.
- e) **Revolving Door.** Existing law restricts the post-governmental activities of certain former public officials. These restrictions are commonly known as a “revolving door ban.” One of the main types of revolving door restrictions in the PRA is a one-year ban that prohibits certain officials, for one year after leaving public service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general

rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. This bill specifies that a board commissioner shall not lobby, contract with, or be employed by the board or the district for two years after serving as commissioner. The Committee may wish to consider if a two-year prohibition is unwarranted considering existing lobbying prohibitions.

- 11) **Committee Amendments.** In order to address some of the above policy considerations, the Committee may wish to amend the bill as follows:

**Sec. 17. (c) ~~A commissioner shall not lobby, contract with, or be employed by the board or the district for two years after serving as a commissioner. A commissioner shall not lobby, contract with, or be employed by the board or the district until after the expiration of one year, beginning January 1 of the year following a commissioner's end of term or resignation.~~**

**Sec. 19.5(d)** The board shall create the "Community Impact Fund" and deposit 1 percent of all nontax port district gross **operating** revenue into that fund. In addition to the funding required in subdivision (b), the board shall use the moneys in the fund to pay for projects that address maritime industrial impacts that are proposed by eligible cities.

- 12) **Author Amendment.** The author has requested the Committee accept amendments as follows:

**Sec. 18. (b)** If the board acts to censure or strip a commissioner of their duties based on alleged unethical or unlawful conduct, then the board shall disclose to the public all documents and evidence related to the alleged conduct in accordance with the requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), ~~and~~ **All records related to the alleged conduct are public records that are subject to the disclosure requirements of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code.**

- 13) **Previous Legislation.** AB 1153 (Alvarez) of 2023 would have required the District, in implementing the master plan, to include funding for cooperative infrastructure and capital projects that directly address maritime industrial impacts by the Port in cities that host maritime terminals, as specified. In addition to that funding, AB 1153 would have required the District to dedicate 1% of the Port's revenue, as specified, for those cooperative infrastructure and capital projects. AB 1153 was never heard in the Assembly Committee on Jobs, Economic Development, and the Economy.

SB 507 (Atkins), Chapter 372, Statutes of 2019, granted certain previously ungranted tidelands in San Diego Bay to the District, and granted certain public trust lands to the City of San Diego, subject to specified terms and conditions in both instances.

AB 2646 (Gonzalez Fletcher), Chapter 192, Statutes of 2018, granted certain public trust lands in Chula Vista to the District that had been subject to an earlier exchange approved by the SLC.

AB 729 (Atkins) of 2016 would have granted the tidelands in the center of San Diego Bay to the Port. This bill was never heard in the Assembly Committee on Natural Resources.

AB 93 (Wayne), Chapter 946, Statutes of 2001, created the San Diego County Regional Airport Authority and required the District to transfer the San Diego International Airport to the authority, among other things.

SB 698 (Peace), Chapter 714, Statutes of 2000, authorized the SLC to carry out an exchange of public trust lands within the Naval Training Center, San Diego, with the City of San Diego and the District.

**Arguments in Support.** According to National City Councilmember Luz Molina, “I am a National City councilmember and represent a district that includes our city’s waterfront. I am concerned with the recent actions of the San Diego Unified Port District (the Port), and I strongly support Assembly Bill 2783, for reform of the Port. Of special interest to me is the provision that would establish an independent ethics committee to monitor and guide the work of this very important and very powerful agency.

“As one of five cities that make up the Port, the City of National City is committed to working with the Port on our shared interests. The decisions that are made by the Port have a direct impact to our city’s economy, recreational access, and environmental health. I believe this bill is a step in the right direction to establish a mechanism to give the communities most impact by the Port a stronger voice without impeding the Port’s operation.

“AB 2783 would not impact operations. AB 2783 aims to improve transparency, accountability, and oversight by establishing clear guidelines for ethical standards. An independent ethics committee would promote fair policies and procedures that maximize the likelihood of achieving balanced outcomes for National City and the region as a whole.”

- 14) **Arguments in Opposition.** According to the District with a position of oppose unless amended, “As written, Assembly Bill 2783 would 1) erode the Port’s ability to generate future regional benefits and community investments and 2) conflict with existing laws, the Constitution and the significant statutory purpose of the maritime public infrastructure and coastal-dependent facilities located on these state tidelands. Moreover, AB 2783 applies a series of unprecedented mandates that have been placed on no other California public port and, by rolling back its autonomy, overrules the self-determination of thousands of San Diego County voters who established the Port.

“A self-sustaining public agency, the Port collects no taxes, yet it has invested nearly \$1.9 billion into the region through public infrastructure projects of all sizes. Today, the Port supports a total economic impact of \$20.9 billion and 114,530 jobs in California and manages a diverse portfolio that generates revenues to support vital public services and amenities. From building ships for the US Navy and bolstering California’s cargo supply chain to demonstrating new, clean technologies, San Diego’s waterfront provides jobs and revenue that flow into communities around the Bay. Unless the measure is amended to be consistent with state and federal law, prevent encroachment upon public infrastructure and coastal-dependent facilities, mitigate the economic harm of lost jobs, and offset lost revenue from leaseholds by increased state funding to Portside community projects, the Port must oppose this measure.”

15) **Double-Referral.** This bill is double-referred to the Assembly Committee on Judiciary.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

City Councilmember Jack Shu, La Mesa (If Amended)

City Councilmember Luz Molina, National City

One Individual

**Opposition**

California Teamsters Public Affairs Council

San Diego Unified Port District (unless amended)

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