

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2797 (Chiu) – As Amended April 13, 2016

**SUBJECT:** City and County of San Francisco: Mission Bay South Project: redevelopment plan.

**SUMMARY:** Authorizes the Port of San Francisco (Port) to loan specified nontrust lease revenues for infrastructure costs for the development of Seawall Lot 337, and expands the boundaries of Seawall Lot 337. Specifically, **this bill:**

- 1) Provides numerous definitions, pursuant to Seawall Lot 337, and financing options for development.
- 2) Makes findings regarding the San Francisco Bay, the San Francisco waterfront, public trust, and SB 815 (Migden), Chapter 660, Statutes of 2007.
- 3) Expands the boundaries of Seawall Lot 337 to include Parcel 20 (P20), Third Street, and Terry Francois Boulevard, as specified.
- 4) Provides that no action of the Department of Finance or the State Controller is required for any action taken by the oversight board, the successor agency, the San Francisco Board of Supervisors (BOS), or any other governmental body required to act to amend the Mission Bay South redevelopment plan to remove P20 from the Mission Bay South redevelopment project area. Provides exemptions to specified statutes, which govern the dissolution of redevelopment agencies, and would otherwise prohibit P20 from being removed from the redevelopment plan.
- 5) Authorizes the Port, for Seawall Lot 337, to enter into nontrust leases of development parcels, subject to specified requirements, if the State Lands Commission (SLC) has approved port advances from nontrust lease revenue for infrastructure, pursuant to 13), below.
- 6) Authorizes the Port to enter into a 75-year nontrust lease that terminates after January 1, 2094. Requires a nontrust lease to terminate no later than the later date of January 1, 2094, or the date 75 years after the Port first issues a certificate of occupancy for the improvement on the leased site or development parcel.
- 7) Authorizes the Port to use its nontrust lease revenue from the development of parcels in Seawall Lot 337 to make advances to fund Seawall Lot 337 infrastructure, if the State Lands Commission (SLC) has approved Port advances from nontrust lease revenue for infrastructure, pursuant to 13), below.
- 8) Prohibits revenue from being expended for historic piers or historic structures on land subject to public trust use restrictions, unless the SLC's executive officer has approved the proposed uses of the pier or structure.

- 9) Requires SLC, for nontrust leases of Seawall Lot 337, to consider whether the Port will receive consideration equal to the fair market value on terms consistent with prudent land management practices based on specified procedures.
- 10) Requires the Port, following the BOS approval of the development project, to submit to SLC the proposed disposition and development agreement between the master developer and Port governing the development of Seawall Lot 337.
- 11) Requires additional information, such as the proposed procedures for the disposition of nontrust development parcels, including a proposed financing plan, proposed procedures for establishing the fair market value of each nontrust lease of a development parcel, a description of expected nontrust sources, and a description of how the Port will select the developer of each development parcel.
- 12) Requires the Port to submit specified project documents, following BOS approval for the development project of Seawall Lot 337.
- 13) Requires the SLC, within 75 days after BOS approval of the project and receipt of all required documentation, to either approve or deny the Port advances from nontrust lease revenues for Seawall Lot 337 infrastructure based on the information provided and whether Port advances are consistent with the goals of SB 815.
- 14) Requires the Port to bear the costs of any study or investigation that the SLC undertakes, as specified.
- 15) Requires the Port to provide separate accounting and final audit reports, as specified.
- 16) Requires the Port to ensure repayment, with interest, of each port advance within 50 years. Authorizes the repayment period to extend beyond 50 years with SLC approval.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Public Trust and Granted Lands.** The common law doctrine of the public trust (Public Trust Doctrine) protects 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, known as public trust lands, are to be held in trust by the state for the benefit of the people of California.

Only in rare cases may the public trust be terminated, and only where consistent with the purposes and needs of the trust. For over 100 years, in more than 300 statutes, the Legislature has granted public trust lands to local trustees so the lands can be managed locally for the benefit of the people of California. There are over 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) **Port of San Francisco.** Under the Burton Act (Chapter 1333, Statutes of 1968), the state conveyed certain state tidelands along the San Francisco waterfront, generally extending from Fisherman's Wharf to Candlestick Point, to the City and County of San Francisco, through its Port, in 1969 in trust for public trust and Burton Act trust purposes, subject to the obligation on the part of the City and County of San Francisco to assume \$55 million in state debt obligations then existing relating to the waterfront properties.

The San Francisco waterfront includes a number of seawall lots controlled by the Port, which are triangular lots on the west side of the Embarcadero that have been used for decades as parking lots, a use that is inconsistent with the trust and does not conform with the surrounding urban landscape. SB 815 (Migden), Chapter 660, Statutes of 2007, freed trust use restrictions from the seawall lots along the Embarcadero, and allowed the Port to lease these properties at market rates for non-trust purposes provided specified conditions were met. These seawall lots, parcels of filled tidelands, included Seawall Lot 337.

Revenues from these non-trust leases must be deposited into a separate account and used for the preservation of historic piers and construction or the construction and maintenance of waterfront plazas and open space, as specified. Before using any revenues for any pier or structure subject to public trust restrictions, the SLC's executive officer is required to approve the proposed uses. There are other requirements, including that the non-trust lease must be for fair market value, subject to SLC's approval, and is in the best interest of the state, among others. The port is also authorized to use part of the non-trust lease revenues, as specified, for any purpose consistent with the public trust and the act. SB 815 authorized leases for nontrust uses to have 75-year terms until January 1, 2094, at which time the public trust restrictions on the land are restored.

- 3) **Bill Summary.** This bill authorizes the Port to use nontrust lease revenue from the development of parcels on Seawall Lot 337 to make loans to fund infrastructure on Seawall Lot 337 with the approval of the SLC. This bill specifies the documentation and information that must be provided by the Port, following the BOS approval, to the SLC to gain approval. This bill also expands the boundaries of Seawall Lot 337 to include P20, a parcel of land previously included in the Mission Bay South redevelopment plan and provides the exemptions to redevelopment law to enable the inclusion of P20 in the development proposal for Seawall Lot 337. This bill authorizes the Port to enter into a 75-year lease beyond the January 1, 2094, limit in existing law. This bill is sponsored by the Port.
- 4) **Author's Statement.** According to the author, "As a result of SB 815, the Port initiated a planning process for Seawall Lot 337 and in 2009 the Port selected a development team led by the San Francisco Giants for exclusive negotiations with the Port for the development of Seawall Lot 337. Since 1997, Seawall Lot 337 has been used primarily as a surface parking lot; most recently by an affiliate of the San Francisco Giants. The proposed development at Seawall Lot 337 and Pier 48 is 28 acres and includes former tidelands lying between Mission Bay to the south and China Basin and the Giants ballpark to the north.

"The proposal, known as the Mission Rock project, would include approximately 1,500 rental apartments, 40% of which would be affordable to individuals and families earning between 45% - 150% of area median income; approximately 1.3 million square feet of office space; 3,100 parking spaces; and 250,000 square feet of retail, manufacturing, and restaurants on the ground floors of the buildings. Public improvements include the installation of streets,

sidewalks, 8 acres of parks, public access areas, water, sewer, and electrical utilities, and other infrastructure known as horizontal development. The Mission Rock project also includes the rehabilitation of Pier 48 consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In addition, to address the effects of climate change, the project sponsor proposes to raise the elevation of portions of Seawall Lot 337 and new streets within the site to be resilient to future sea level rise of 55" and 100 Year Storm events. The Developer will finance much of the horizontal development; infrastructure costs are currently expected to exceed \$150 million.

"The City and County of San Francisco, through the Port, the San Francisco Public Utilities Commission, and San Francisco Public Works, intends to acquire the public infrastructure from the developer over time through non-Port revenue generated from the project site in the form of Mello-Roos community facilities district special taxes (CFD), tax increment from an infrastructure financing district formed over the project (IFD), and bonds secured by those revenues. However, the tax increment revenues will not be immediately available for early infrastructure costs. Accordingly, the proposed financing plan calls for the Port to advance a portion of the ground rent from nontrust leases to CFD, which will use the funds to acquire and maintain the infrastructure on behalf of the City. These advances of ground rent (port advances) would allow the Port to reimburse the Developer Capital and pay off the accrued return, well before sufficient CFD and IFD revenues would be available for that purpose, substantially reducing financing costs. The port advances would be repaid, with interest, from CFD and IFD revenues.

"The proposed legislation is necessary to address challenges of financing the infrastructure and public facilities required for the project, which the Port has come to better understand since 2007. The legislation would remove substantial obstacles to the development of the project and the public benefits it will provide."

- 5) **Arguments in Support.** The City and County of San Francisco argues, "Developed in concert with San Francisco's partners at the SLC and the San Francisco Giants, AB 2792 would greatly assist San Francisco in the development of the new Mission Rock neighborhood in San Francisco's Mission Bay. In addition to having support of affordable housing, open space, public transit, and other advocates, the larger public is now behind the project. In November of 2015, San Franciscans approved the Mission Rock development project through Proposition D with an overwhelming 74-26% vote."
- 6) **Arguments in Opposition.** None on file.
- 7) **Double Referral.** This bill was heard in the Natural Resources Committee on April 11, 2016, where it passed with a 9-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

City and County of San Francisco [SPONSOR]  
SPUR (San Francisco Bay Area Planning and Urban Research Association)  
San Francisco Housing Action Coalition  
Individual

**Opposition**

None on file

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