

FILE NUMBER: 2024-335

DATE: Tuesday, August 13, 2024

SUBJECT: Presentation and Update on Assembly Bill 2783, and Direction to Staff.

EXECUTIVE SUMMARY:

During the current legislative session, California Assemblymember David Alvarez, introduced Assembly Bill 2783, which proposes multiple amendments to the San Diego Unified Port Act (Port Act) that would revise the governance of the District and Board. On April 22, 2024, the Board received a presentation and update on AB 2783 and provided direction to staff, enabling the District's legislative team to formalize and advocate a position of "oppose unless amended" to the bill.

Through the legislative process, the bill's initial scope has narrowed and major policy elements modified or removed. As of the date of this publication, AB 2783 is scheduled to be heard by the California Senate's Appropriations Committee on August 12th and may also be part of the Suspense File process later that same week.

District staff will present to AB 2783, as amended, at the August 13, 2024 open session meeting and may have a recommendation whether the Board should continue to oppose unless amended, be neutral or support the bill in whole or in part. District staff will also seek any further direction the Board may want to give.

RECOMMENDATION:

Receive a presentation and update and provide direction to staff.

FISCAL IMPACT:

This item has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

During the 2023-2024 legislative session, California Assemblymember David Alvarez, introduced AB 2783, which in its original form proposes several amendments to the San Diego Unified Port Act. Originally, AB 2783 proposed the following:

- Required the City of San Diego to make a good faith attempt to appoint a Commissioner from certain neighborhoods. (Amendment to Section 16 of the Port Act.)
- Established terms limits for Commissioners of three terms. (Amendment to Section 17 of the Port Act.)
- Restricted the ability for a Commissioner to be employed by the District, or lobby or contract with the District until after the expiration of one year, beginning January 1 of the year following a commissioner's end of term or resignation. (Amendment to Section 17 of the Port Act.)
- Required that the Chair of the Board have served on the Board for at least one year and restricts the election of the Board's Chair and Vice Chair until all Commissioners have held those offices. (Amendment to Section 18 of the Port Act.)
- Dictates that disclosure to the public all documents and evidence related to the alleged conduct of a Commissioner in the case of a censure based on alleged unethical or unlawful conduct. (Amendment to Section 18 of the Port Act.)
- Mandated the Board 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. (Amendment to Section 18 of the Port Act.)
- Dictated compensates Commissioners up to \$600 a month (\$100 for each day the commissioner attends a meeting or performs duties related to the District). (Amendment to Section 18 of the Port Act.)
- Required reporting on lobbyist contracted by the District. (New Section 18.3 of the Port Act.)
- Commanded the Board adopt a Code of Ethics, establish a board of ethics and mandates certain procedures for the Board and the board of ethics. (New Section 18.5 of the Port Act.)
- Required the Port Master Plan (presumably through an amendment) include cooperative infrastructure and capital projects on and off tidelands and submerged lands and funding for the same and lays out eligibility for which cities may receive funding for cooperative infrastructure and capital projects. (New Section 19.5 of the Port Act.)
- Dictated the establishment of a "Community Impact Fund" where the District must deposit 1 percent of all nontax port district gross operating revenue into that fund and use the monies in the fund to pay for projects that address maritime industrial impacts that are proposed by eligible cities. (New Section 19.5 of the Port Act.)
- Mandated the establishment of a "Future Public Access Fund" where the District must deposit 1 percent of eligible rents to convert District industrial property in disadvantaged communities within the District to open space. "Eligible rents" are

rents from real property not located in a disadvantaged community. (New Section 19.5 of the Port Act.)

On April 22, 2024, District staff presented to and updated the Board on its efforts in implementing the District's Legislative Platform and 2023-2024 legislative priorities, as well as gave an update on AB 2783. At the time, the Board directed staff to oppose AB 2783 unless amended in a certain manner. Attachment A includes the Board directed amendments to AB 2783.

Following the Board's direction, amendments to AB 2783 have occurred through the Legislative process. Additionally, District staff has been in discussions with Assemblymember Alvarez's staff regarding further amendments to AB 2783. At the August 13th Board's open session meeting, District staff will update the Board on the current form of AB 2783, may recommend the Board change its position on the bill, and seek further direction from the Board.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and attachments, as presented to it, and approves the same as to form and legality.

Environmental Review:

The proposed Board direction, including without limitation presentation and update on Assembly Bill 2783, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board direction requiring the District or the Board's discretionary approval resulting in a physical change to the environment would be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The exercise of this discretion is in no way limited by this proposed Board direction. Therefore, no further CEQA review is required.

The proposed Board direction complies with Sections 21 and 35 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board direction is consistent with the Public Trust Doctrine.

The proposed Board direction does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because there will not be, without limitation, a physical change, change in use or increase the intensity of uses.

Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and Chapters 3 and 8 of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by the proposed Board direction.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Board Proposed Amendments to AB 2783