

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2208**

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**Introduced by Assembly Member Santiago**

February 18, 2016

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An act to ~~add Sections 15810 and 25351.7 to amend Section 65583.2~~ of the Government Code, relating to ~~public buildings, and making an appropriation therefore.~~ *housing.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2208, as amended, Santiago. ~~Public building construction and seismic retrofit; additional affordable housing structures or levels.~~ *Local planning: housing element: inventory of land for residential development.*

*Existing law, the Planning and Zoning Law, requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or the county and of any land outside its boundaries that bears relation to its planning. That law requires the general plan to contain specified mandatory elements, including a housing element. Existing law requires the housing element to contain an inventory of land suitable for residential development, and requires that inventory to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels.*

*This bill would expand that inventory of land suitable for residential development to include buildings owned or under the control of a city or a county, zoned for residential or nonresidential use and capable of having residential developments constructed above the existing building,*

*and to include underutilized sites, as defined. By imposing new duties upon local agencies with respect to the housing element of the general plan, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law establishes the powers of the State Public Works Board, for the purposes of the State Building Construction Act of 1955, including the authority to construct public buildings, as defined. Existing law requires all moneys received by the board from whatever source derived, to be deposited in the State Treasury to the credit of the Public Buildings Construction Fund, which is continuously appropriated to the board for specific purposes.~~

~~This bill would require, before constructing, including seismic retrofitting, a public building with state funds, the board to sell the air rights above the public building to a private or nonprofit developer to construct affordable housing above the public building. The bill would also require the public works contract to construct the public building to include provisions that require the building to be constructed or retrofitted to accommodate additional structures or levels that may be added by a private or nonprofit developer to provide affordable housing. By increasing the amount of funds deposited into a continuously appropriated fund, this bill would make an appropriation.~~

~~Existing law authorizes the board of supervisors of a county to construct, expand, lease, build, rebuild, furnish, refurnish, or repair various public buildings, including a hospital, courthouse, jail, historical museum, aquarium, library, art gallery, art institute, exposition building for exhibiting and advertising farming, mining, manufacturing, livestock raising, and other resources of the county, stadium, coliseum, sports arena, or sports pavilion or other building for holding sports events, exhibitions, and other public meetings. Existing law authorizes a county or city and county to enter into leases and agreements relating to real property and buildings to be used jointly by the county or city and county and any private person, firm, or corporation.~~

~~This bill would require, before constructing, including seismic retrofitting, a public building with state funds, the board of supervisors to sell the air rights above the public building to a private or nonprofit~~

~~developer to construct affordable housing above the public building. The bill would also require the public works contract to construct the public building to include provisions that require the building to be constructed or retrofitted to accommodate additional structures or levels that may be added by a private or nonprofit developer to provide affordable housing.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

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

- 1     SECTION 1. Section 65583.2 of the Government Code, as
- 2     amended by Section 232 of Chapter 303 of the Statutes of 2015,
- 3     is amended to read:
- 4     65583.2. (a) (1) A city’s or county’s inventory of land suitable
- 5     for residential development pursuant to paragraph (3) of
- 6     subdivision (a) of Section 65583 shall be used to identify sites that
- 7     can be developed for housing within the planning period and that
- 8     are sufficient to provide for the jurisdiction’s share of the regional
- 9     housing need for all income levels pursuant to Section 65584. As
- 10    used in this section, “land suitable for residential development”
- 11    includes all of the following:
- 12    (1)
- 13    (A) Vacant sites zoned for residential use.
- 14    (2)
- 15    (B) Vacant sites zoned for nonresidential use that allows
- 16    residential development.
- 17    (3)
- 18    (C) Residentially zoned sites that are capable of being developed
- 19    at a higher density.
- 20    (4)
- 21    (D) Sites zoned for nonresidential use that can be redeveloped
- 22    for, and as necessary, rezoned for, residential use.

- 1     (E) Buildings owned or under the control of a city or a county,
- 2     zoned for residential use and capable of having residential
- 3     developments constructed above the existing building.
- 4     (F) Buildings owned or under the control of a city or a county
- 5     and zoned for nonresidential use, that can be rezoned for
- 6     residential use and are capable of having residential developments
- 7     constructed above the existing building.
- 8     (G) Underutilized sites zoned for residential use.
- 9     (H) Underutilized sites zoned for nonresidential use that allow
- 10    residential development.
- 11    (2) For purposes of subparagraphs (G) and (H) of paragraph
- 12    (1), “underutilized sites” means properties or portions of property
- 13    that are used only at irregular periods or intermittently by the
- 14    accountable agency of the local government, or property that is
- 15    being used for the accountable agency’s current program purposes
- 16    that can be satisfied with only a portion of the property.
- 17    (b) The inventory of land shall include all of the following:
- 18    (1) A listing of properties by parcel number or other unique
- 19    reference.
- 20    (2) The size of each property listed pursuant to paragraph (1),
- 21    and the general plan designation and zoning of each property.
- 22    (3) For nonvacant sites, a description of the existing use of each
- 23    property.
- 24    (4) A general description of any environmental constraints to
- 25    the development of housing within the jurisdiction, the
- 26    documentation for which has been made available to the
- 27    jurisdiction. This information need not be identified on a
- 28    site-specific basis.
- 29    (5) A general description of existing or planned water, sewer,
- 30    and other dry utilities supply, including the availability and access
- 31    to distribution facilities. This information need not be identified
- 32    on a site-specific basis.
- 33    (6) Sites identified as available for housing for above
- 34    moderate-income households in areas not served by public sewer
- 35    systems. This information need not be identified on a site-specific
- 36    basis.
- 37    (7) A map that shows the location of the sites included in the
- 38    inventory, such as the land use map from the jurisdiction’s general
- 39    plan, for reference purposes only.

1 (c) Based on the information provided in subdivision (b), a city  
2 or county shall determine whether each site in the inventory can  
3 accommodate some portion of its share of the regional housing  
4 need by income level during the planning period, as determined  
5 pursuant to Section 65584. The analysis shall determine whether  
6 the inventory can provide for a variety of types of housing,  
7 including multifamily rental housing, factory-built housing,  
8 mobilehomes, housing for agricultural employees, emergency  
9 shelters, and transitional housing. The city or county shall  
10 determine the number of housing units that can be accommodated  
11 on each site as follows:

12 (1) If local law or regulations require the development of a site  
13 at a minimum density, the department shall accept the planning  
14 agency's calculation of the total housing unit capacity on that site  
15 based on the established minimum density. If the city or county  
16 does not adopt a law or regulations requiring the development of  
17 a site at a minimum density, then it shall demonstrate how the  
18 number of units determined for that site pursuant to this subdivision  
19 will be accommodated.

20 (2) The number of units calculated pursuant to paragraph (1)  
21 shall be adjusted as necessary, based on the land use controls and  
22 site improvements requirement identified in paragraph (5) of  
23 subdivision (a) of Section 65583.

24 (3) For the number of units calculated to accommodate its share  
25 of the regional housing need for lower income households pursuant  
26 to paragraph (2), a city or county shall do either of the following:

27 (A) Provide an analysis demonstrating how the adopted densities  
28 accommodate this need. The analysis shall include, but is not  
29 limited to, factors such as market demand, financial feasibility, or  
30 information based on development project experience within a  
31 zone or zones that provide housing for lower income households.

32 (B) The following densities shall be deemed appropriate to  
33 accommodate housing for lower income households:

34 (i) For an incorporated city within a nonmetropolitan county  
35 and for a nonmetropolitan county that has a micropolitan area:  
36 sites allowing at least 15 units per acre.

37 (ii) For an unincorporated area in a nonmetropolitan county not  
38 included in clause (i): sites allowing at least 10 units per acre.

39 (iii) For a suburban jurisdiction: sites allowing at least 20 units  
40 per acre.

1 (iv) For a jurisdiction in a metropolitan county: sites allowing  
2 at least 30 units per acre.

3 (d) For purposes of this section, a metropolitan county,  
4 nonmetropolitan county, and nonmetropolitan county with a  
5 micropolitan area shall be as determined by the United States  
6 Census Bureau. A nonmetropolitan county with a micropolitan  
7 area includes the following counties: Del Norte, Humboldt, Lake,  
8 Mendocino, Nevada, Tehama, and Tuolumne and other counties  
9 as may be determined by the United States Census Bureau to be  
10 nonmetropolitan counties with micropolitan areas in the future.

11 (e) (1) Except as provided in paragraph (2), a jurisdiction shall  
12 be considered suburban if the jurisdiction does not meet the  
13 requirements of clauses (i) and (ii) of subparagraph (B) of  
14 paragraph (3) of subdivision (c) and is located in a Metropolitan  
15 Statistical Area (MSA) of less than 2,000,000 in population, unless  
16 that jurisdiction's population is greater than 100,000, in which  
17 case it shall be considered metropolitan. A county, not including  
18 the City and County of San Francisco, shall be considered suburban  
19 unless the county is in an MSA of 2,000,000 or greater in  
20 population in which case the county shall be considered  
21 metropolitan.

22 (2) (A) (i) Notwithstanding paragraph (1), if a county that is  
23 in the San Francisco-Oakland-Fremont California MSA has a  
24 population of less than 400,000, that county shall be considered  
25 suburban. If this county includes an incorporated city that has a  
26 population of less than 100,000, this city shall also be considered  
27 suburban. This paragraph shall apply to a housing element revision  
28 cycle, as described in subparagraph (A) of paragraph (3) of  
29 subdivision (e) of Section 65588, that is in effect from July 1,  
30 2014, to December 31, 2023, inclusive.

31 (ii) A county subject to this subparagraph shall utilize the sum  
32 existing in the county's housing trust fund as of June 30, 2013, for  
33 the development and preservation of housing affordable to low- and  
34 very low income households.

35 (B) A jurisdiction that is classified as suburban pursuant to this  
36 paragraph shall report to the Assembly Committee on Housing  
37 and Community Development, the Senate Committee on  
38 Transportation and Housing, and the Department of Housing and  
39 Community Development regarding its progress in developing  
40 low- and very low income housing consistent with the requirements

1 of Section 65400. The report shall be provided twice: once, on or  
2 before December 31, 2019, which report shall address the initial  
3 four years of the housing element cycle, and a second time, on or  
4 before December 31, 2023, which report shall address the  
5 subsequent four years of the housing element cycle and the cycle  
6 as a whole. The reports shall be provided consistent with the  
7 requirements of Section 9795.

8 (f) A jurisdiction shall be considered metropolitan if the  
9 jurisdiction does not meet the requirements for “suburban area”  
10 above and is located in an MSA of 2,000,000 or greater in  
11 population, unless that jurisdiction’s population is less than 25,000  
12 in which case it shall be considered suburban.

13 (g) For sites described in paragraph (3) of subdivision (b), the  
14 city or county shall specify the additional development potential  
15 for each site within the planning period and shall provide an  
16 explanation of the methodology used to determine the development  
17 potential. The methodology shall consider factors including the  
18 extent to which existing uses may constitute an impediment to  
19 additional residential development, development trends, market  
20 conditions, and regulatory or other incentives or standards to  
21 encourage additional residential development on these sites.

22 (h) The program required by subparagraph (A) of paragraph (1)  
23 of subdivision (c) of Section 65583 shall accommodate 100 percent  
24 of the need for housing for very low and low-income households  
25 allocated pursuant to Section 65584 for which site capacity has  
26 not been identified in the inventory of sites pursuant to paragraph  
27 (3) of subdivision (a) on sites that shall be zoned to permit  
28 owner-occupied and rental multifamily residential use by right  
29 during the planning period. These sites shall be zoned with  
30 minimum density and development standards that permit at least  
31 16 units per site at a density of at least 16 units per acre in  
32 jurisdictions described in clause (i) of subparagraph (B) of  
33 paragraph (3) of subdivision (c) and at least 20 units per acre in  
34 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)  
35 of paragraph (3) of subdivision (c). At least 50 percent of the very  
36 low and low-income housing need shall be accommodated on sites  
37 designated for residential use and for which nonresidential uses  
38 or mixed-uses are not permitted, except that a city or county may  
39 accommodate all of the very low and low-income housing need  
40 on sites designated for mixed uses if those sites allow 100 percent

1 residential use and require that residential use occupy 50 percent  
2 of the total floor area of a mixed-use project.

3 (i) For purposes of this section and Section 65583, the phrase  
4 “use by right” shall mean that the local government’s review of  
5 the owner-occupied or multifamily residential use may not require  
6 a conditional use permit, planned unit development permit, or other  
7 discretionary local government review or approval that would  
8 constitute a “project” for purposes of Division 13 (commencing  
9 with Section 21000) of the Public Resources Code. Any subdivision  
10 of the sites shall be subject to all laws, including, but not limited  
11 to, the local government ordinance implementing the Subdivision  
12 Map Act. A local ordinance may provide that “use by right” does  
13 not exempt the use from design review. However, that design  
14 review shall not constitute a “project” for purposes of Division 13  
15 (commencing with Section 21000) of the Public Resources Code.  
16 Use by right for all rental multifamily residential housing shall be  
17 provided in accordance with subdivision (f) of Section 65589.5.

18 (j) Notwithstanding any other provision of this section, within  
19 one-half mile of a Sonoma-Marín Area Rail Transit station, housing  
20 density requirements in place on June 30, 2014, shall apply.

21 (k) This section shall remain in effect only until December 31,  
22 2023, and as of that date is repealed, unless a later enacted statute,  
23 that is enacted before December 31, 2023, deletes or extends that  
24 date.

25 *SEC. 2. Section 65583.2 of the Government Code, as added*  
26 *by Chapter 875 of the Statutes of 2014, is amended to read:*

27 65583.2. (a) (1) A city’s or county’s inventory of land suitable  
28 for residential development pursuant to paragraph (3) of  
29 subdivision (a) of Section 65583 shall be used to identify sites that  
30 can be developed for housing within the planning period and that  
31 are sufficient to provide for the jurisdiction’s share of the regional  
32 housing need for all income levels pursuant to Section 65584. As  
33 used in this section, “land suitable for residential development”  
34 includes all of the following:

- 35 (1)
- 36 (A) Vacant sites zoned for residential use.
- 37 (2)
- 38 (B) Vacant sites zoned for nonresidential use that allows  
39 residential development.
- 40 (3)

1 (C) Residentially zoned sites that are capable of being developed  
2 at a higher density.

3 ~~(4)~~

4 (D) Sites zoned for nonresidential use that can be redeveloped  
5 for, and, as necessary, rezoned for, residential use.

6 (E) *Buildings owned or under the control of a city or a county,*  
7 *zoned for residential use and capable of having residential*  
8 *developments constructed above the existing building.*

9 (F) *Buildings owned or under the control of a city or a county*  
10 *and zoned for nonresidential use, that can be rezoned for*  
11 *residential use and are capable of having residential development*  
12 *constructed above the existing building.*

13 (G) *Underutilized sites zoned for residential use.*

14 (H) *Underutilized sites zoned for nonresidential use that allow*  
15 *residential development.*

16 (2) *For purposes of subparagraphs (G) and (H) of paragraph*  
17 *(1), “underutilized sites” means properties or portions of property*  
18 *that are used only at irregular periods or intermittently by the*  
19 *accountable agency of the local government or property that is*  
20 *being used for the accountable agency’s current program purposes*  
21 *that can be satisfied with only a portion of the property.*

22 (b) The inventory of land shall include all of the following:

23 (1) A listing of properties by parcel number or other unique  
24 reference.

25 (2) The size of each property listed pursuant to paragraph (1),  
26 and the general plan designation and zoning of each property.

27 (3) For nonvacant sites, a description of the existing use of each  
28 property.

29 (4) A general description of any environmental constraints to  
30 the development of housing within the jurisdiction, the  
31 documentation for which has been made available to the  
32 jurisdiction. This information need not be identified on a  
33 site-specific basis.

34 (5) A general description of existing or planned water, sewer,  
35 and other dry utilities supply, including the availability and access  
36 to distribution facilities. This information need not be identified  
37 on a site-specific basis.

38 (6) Sites identified as available for housing for above  
39 moderate-income households in areas not served by public sewer

1 systems. This information need not be identified on a site-specific  
2 basis.

3 (7) A map that shows the location of the sites included in the  
4 inventory, such as the land use map from the jurisdiction’s general  
5 plan for reference purposes only.

6 (c) Based on the information provided in subdivision (b), a city  
7 or county shall determine whether each site in the inventory can  
8 accommodate some portion of its share of the regional housing  
9 need by income level during the planning period, as determined  
10 pursuant to Section 65584. The analysis shall determine whether  
11 the inventory can provide for a variety of types of housing,  
12 including multifamily rental housing, factory-built housing,  
13 mobilehomes, housing for agricultural employees, emergency  
14 shelters, and transitional housing. The city or county shall  
15 determine the number of housing units that can be accommodated  
16 on each site as follows:

17 (1) If local law or regulations require the development of a site  
18 at a minimum density, the department shall accept the planning  
19 agency’s calculation of the total housing unit capacity on that site  
20 based on the established minimum density. If the city or county  
21 does not adopt a law or regulations requiring the development of  
22 a site at a minimum density, then it shall demonstrate how the  
23 number of units determined for that site pursuant to this subdivision  
24 will be accommodated.

25 (2) The number of units calculated pursuant to paragraph (1)  
26 shall be adjusted as necessary, based on the land use controls and  
27 site improvements requirement identified in paragraph (5) of  
28 subdivision (a) of Section 65583.

29 (3) For the number of units calculated to accommodate its share  
30 of the regional housing need for lower income households pursuant  
31 to paragraph (2), a city or county shall do either of the following:

32 (A) Provide an analysis demonstrating how the adopted densities  
33 accommodate this need. The analysis shall include, but is not  
34 limited to, factors such as market demand, financial feasibility, or  
35 information based on development project experience within a  
36 zone or zones that provide housing for lower income households.

37 (B) The following densities shall be deemed appropriate to  
38 accommodate housing for lower income households:

- 1 (i) For an incorporated city within a nonmetropolitan county  
2 and for a nonmetropolitan county that has a micropolitan area:  
3 sites allowing at least 15 units per acre.
- 4 (ii) For an unincorporated area in a nonmetropolitan county not  
5 included in clause (i): sites allowing at least 10 units per acre.
- 6 (iii) For a suburban jurisdiction: sites allowing at least 20 units  
7 per acre.
- 8 (iv) For a jurisdiction in a metropolitan county: sites allowing  
9 at least 30 units per acre.
- 10 (d) For purposes of this section, a metropolitan county,  
11 nonmetropolitan county, and nonmetropolitan county with a  
12 micropolitan area shall be as determined by the United States  
13 Census Bureau. A nonmetropolitan county with a micropolitan  
14 area includes the following counties: Del Norte, Humboldt, Lake,  
15 Mendocino, Nevada, Tehama, and Tuolumne and other counties  
16 as may be determined by the United States Census Bureau to be  
17 nonmetropolitan counties with micropolitan areas in the future.
- 18 (e) A jurisdiction shall be considered suburban if the jurisdiction  
19 does not meet the requirements of clauses (i) and (ii) of  
20 subparagraph (B) of paragraph (3) of subdivision (c) and is located  
21 in a Metropolitan Statistical Area (MSA) of less than 2,000,000  
22 in population, unless that jurisdiction's population is greater than  
23 100,000, in which case it shall be considered metropolitan. A  
24 county, not including the City and County of San Francisco, shall  
25 be considered suburban unless the county is in an MSA of  
26 2,000,000 or greater in population in which case the county shall  
27 be considered metropolitan.
- 28 (f) A jurisdiction shall be considered metropolitan if the  
29 jurisdiction does not meet the requirements for "suburban area"  
30 above and is located in an MSA of 2,000,000 or greater in  
31 population, unless that jurisdiction's population is less than 25,000  
32 in which case it shall be considered suburban.
- 33 (g) For sites described in paragraph (3) of subdivision (b), the  
34 city or county shall specify the additional development potential  
35 for each site within the planning period and shall provide an  
36 explanation of the methodology used to determine the development  
37 potential. The methodology shall consider factors including the  
38 extent to which existing uses may constitute an impediment to  
39 additional residential development, development trends, market

1 conditions, and regulatory or other incentives or standards to  
2 encourage additional residential development on these sites.

3 (h) The program required by subparagraph (A) of paragraph (1)  
4 of subdivision (c) of Section 65583 shall accommodate 100 percent  
5 of the need for housing for very low and low-income households  
6 allocated pursuant to Section 65584 for which site capacity has  
7 not been identified in the inventory of sites pursuant to paragraph  
8 (3) of subdivision (a) on sites that shall be zoned to permit  
9 owner-occupied and rental multifamily residential use by right  
10 during the planning period. These sites shall be zoned with  
11 minimum density and development standards that permit at least  
12 16 units per site at a density of at least 16 units per acre in  
13 jurisdictions described in clause (i) of subparagraph (B) of  
14 paragraph (3) of subdivision (c) and at least 20 units per acre in  
15 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)  
16 of paragraph (3) of subdivision (c). At least 50 percent of the very  
17 low and low-income housing need shall be accommodated on sites  
18 designated for residential use and for which nonresidential uses  
19 or mixed-uses are not permitted, except that a city or county may  
20 accommodate all of the very low and low-income housing need  
21 on sites designated for mixed uses if those sites allow 100 percent  
22 residential use and require that residential use occupy 50 percent  
23 of the total floor area of a mixed-use project.

24 (i) For purposes of this section and Section 65583, the phrase  
25 “use by right” shall mean that the local government’s review of  
26 the owner-occupied or multifamily residential use may not require  
27 a conditional use permit, planned unit development permit, or other  
28 discretionary local government review or approval that would  
29 constitute a “project” for purposes of Division 13 (commencing  
30 with Section 21000) of the Public Resources Code. Any subdivision  
31 of the sites shall be subject to all laws, including, but not limited  
32 to, the local government ordinance implementing the Subdivision  
33 Map Act. A local ordinance may provide that “use by right” does  
34 not exempt the use from design review. However, that design  
35 review shall not constitute a “project” for purposes of Division 13  
36 (commencing with Section 21000) of the Public Resources Code.  
37 Use by right for all rental multifamily residential housing shall be  
38 provided in accordance with subdivision (f) of Section 65589.5.

39 (j) This section shall become operative on December 31, 2023.

1     *SEC. 3. No reimbursement is required by this act pursuant to*  
2 *Section 6 of Article XIII B of the California Constitution because*  
3 *a local agency or school district has the authority to levy service*  
4 *charges, fees, or assessments sufficient to pay for the program or*  
5 *level of service mandated by this act, within the meaning of Section*  
6 *17556 of the Government Code.*

7     ~~SECTION 1. Section 15810 is added to the Government Code,~~  
8 ~~to read:~~

9     ~~15810. (a) Notwithstanding any law before constructing, which~~  
10 ~~includes seismic retrofitting, a public building with state funds,~~  
11 ~~the board shall sell the air rights above the public building to a~~  
12 ~~private or nonprofit developer to construct affordable housing~~  
13 ~~above the public building.~~

14     ~~(b) Notwithstanding any law, when state funds are used to~~  
15 ~~construct, including seismically retrofit, a public building, the~~  
16 ~~public works contract shall include provisions that require the~~  
17 ~~building to be constructed or retrofitted to accommodate additional~~  
18 ~~structures or levels that may be added by a private or nonprofit~~  
19 ~~developer to provide affordable housing.~~

20     ~~SEC. 2. Section 25351.7 is added to the Government Code, to~~  
21 ~~read:~~

22     ~~25351.7. (a) Notwithstanding any law before constructing,~~  
23 ~~which includes seismic retrofitting, a public building with state~~  
24 ~~funds, the board of supervisors shall sell the air rights above the~~  
25 ~~public building to a private or nonprofit developer to construct~~  
26 ~~affordable housing above the public building.~~

27     ~~(b) Notwithstanding any law, when state funds are used to~~  
28 ~~construct, including seismically retrofit, a public building, the~~  
29 ~~public works contract shall include provisions that require the~~  
30 ~~building to be constructed or retrofitted to accommodate additional~~  
31 ~~structures or levels that may be added by a private or nonprofit~~  
32 ~~developer to provide affordable housing.~~

33     ~~SEC. 3. If the Commission on State Mandates determines that~~  
34 ~~this act contains costs mandated by the state, reimbursement to~~  
35 ~~local agencies and school districts for those costs shall be made~~  
36 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
37 ~~4 of Title 2 of the Government Code.~~