

**ASSEMBLY BILL**

**No. 1449**

---

---

**Introduced by Assembly Member Saldana**

February 23, 2007

---

---

An act to amend Sections 65915 and 65917.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1449, as introduced, Saldana. Density bonus.

(1) The Planning and Zoning Law requires a city, county, or city and county to provide a housing developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within a development, if the developer proposes a housing development within the jurisdiction of the local government and meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would revise the eligibility requirements for construction of moderate- income housing units to conform to the requirements in existing law for low- and very low income housing units and would make changes in related provisions of existing law. Because the revision of eligibility requirements for moderate- income units would impose additional administrative requirements on local government, the bill would establish a state-mandated local program.

(2) 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.

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

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

1 SECTION 1. Section 65915 of the Government Code is  
2 amended to read:  
3 65915. (a) When an applicant seeks a density bonus for a  
4 housing development within, or for the donation of land for housing  
5 within, the jurisdiction of a city, county, or city and county, that  
6 local government shall provide the applicant incentives or  
7 concessions for the production of housing units and child care  
8 facilities as prescribed in this section. All cities, counties, or cities  
9 and counties shall adopt an ordinance that specifies how  
10 compliance with this section will be implemented.  
11 (b) (1) A city, county, or city and county shall grant one density  
12 bonus, the amount of which shall be as specified in subdivision  
13 (g), and incentives or concessions, as described in subdivision (d),  
14 when an applicant for a housing development seeks and agrees to  
15 construct a housing development, excluding any units permitted  
16 by the density bonus awarded pursuant to this section, that will  
17 contain at least any one of the following:  
18 (A) Ten percent of the total units of a housing development for  
19 lower income households, as defined in Section 50079.5 of the  
20 Health and Safety Code.  
21 (B) Five percent of the total units of a housing development for  
22 very low income households, as defined in Section 50105 of the  
23 Health and Safety Code.  
24 (C) A senior citizen housing development as defined in Sections  
25 51.3 and 51.12 of the Civil Code, or mobilehome park that limits  
26 residency based on age requirements for housing for older persons  
27 pursuant to Section 798.76 or 799.5 of the Civil Code.  
28 (D) Ten percent of the total dwelling units in a common interest  
29 development as defined in Section 1351 of the Civil Code for  
30 persons and families of moderate income, as defined in Section  
31 50093 of the Health and Safety Code, provided that all units in the  
32 development are offered to the public for purchase.  
33 (2) For purposes of calculating the amount of the density bonus  
34 pursuant to subdivision (f), the applicant who requests a density  
35 bonus pursuant to this subdivision shall elect whether the bonus

1 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)  
2 of paragraph (1).

3 (c) ~~(1)~~—An applicant shall agree to, and the city, county, or city  
4 and county shall ensure, continued affordability of all ~~low-and~~  
5 *moderate-, low-, and* very low income units that qualified the  
6 applicant for the award of the density bonus for 30 years or a longer  
7 period of time if required by the construction or mortgage financing  
8 assistance program, mortgage insurance program, or rental subsidy  
9 program. Rents for the lower income density bonus units shall be  
10 set at an affordable rent as defined in Section 50053 of the Health  
11 and Safety Code. Owner-occupied units shall be available at an  
12 affordable housing cost as defined in Section 50052.5 of the Health  
13 and Safety Code.

14 ~~(2)~~ An applicant shall agree to, and the city, county, or city and  
15 county shall ensure that, the initial occupant of the  
16 moderate-income units that are directly related to the receipt of  
17 the density bonus in the common interest development, as defined  
18 in Section 1351 of the Civil Code, are persons and families of  
19 moderate income, as defined in Section 50093 of the Health and  
20 Safety Code, and that the units are offered at an affordable housing  
21 cost, as that cost is defined in Section 50052.5 of the Health and  
22 Safety Code. The local government shall enforce an equity-sharing  
23 agreement, unless it is in conflict with the requirements of another  
24 public funding source or law. The following apply to the  
25 equity-sharing agreement:

26 (A) Upon resale, the seller of the unit shall retain the value of  
27 any improvements, the downpayment, and the seller's proportionate  
28 share of appreciation. The local government shall recapture any  
29 initial subsidy and its proportionate share of appreciation, which  
30 shall then be used within three years for any of the purposes  
31 described in subdivision (c) of Section 33334.2 of the Health and  
32 Safety Code that promote homeownership.

33 (B) For purposes of this subdivision, the local government's  
34 initial subsidy shall be equal to the fair market value of the home  
35 at the time of initial sale minus the initial sale price to the  
36 moderate-income household, plus the amount of any downpayment  
37 assistance or mortgage assistance. If upon resale the market value  
38 is lower than the initial market value, then the value at the time of  
39 the resale shall be used as the initial market value.

1     ~~(C) For purposes of this subdivision, the local government's~~  
2 ~~proportionate share of appreciation shall be equal to the ratio of~~  
3 ~~the initial subsidy to the fair market value of the home at the time~~  
4 ~~of initial sale.~~

5     (d) (1) An applicant for a density bonus pursuant to subdivision  
6 (b) may submit to a city, county, or city and county a proposal for  
7 the specific incentives or concessions that the applicant requests  
8 pursuant to this section, and may request a meeting with the city,  
9 county, or city and county. The city, county, or city and county  
10 shall grant the concession or incentive requested by the applicant  
11 unless the city, county, or city and county makes a written finding,  
12 based upon substantial evidence, of either of the following:

13     (A) The concession or incentive is not required in order to  
14 provide for affordable housing costs, as defined in Section 50052.5  
15 of the Health and Safety Code, or for rents for the targeted units  
16 to be set as specified in subdivision (c).

17     (B) The concession or incentive would have a specific adverse  
18 impact, as defined in paragraph (2) of subdivision (d) of Section  
19 65589.5, upon public health and safety or the physical environment  
20 or on any real property that is listed in the California Register of  
21 Historical Resources and for which there is no feasible method to  
22 satisfactorily mitigate or avoid the specific adverse impact without  
23 rendering the development unaffordable to low- and  
24 moderate-income households.

25     (2) The applicant shall receive the following number of  
26 incentives or concessions:

27     (A) One incentive or concession for projects that include at least  
28 10 percent of the total units for lower income households, at least  
29 5 percent for very low income households, or at least 10 percent  
30 for persons and families of moderate income in a common interest  
31 development.

32     (B) Two incentives or concessions for projects that include at  
33 least 20 percent of the total units for lower income households, at  
34 least 10 percent for very low income households, or at least 20  
35 percent for persons and families of moderate income in a common  
36 interest development.

37     (C) Three incentives or concessions for projects that include at  
38 least 30 percent of the total units for lower income households, at  
39 least 15 percent for very low income households, or at least 30

1 percent for persons and families of moderate income in a common  
2 interest development.

3 (3) The applicant may initiate judicial proceedings if the city,  
4 county, or city and county refuses to grant a requested density  
5 bonus, incentive, or concession. If a court finds that the refusal to  
6 grant a requested density bonus, incentive, or concession is in  
7 violation of this section, the court shall award the plaintiff  
8 reasonable attorney's fees and costs of suit. Nothing in this  
9 subdivision shall be interpreted to require a local government to  
10 grant an incentive or concession that has a specific, adverse impact,  
11 as defined in paragraph (2) of subdivision (d) of Section 65589.5,  
12 upon health, safety, or the physical environment, and for which  
13 there is no feasible method to satisfactorily mitigate or avoid the  
14 specific adverse impact. Nothing in this subdivision shall be  
15 interpreted to require a local government to grant an incentive or  
16 concession that would have an adverse impact on any real property  
17 that is listed in the California Register of Historical Resources.  
18 The city, county, or city and county shall establish procedures for  
19 carrying out this section, that shall include legislative body  
20 approval of the means of compliance with this section. The city,  
21 county, or city and county shall also establish procedures for  
22 waiving or modifying development and zoning standards that  
23 would otherwise inhibit the utilization of the density bonus on  
24 specific sites. These procedures shall include, but not be limited  
25 to, such items as minimum lot size, side yard setbacks, and  
26 placement of public works improvements.

27 (e) In no case may a city, county, or city and county apply any  
28 development standard that will have the effect of precluding the  
29 construction of a development meeting the criteria of subdivision  
30 (b) at the densities or with the concessions or incentives permitted  
31 by this section. An applicant may submit to a city, county, or city  
32 and county a proposal for the waiver or reduction of development  
33 standards and may request a meeting with the city, county, or city  
34 and county. If a court finds that the refusal to grant a waiver or  
35 reduction of development standards is in violation of this section,  
36 the court shall award the plaintiff reasonable attorney's fees and  
37 costs of suit. Nothing in this subdivision shall be interpreted to  
38 require a local government to waive or reduce development  
39 standards if the waiver or reduction would have a specific, adverse  
40 impact, as defined in paragraph (2) of subdivision (d) of Section

1 65589.5, upon health, safety, or the physical environment, and for  
2 which there is no feasible method to satisfactorily mitigate or avoid  
3 the specific adverse impact. Nothing in this subdivision shall be  
4 interpreted to require a local government to waive or reduce  
5 development standards that would have an adverse impact on any  
6 real property that is listed in the California Register of Historical  
7 Resources.

8 (f) The applicant shall show that the waiver or modification is  
9 necessary to make the housing units economically feasible.

10 (g) For the purposes of this chapter, “density bonus” means a  
11 density increase over the otherwise maximum allowable residential  
12 density under the applicable zoning ordinance and land use element  
13 of the general plan as of the date of application by the applicant  
14 to the city, county, or city and county. The applicant may elect to  
15 accept a lesser percentage of density bonus. The amount of density  
16 bonus to which the applicant is entitled shall vary according to the  
17 amount by which the percentage of affordable housing units  
18 exceeds the percentage established in subdivision (b).

19 (1) For housing developments meeting the criteria of  
20 subparagraph (A) of paragraph (1) of subdivision (b), the density  
21 bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

34  
35 (2) For housing developments meeting the criteria of  
36 subparagraph (B) of paragraph (1) of subdivision (b), the density  
37 bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20

	Percentage Very Low Income Units	Percentage Density Bonus
1		
2	6	22.5
3	7	25
4	8	27.5
5	9	30
6	10	32.5
7	11	35
8		

9 (3) For housing developments meeting the criteria of  
10 subparagraph (C) of paragraph (1) of subdivision (b), the density  
11 bonus shall be 20 percent.

12 (4) For housing developments meeting the criteria of  
13 subparagraph (D) of paragraph (1) of subdivision (b), the density  
14 bonus shall be calculated as follows:

	Percentage Moderate-Income Units	Percentage Density Bonus
15		
16		
17	10	5
18	11	6
19	12	7
20	13	8
21	14	9
22	15	10
23	16	11
24	17	12
25	18	13
26	19	14
27	20	15
28	21	16
29	22	17
30	23	18
31	24	19
32	25	20
33	26	21
34	27	22
35	28	23
36	29	24
37	30	25
38	31	26
39	32	27
40	33	28

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	34	29
3	35	30
4	36	31
5	37	32
6	38	33
7	39	34
8	40	35
9		

10 (5) All density calculations resulting in fractional units shall be  
 11 rounded up to the next whole number. The granting of a density  
 12 bonus shall not be interpreted, in and of itself, to require a general  
 13 plan amendment, local coastal plan amendment, zoning change,  
 14 or other discretionary approval. As used in subdivision (b), “total  
 15 units” or “total dwelling units” does not include units permitted  
 16 by a density bonus awarded pursuant to this section or any local  
 17 law granting a greater density bonus. The density bonus provided  
 18 by this section shall apply to housing developments consisting of  
 19 five or more dwelling units.

20 (h) (1) When an applicant for a tentative subdivision map,  
 21 parcel map, or other residential development approval donates  
 22 land to a city, county, or city and county as provided for in this  
 23 subdivision, the applicant shall be entitled to a 15-percent increase  
 24 above the otherwise maximum allowable residential density ~~under~~  
 25 ~~the applicable zoning ordinance and land use element of the general~~  
 26 ~~plan~~ for the entire development, as follows:

	Percentage Very Low Income	Percentage Density Bonus
27		
28		
29	10	15
30	11	16
31	12	17
32	13	18
33	14	19
34	15	20
35	16	21
36	17	22
37	18	23
38	19	24
39	20	25
40	21	26

	Percentage Very Low Income	Percentage Density Bonus
1		
2	22	27
3	23	28
4	24	29
5	25	30
6	26	31
7	27	32
8	28	33
9	29	34
10	30	35

11

12 (2) This increase shall be in addition to any increase in density  
13 mandated by subdivision (b), up to a maximum combined mandated  
14 density increase of 35 percent if an applicant seeks both the  
15 increase required pursuant to this subdivision and subdivision (b).  
16 All density calculations resulting in fractional units shall be  
17 rounded up to the next whole number. Nothing in this subdivision  
18 shall be construed to enlarge or diminish the authority of a city,  
19 county, or city and county to require a developer to donate land  
20 as a condition of development. An applicant shall be eligible for  
21 the increased density bonus described in this subdivision if all of  
22 the following conditions are met:

23 (A) The applicant donates and transfers the land no later than  
24 the date of approval of the final subdivision map, parcel map, or  
25 residential development application.

26 (B) The developable acreage and zoning classification of the  
27 land being transferred are sufficient to permit construction of units  
28 affordable to very low income households in an amount not less  
29 than 10 percent of the number of residential units of the proposed  
30 development.

31 (C) The transferred land is at least one acre in size or of  
32 sufficient size to permit development of at least 40 units, has the  
33 appropriate general plan designation, is appropriately zoned for  
34 development as affordable housing, and is or will be served by  
35 adequate public facilities and infrastructure. The land shall have  
36 appropriate zoning and development standards to make the  
37 development of the affordable units feasible. No later than the date  
38 of approval of the final subdivision map, parcel map, or of the  
39 residential development, the transferred land shall have all of the  
40 permits and approvals, other than building permits, necessary for

1 the development of the very low income housing units on the  
2 transferred land, except that the local government may subject the  
3 proposed development to subsequent design review to the extent  
4 authorized by subdivision (i) of Section 65583.2 if the design is  
5 not reviewed by the local government prior to the time of transfer.

6 (D) The transferred land and the affordable units shall be subject  
7 to a deed restriction ensuring continued affordability of the units  
8 consistent with paragraphs (1) and (2) of subdivision (c), which  
9 shall be recorded on the property at the time of dedication.

10 (E) The land is transferred to the local agency or to a housing  
11 developer approved by the local agency. The local agency may  
12 require the applicant to identify and transfer the land to the  
13 developer.

14 (F) The transferred land shall be within the boundary of the  
15 proposed development or, if the local agency agrees, within  
16 one-quarter mile of the boundary of the proposed development.

17 (i) (1) When an applicant proposes to construct a housing  
18 development that conforms to the requirements of subdivision (b)  
19 and includes a child care facility that will be located on the  
20 premises of, as part of, or adjacent to, the project, the city, county,  
21 or city and county shall grant either of the following:

22 (A) An additional density bonus that is an amount of square  
23 feet of residential space that is equal to or greater than the amount  
24 of square feet in the child care facility.

25 (B) An additional concession or incentive that contributes  
26 significantly to the economic feasibility of the construction of the  
27 child care facility.

28 (2) The city, county, or city and county shall require, as a  
29 condition of approving the housing development, that the following  
30 occur:

31 (A) The child care facility shall remain in operation for a period  
32 of time that is as long as or longer than the period of time during  
33 which the density bonus units are required to remain affordable  
34 pursuant to subdivision (c).

35 (B) Of the children who attend the child care facility, the  
36 children of very low income households, lower income households,  
37 or families of moderate income shall equal a percentage that is  
38 equal to or greater than the percentage of dwelling units that are  
39 required for very low income households, lower income

1 households, or families of moderate income pursuant to subdivision  
2 (b).

3 (3) Notwithstanding any requirement of this subdivision, a city,  
4 county, or a city and county shall not be required to provide a  
5 density bonus or concession for a child care facility if it finds,  
6 based upon substantial evidence, that the community has adequate  
7 child care facilities.

8 (4) “Child care facility,” as used in this section, means a child  
9 day care facility other than a family day care home, including, but  
10 not limited to, infant centers, preschools, extended day care  
11 facilities, and schoolage child care centers.

12 (j) “Housing development,” as used in this section, means one  
13 or more groups of projects for residential units constructed in the  
14 planned development of a city, county, or city and county. For the  
15 purposes of this section, “housing development” also includes a  
16 subdivision or common interest development, as defined in Section  
17 1351 of the Civil Code, approved by a city, county, or city and  
18 county and consists of residential units or unimproved residential  
19 lots and either a project to substantially rehabilitate and convert  
20 an existing commercial building to residential use or the substantial  
21 rehabilitation of an existing multifamily dwelling, as defined in  
22 subdivision (d) of Section 65863.4, where the result of the  
23 rehabilitation would be a net increase in available residential units.  
24 For the purpose of calculating a density bonus, the residential units  
25 do not have to be based upon individual subdivision maps or  
26 parcels. The density bonus shall be permitted in geographic areas  
27 of the housing development other than the areas where the units  
28 for the lower income households are located.

29 (k) The granting of a concession or incentive shall not be  
30 interpreted, in and of itself, to require a general plan amendment,  
31 local coastal plan amendment, zoning change, or other discretionary  
32 approval. This provision is declaratory of existing law.

33 (l) For the purposes of this chapter, concession or incentive  
34 means any of the following:

35 (1) A reduction in site development standards or a modification  
36 of zoning code requirements or architectural design requirements  
37 that exceed the minimum building standards approved by the  
38 California Building Standards Commission as provided in Part 2.5  
39 (commencing with Section 18901) of Division 13 of the Health  
40 and Safety Code, including, but not limited to, a reduction in

1 setback and square footage requirements and in the ratio of  
2 vehicular parking spaces that would otherwise be required that  
3 results in identifiable, financially sufficient, and actual cost  
4 reductions.

5 (2) Approval of mixed use zoning in conjunction with the  
6 housing project if commercial, office, industrial, or other land uses  
7 will reduce the cost of the housing development and if the  
8 commercial, office, industrial, or other land uses are compatible  
9 with the housing project and the existing or planned development  
10 in the area where the proposed housing project will be located.

11 (3) Other regulatory incentives or concessions proposed by the  
12 developer or the city, county, or city and county that result in  
13 identifiable, financially sufficient, and actual cost reductions.

14 This subdivision does not limit or require the provision of direct  
15 financial incentives for the housing development, including the  
16 provision of publicly owned land, by the city, county, or city and  
17 county, or the waiver of fees or dedication requirements.

18 (m) Nothing in this section shall be construed to supersede or  
19 in any way alter or lessen the effect or application of the California  
20 Coastal Act (Division 20 (commencing with Section 30000) of  
21 the Public Resources Code.

22 (n) Nothing in this section shall be construed to prohibit a city,  
23 county, or city and county from granting a density bonus greater  
24 than what is described in this section for a development that meets  
25 the requirements of this section or from granting a proportionately  
26 lower density bonus than what is required by this section for  
27 developments that do not meet the requirements of this section.  
28 *Nothing in this section shall be construed to require a city, county,*  
29 *or city and county to grant waivers, modifications, incentives, or*  
30 *concessions, unless the applicant requests a density bonus.*

31 (o) For purposes of this section, the following definitions shall  
32 apply:

33 (1) “Development standard” includes site or construction  
34 conditions that apply to a residential development pursuant to any  
35 ordinance, general plan element, specific plan, charter amendment,  
36 or other local condition, law, policy, resolution, or regulation.

37 (2) “Maximum allowable residential density” means the density  
38 allowed under the zoning ordinance, or if a range of density is  
39 permitted, means the maximum allowable density for the specific  
40 zoning range applicable to the project.

1 (p) (1) Upon the request of the developer, no city, county, or  
2 city and county shall require a vehicular parking ratio, inclusive  
3 of handicapped and guest parking, of a development meeting the  
4 criteria of subdivision (b), that exceeds the following ratios:

5 (A) Zero to one bedrooms: one onsite parking space.

6 (B) Two to three bedrooms: two onsite parking spaces.

7 (C) Four and more bedrooms: two and one-half parking spaces.

8 (2) If the total number of parking spaces required for a  
9 development is other than a whole number, the number shall be  
10 rounded up to the next whole number. For purposes of this  
11 subdivision, a development may provide “onsite parking” through  
12 tandem parking or uncovered parking, but not through onstreet  
13 parking.

14 (3) This subdivision shall apply to a development that meets  
15 the requirements of subdivision (b) but only at the request of the  
16 applicant. An applicant may request additional parking incentives  
17 or concessions beyond those provided in this section, subject to  
18 subdivision (d).

19 (q) *No density bonus is required to be granted if the zoning*  
20 *ordinance does not specify a maximum density.*

21 SEC. 2. Section 65917.5 of the Government Code is amended  
22 to read:

23 65917.5. (a) As used in this section, the following terms shall  
24 have the following meanings:

25 (1) “Child care facility” means a facility installed, operated, and  
26 maintained under this section for the nonresidential care of children  
27 as defined under applicable state licensing requirements for the  
28 facility.

29 (2) “Density bonus” means a floor area ratio bonus over the  
30 otherwise maximum allowable density ~~permitted under the~~  
31 ~~applicable zoning ordinance and land use elements of the general~~  
32 ~~plan of a city, including a charter city, city and county, or county,~~  
33 *as defined in paragraph (2) of subdivision (o) of Section 65915,*  
34 of:

35 (A) A maximum of five square feet of floor area for each one  
36 square foot of floor area contained in the child care facility for  
37 existing structures.

38 (B) A maximum of 10 square feet of floor area for each one  
39 square foot of floor area contained in the child care facility for  
40 new structures.

1 For purposes of calculating the density bonus under this section,  
2 both indoor and outdoor square footage requirements for the child  
3 care facility as set forth in applicable state child care licensing  
4 requirements shall be included in the floor area of the child care  
5 facility.

6 (3) “Developer” means the owner or other person, including a  
7 lessee, having the right under the applicable zoning ordinance of  
8 a city council, including a charter city council, city and county  
9 board of supervisors, or county board of supervisors to make  
10 application for development approvals for the development or  
11 redevelopment of a commercial or industrial project.

12 (4) “Floor area” means as to a commercial or industrial project,  
13 the floor area as calculated under the applicable zoning ordinance  
14 of a city council, including a charter city council, city and county  
15 board of supervisors, or county board of supervisors and as to a  
16 child care facility, the total area contained within the exterior walls  
17 of the facility and all outdoor areas devoted to the use of the facility  
18 in accordance with applicable state child care licensing  
19 requirements.

20 (b) A city council, including a charter city council, city and  
21 county board of supervisors, or county board of supervisors may  
22 establish a procedure by ordinance to grant a developer of a  
23 commercial or industrial project, containing at least 50,000 square  
24 feet of floor area, a density bonus when that developer has set aside  
25 at least 2,000 square feet of floor area and 3,000 outdoor square  
26 feet to be used for a child care facility. The granting of a bonus  
27 shall not preclude a city council, including a charter city council,  
28 city and county board of supervisors, or county board of  
29 supervisors from imposing necessary conditions on the project or  
30 on the additional square footage. Projects constructed under this  
31 section shall conform to height, setback, lot coverage, architectural  
32 review, site plan review, fees, charges, and other health, safety,  
33 and zoning requirements generally applicable to construction in  
34 the zone in which the property is located. A consortium with more  
35 than one developer may be permitted to achieve the threshold  
36 amount for the available density bonus with each developer’s  
37 density bonus equal to the percentage participation of the  
38 developer. This facility may be located on the project site or may  
39 be located offsite as agreed upon by the developer and local agency.  
40 If the child care facility is not located on the site of the project,

1 the local agency shall determine whether the location of the child  
2 care facility is appropriate and whether it conforms with the intent  
3 of this section. The child care facility shall be of a size to comply  
4 with all state licensing requirements in order to accommodate at  
5 least 40 children.

6 (c) The developer may operate the child care facility itself or  
7 may contract with a licensed child care provider to operate the  
8 facility. In all cases, the developer shall show ongoing coordination  
9 with a local child care resource and referral network or local  
10 governmental child care coordinator in order to qualify for the  
11 density bonus.

12 (d) If the developer uses space allocated for child care facility  
13 purposes, in accordance with subdivision (b), for any purposes  
14 other than for a child care facility, an assessment based on the  
15 square footage of the project may be levied and collected by the  
16 city council, including a charter city council, city and county board  
17 of supervisors, or county board of supervisors. The assessment  
18 shall be consistent with the market value of the space. If the  
19 developer fails to have the space allocated for the child care facility  
20 within three years, from the date upon which the first temporary  
21 certificate of occupancy is granted, an assessment based on the  
22 square footage of the project may be levied and collected by the  
23 city council, including a charter city council, city and county board  
24 of supervisors, or county board of supervisors in accordance with  
25 procedures to be developed by the legislative body of the city  
26 council, including a charter city council, city and county board of  
27 supervisors, or county board of supervisors. The assessment shall  
28 be consistent with the market value of the space. Any penalty  
29 levied against a consortium of developers shall be charged to each  
30 developer in an amount equal to the developer's percentage square  
31 feet participation. Funds collected pursuant to this subdivision  
32 shall be deposited by the city council, including a charter city  
33 council, city and county board of supervisors, or county board of  
34 supervisors into a special account to be used for childcare services  
35 or child care facilities.

36 (e) Once the child care facility has been established, prior to  
37 the closure, change in use, or reduction in the physical size of, the  
38 facility, the city, city council, including a charter city council, city  
39 and county board of supervisors, or county board of supervisors  
40 shall be required to make a finding that the need for child care is

1 no longer present, or is not present to the same degree as it was at  
2 the time the facility was established.

3 (f) The requirements of Chapter 5 (commencing with Section  
4 66000) and of the amendments made to Sections 53077, 54997,  
5 and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply  
6 to actions taken in accordance with this section.

7 (g) This section shall not apply to a voter-approved ordinance  
8 adopted by referendum or initiative.

9 SEC. 3. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 a local agency or school district has the authority to levy service  
12 charges, fees, or assessments sufficient to pay for the program or  
13 level of service mandated by this act, within the meaning of Section  
14 17556 of the Government Code.