

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 305**

**Introduced by Assembly Member Mullin**

February 6, 2003

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An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Mullin. Density bonuses: child care facilities.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements.

This bill would also ~~require~~ *grant an additional density bonus, concession, or incentive to* a developer of housing ~~to make adequate provision for that includes a child care facilities facility as part of his or her proposal, except as specified.~~

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

*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:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to make adequate provision for child care facilities and to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c). *The city, county, or city and county shall grant an additional density bonus, concession, or incentive required by this subdivision to an applicant entitled to a density bonus, or any other incentives or concessions pursuant to this section if the applicant includes a child care facility as part of the proposed housing development, unless the city, county, or city and county makes a*

1 *written finding, based upon substantial evidence, that the existing*  
2 *area has adequate child care facilities.*

3 (c) (1) An applicant shall agree to, and the city, county, or city  
4 and county shall ensure, continued affordability of all lower  
5 income density bonus units for 30 years or a longer period of time  
6 if required by the construction or mortgage financing assistance  
7 program, mortgage insurance program, or rental subsidy program.  
8 Those units targeted for lower income households, as defined in  
9 Section 50079.5 of the Health and Safety Code, shall be affordable  
10 at a rent that does not exceed 30 percent of 60 percent of area  
11 median income. Those units targeted for very low income  
12 households, as defined in Section 50105 of the Health and Safety  
13 Code, shall be affordable at a rent that does not exceed 30 percent  
14 of 50 percent of area median income.

15 (2) An applicant shall agree to, and the city, county, or city and  
16 county shall ensure, continued affordability of the  
17 moderate-income units that are directly related to the receipt of the  
18 density bonus for 10 years if the housing is in a condominium  
19 project as defined in subdivision (f) of Section 1351 of the Civil  
20 Code.

21 (d) An applicant may submit to a city, county, or city and  
22 county a proposal for the specific incentives or concessions that the  
23 applicant requests pursuant to this section, and may request a  
24 meeting with the city, county, or city and county. The city, county,  
25 or city and county shall grant the concession or incentive requested  
26 by the applicant unless the city, county, or city and county makes  
27 a written finding, based upon substantial evidence, of either of the  
28 following:

29 (1) The concession or incentive is not required in order to  
30 provide for affordable housing costs, as defined in Section  
31 50052.5 of the Health and Safety Code, or for rents for the targeted  
32 units to be set as specified in subdivision (c).

33 (2) The concession or incentive would have a specific adverse  
34 impact, as defined in paragraph (2) of subdivision (d) of Section  
35 65589.5, upon public health and safety or the physical  
36 environment or on any real property that is listed in the California  
37 Register of Historical Resources and for which there is no feasible  
38 method to satisfactorily mitigate or avoid the specific adverse  
39 impact without rendering the development unaffordable to low-  
40 and moderate-income households.

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

25 (e) In no case may a city, county, or city and county apply any  
26 development standard that will have the effect of precluding the  
27 construction of a development meeting the criteria of subdivision  
28 (b) at the densities or with the concessions or incentives permitted  
29 by this section. An applicant may submit to a city, county, or city  
30 and county a proposal for the waiver or reduction of development  
31 standards and may request a meeting with the city, county, or city  
32 and county. If a court finds that the refusal to grant a waiver or  
33 reduction of development standards is in violation of this section,  
34 the court shall award the plaintiff reasonable attorney's fees and  
35 costs of suit. Nothing in this subdivision shall be interpreted to  
36 require a local government to waive or reduce development  
37 standards if the waiver or reduction would have a specific, adverse  
38 impact, as defined in paragraph (2) of subdivision (d) of Section  
39 65589.5, upon health, safety, or the physical environment, and for  
40 which there is no feasible method to satisfactorily mitigate or



1 avoid the specific adverse impact. Nothing in this subdivision shall  
2 be interpreted to require a local government to waive or reduce  
3 development standards that would have an adverse impact on any  
4 real property that is listed in the California Register of Historical  
5 Resources.

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

8 (g) (1) For the purposes of this chapter, except as provided in  
9 paragraph (2), “density bonus” means a density increase of at least  
10 25 percent, unless a lesser percentage is elected by the applicant,  
11 over the otherwise maximum allowable residential density under  
12 the applicable zoning ordinance and land use element of the  
13 general plan as of the date of application by the applicant to the  
14 city, county, or city and county. All density calculations resulting  
15 in fractional units shall be rounded up to the next whole number.  
16 The granting of a density bonus shall not be interpreted, in and of  
17 itself, to require a general plan amendment, local coastal plan  
18 amendment, zoning change, or other discretionary approval. The  
19 density bonus shall not be included when determining the number  
20 of housing units which is equal to 10, 20, or 50 percent of the total.  
21 The density bonus shall apply to housing developments consisting  
22 of five or more dwelling units.

23 (2) For the purposes of this chapter, if a development does not  
24 meet the requirements of paragraph (1), (2), or (3) of subdivision  
25 (b), but the applicant agrees or proposes to construct a  
26 condominium project as defined in subdivision (f) of Section 1351  
27 of the Civil Code, in which at least 20 percent of the total dwelling  
28 units are reserved for persons and families of moderate income, as  
29 defined in Section 50093 of the Health and Safety Code, a “density  
30 bonus” of at least 10 percent shall be granted, unless a lesser  
31 percentage is elected by the applicant, over the otherwise  
32 maximum allowable residential density under the applicable  
33 zoning ordinance and land use element of the general plan as of the  
34 date of application by the applicant to the city, county, or city and  
35 county. All density calculations resulting in fractional units shall  
36 be rounded up to the next whole number. The granting of a density  
37 bonus shall not be interpreted, in and of itself, to require a general  
38 plan amendment, local coastal plan amendment, zoning change, or  
39 other discretionary approval. The density bonus shall not be  
40 included when determining the number of housing units which is

1 equal to 20 percent of the total. The density bonus shall apply to  
2 housing developments consisting of five or more dwelling units.

3 (h) “Child care facility,” as used in this section, means a  
4 facility operated and maintained under this section for the  
5 residential care of children as defined under applicable state  
6 licensing requirements for the facility.

7 (i) “Housing development,” as used in this section, means one  
8 or more groups of projects for residential units constructed in the  
9 planned development of a city, county, or city and county. For the  
10 purposes of this section, “housing development” also includes  
11 either (1) a project to substantially rehabilitate and convert an  
12 existing commercial building to residential use, or (2) the  
13 substantial rehabilitation of an existing multifamily dwelling, as  
14 defined in subdivision (d) of Section 65863.4, where the result of  
15 the rehabilitation would be a net increase in available residential  
16 units. For the purpose of calculating a density bonus, the  
17 residential units do not have to be based upon individual  
18 subdivision maps or parcels. The density bonus shall be permitted  
19 in geographic areas of the housing development other than the  
20 areas where the units for the lower income households are located.

21 (j) The granting of a concession or incentive shall not be  
22 interpreted, in and of itself, to require a general plan amendment,  
23 local coastal plan amendment, zoning change, or other  
24 discretionary approval. This provision is declaratory of existing  
25 law.

26 (k) For the purposes of this chapter, concession or incentive  
27 means any of the following:

28 (1) A reduction in site development standards or a modification  
29 of zoning code requirements or architectural design requirements  
30 that exceed the minimum building standards approved by the  
31 California Building Standards Commission as provided in Part 2.5  
32 (commencing with Section 18901) of Division 13 of the Health  
33 and Safety Code, including, but not limited to, a reduction in  
34 setback and square footage requirements and in the ratio of  
35 vehicular parking spaces that would otherwise be required.

36 (2) Approval of mixed use zoning in conjunction with the  
37 housing project if commercial, office, industrial, or other land uses  
38 will reduce the cost of the housing development and if the  
39 commercial, office, industrial, or other land uses are compatible

1 with the housing project and the existing or planned development  
2 in the area where the proposed housing project will be located.

3 (3) Other regulatory incentives or concessions proposed by the  
4 developer or the city, county, or city and county that result in  
5 identifiable and actual cost reductions.

6 This subdivision does not limit or require the provision of direct  
7 financial incentives for the housing development, including the  
8 provision of publicly owned land, by the city, county, or city and  
9 county, or the waiver of fees or dedication requirements.

10 (l) If an applicant agrees to construct both 20 percent of the total  
11 units for lower income households and 10 percent of the total units  
12 for very low income households, the developer is entitled to only  
13 one density bonus and at least one additional concession or  
14 incentive identified in Section 65913.4 under this section although  
15 the city, ~~city and county, or~~ county, or city and county may, at its  
16 discretion, grant more than one density bonus.

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

21 (n) A local agency may charge a fee to reimburse it for costs it  
22 incurs as a result of amendments to this section enacted during the  
23 2001–02 Regular Session of the Legislature.

24 (o) For purposes of this section, the following definitions shall  
25 apply:

26 (1) “Development standard” means any ordinance, general  
27 plan element, specific plan, charter amendment, or other local  
28 condition, law, policy, resolution, or regulation.

29 (2) “Maximum allowable residential density” means the  
30 density allowed under the zoning ordinance, or if a range of  
31 density is permitted, means the maximum allowable density for  
32 the specific zoning range applicable to the project.

