

**ASSEMBLY BILL**

**No. 1403**

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**Introduced by Assembly Member Maienschein**

February 27, 2015

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An act to amend Sections 65582 and 65583 of, and to add Section 6538 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1403, as introduced, Maienschein. Housing: joint powers agreement.

The Joint Exercise of Powers Act authorizes 2 or more public agencies to enter into an agreement to jointly exercise any power common to the contracting parties.

This bill would provide that, notwithstanding any other provision of the act, a private, nonprofit corporation that provides services to homeless persons or for the prevention of homelessness may enter into a joint powers agreement with a public agency for the sole purpose of providing frequent user coordinated care housing services, defined by to mean housing combined with other supportive services, as defined, for homeless persons identified by a city or county as the most costly, frequent users of publicly funded emergency services.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development that includes, among other things, a housing element. A housing element is required to include an analysis of any special housing needs.

This bill would provide that the analysis of special housing needs by a city or county may include an analysis of the need for frequent user coordinated care housing services.

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 6538 is added to the Government Code,  
2 to read:  
3 6538. Notwithstanding any other provision of this chapter, a  
4 private, nonprofit corporation that is organized pursuant to Section  
5 501(c)(3) of the Internal Revenue Code and provides services to  
6 homeless persons or for the prevention of homelessness may enter  
7 into a joint powers agreement with a public agency for the sole  
8 purpose of providing frequent user coordinated care housing  
9 services. The agency formed pursuant to this joint powers  
10 agreement shall be deemed a public entity, as described in Section  
11 6507, except that, notwithstanding any other provision of law, the  
12 agency shall not have any power to incur debt.

13 SEC. 2. Section 65582 of the Government Code is amended  
14 to read:  
15 65582. As used in this article, the following definitions apply:  
16 (a) “Community,” “locality,” “local government,” or  
17 “jurisdiction” means a city, city and county, or county.  
18 (b) “Council of governments” means a single or multicounty  
19 council created by a joint powers agreement pursuant to Chapter  
20 5 (commencing with Section 6500) of Division 1 of Title 1.  
21 (c) “Department” means the Department of Housing and  
22 Community Development.  
23 (d) “Emergency shelter” has the same meaning as defined in  
24 subdivision (e) of Section 50801 of the Health and Safety Code.  
25 (e) *“Frequent user coordinated care housing services” means*  
26 *housing combined with other supportive services for homeless*  
27 *persons identified by a city or county as the most costly, frequent*  
28 *users of publicly funded emergency services.*  
29 (e)  
30 (f) “Housing element” or “element” means the housing element  
31 of the community’s general plan, as required pursuant to this article  
32 and subdivision (c) of Section 65302.  
33 (f)  
34 (g) “Supportive housing” means housing with no limit on length  
35 of stay, that is occupied by the target population, and that is linked

1 to an onsite or offsite service that assists the supportive housing  
2 resident in retaining the housing, improving his or her health status,  
3 and maximizing his or her ability to live and, when possible, work  
4 in the community.

5 (h) *“Supportive services” include, but are not limited to, a*  
6 *combination of subsidized, permanent housing, intensive case*  
7 *management, medical and mental health care, substance abuse*  
8 *treatment, employment services, and benefits advocacy.*

9 ~~(g)~~

10 (i) “Target population” means persons with low incomes who  
11 have one or more disabilities, including mental illness, HIV or  
12 AIDS, substance abuse, or other chronic health condition, or  
13 individuals eligible for services provided pursuant to the Lanterman  
14 Developmental Disabilities Services Act (Division 4.5  
15 (commencing with Section 4500) of the Welfare and Institutions  
16 Code) and may include, among other populations, adults,  
17 emancipated minors, families with children, elderly persons, young  
18 adults aging out of the foster care system, individuals exiting from  
19 institutional settings, veterans, and homeless people.

20 ~~(h)~~

21 (j) “Transitional housing” means buildings configured as rental  
22 housing developments, but operated under program requirements  
23 that require the termination of assistance and recirculating of the  
24 assisted unit to another eligible program recipient at a  
25 predetermined future point in time that shall be no less than six  
26 months from the beginning of the assistance.

27 SEC. 3. Section 65583 of the Government Code is amended  
28 to read:

29 65583. The housing element shall consist of an identification  
30 and analysis of existing and projected housing needs and a  
31 statement of goals, policies, quantified objectives, financial  
32 resources, and scheduled programs for the preservation,  
33 improvement, and development of housing. The housing element  
34 shall identify adequate sites for housing, including rental housing,  
35 factory-built housing, mobilehomes, and emergency shelters, and  
36 shall make adequate provision for the existing and projected needs  
37 of all economic segments of the community. The element shall  
38 contain all of the following:

1 (a) An assessment of housing needs and an inventory of  
2 resources and constraints relevant to the meeting of these needs.  
3 The assessment and inventory shall include all of the following:  
4 (1) An analysis of population and employment trends and  
5 documentation of projections and a quantification of the locality's  
6 existing and projected housing needs for all income levels,  
7 including extremely low income households, as defined in  
8 subdivision (b) of Section 50105 and Section 50106 of the Health  
9 and Safety Code. These existing and projected needs shall include  
10 the locality's share of the regional housing need in accordance  
11 with Section 65584. Local agencies shall calculate the subset of  
12 very low income households allotted under Section 65584 that  
13 qualify as extremely low income households. The local agency  
14 may either use available census data to calculate the percentage  
15 of very low income households that qualify as extremely low  
16 income households or presume that 50 percent of the very low  
17 income households qualify as extremely low income households.  
18 The number of extremely low income households and very low  
19 income households shall equal the jurisdiction's allocation of very  
20 low income households pursuant to Section 65584.  
21 (2) An analysis and documentation of household characteristics,  
22 including level of payment compared to ability to pay, housing  
23 characteristics, including overcrowding, and housing stock  
24 condition.  
25 (3) An inventory of land suitable for residential development,  
26 including vacant sites and sites having potential for redevelopment,  
27 and an analysis of the relationship of zoning and public facilities  
28 and services to these sites.  
29 (4) (A) The identification of a zone or zones where emergency  
30 shelters are allowed as a permitted use without a conditional use  
31 or other discretionary permit. The identified zone or zones shall  
32 include sufficient capacity to accommodate the need for emergency  
33 shelter identified in paragraph (7), except that each local  
34 government shall identify a zone or zones that can accommodate  
35 at least one year-round emergency shelter. If the local government  
36 cannot identify a zone or zones with sufficient capacity, the local  
37 government shall include a program to amend its zoning ordinance  
38 to meet the requirements of this paragraph within one year of the  
39 adoption of the housing element. The local government may  
40 identify additional zones where emergency shelters are permitted

1 with a conditional use permit. The local government shall also  
2 demonstrate that existing or proposed permit processing,  
3 development, and management standards are objective and  
4 encourage and facilitate the development of, or conversion to,  
5 emergency shelters. Emergency shelters may only be subject to  
6 those development and management standards that apply to  
7 residential or commercial development within the same zone except  
8 that a local government may apply written, objective standards  
9 that include all of the following:

10 (i) The maximum number of beds or persons permitted to be  
11 served nightly by the facility.

12 (ii) Off-street parking based upon demonstrated need, provided  
13 that the standards do not require more parking for emergency  
14 shelters than for other residential or commercial uses within the  
15 same zone.

16 (iii) The size and location of exterior and interior onsite waiting  
17 and client intake areas.

18 (iv) The provision of onsite management.

19 (v) The proximity to other emergency shelters, provided that  
20 emergency shelters are not required to be more than 300 feet apart.

21 (vi) The length of stay.

22 (vii) Lighting.

23 (viii) Security during hours that the emergency shelter is in  
24 operation.

25 (B) The permit processing, development, and management  
26 standards applied under this paragraph shall not be deemed to be  
27 discretionary acts within the meaning of the California  
28 Environmental Quality Act (Division 13 (commencing with Section  
29 21000) of the Public Resources Code).

30 (C) A local government that can demonstrate to the satisfaction  
31 of the department the existence of one or more emergency shelters  
32 either within its jurisdiction or pursuant to a multijurisdictional  
33 agreement that can accommodate that jurisdiction's need for  
34 emergency shelter identified in paragraph (7) may comply with  
35 the zoning requirements of subparagraph (A) by identifying a zone  
36 or zones where new emergency shelters are allowed with a  
37 conditional use permit.

38 (D) A local government with an existing ordinance or ordinances  
39 that comply with this paragraph shall not be required to take  
40 additional action to identify zones for emergency shelters. The

1 housing element must only describe how existing ordinances,  
2 policies, and standards are consistent with the requirements of this  
3 paragraph.

4 (5) An analysis of potential and actual governmental constraints  
5 upon the maintenance, improvement, or development of housing  
6 for all income levels, including the types of housing identified in  
7 paragraph (1) of subdivision (c), and for persons with disabilities  
8 as identified in the analysis pursuant to paragraph (7), including  
9 land use controls, building codes and their enforcement, site  
10 improvements, fees and other exactions required of developers,  
11 and local processing and permit procedures. The analysis shall  
12 also demonstrate local efforts to remove governmental constraints  
13 that hinder the locality from meeting its share of the regional  
14 housing need in accordance with Section 65584 and from meeting  
15 the need for housing for persons with disabilities, supportive  
16 housing, transitional housing, and emergency shelters identified  
17 pursuant to paragraph (7). Transitional housing and supportive  
18 housing shall be considered a residential use of property, and shall  
19 be subject only to those restrictions that apply to other residential  
20 dwellings of the same type in the same zone.

21 (6) An analysis of potential and actual nongovernmental  
22 constraints upon the maintenance, improvement, or development  
23 of housing for all income levels, including the availability of  
24 financing, the price of land, and the cost of construction.

25 (7) An analysis of any special housing needs, such as those of  
26 the elderly; persons with disabilities, including a developmental  
27 disability, as defined in Section 4512 of the Welfare and  
28 Institutions Code; large families; farmworkers; families with female  
29 heads of households; and families and persons in need of  
30 emergency shelter. The need for emergency shelter shall be  
31 assessed based on annual and seasonal need. The need for  
32 emergency shelter may be reduced by the number of supportive  
33 housing units that are identified in an adopted 10-year plan to end  
34 chronic homelessness and that are either vacant or for which  
35 funding has been identified to allow construction during the  
36 planning period. *An analysis of special housing needs by a city or*  
37 *county may include an analysis of the need for frequent user*  
38 *coordinated care housing services.*

39 (8) An analysis of opportunities for energy conservation with  
40 respect to residential development. Cities and counties are

1 encouraged to include weatherization and energy efficiency  
2 improvements as part of publicly subsidized housing rehabilitation  
3 projects. This may include energy efficiency measures that  
4 encompass the building envelope, its heating and cooling systems,  
5 and its electrical system.

6 (9) An analysis of existing assisted housing developments that  
7 are eligible to change from low-income housing uses during the  
8 next 10 years due to termination of subsidy contracts, mortgage  
9 prepayment, or expiration of restrictions on use. “Assisted housing  
10 developments,” for the purpose of this section, shall mean  
11 multifamily rental housing that receives governmental assistance  
12 under federal programs listed in subdivision (a) of Section  
13 65863.10, state and local multifamily revenue bond programs,  
14 local redevelopment programs, the federal Community  
15 Development Block Grant Program, or local in-lieu fees. “Assisted  
16 housing developments” shall also include multifamily rental units  
17 that were developed pursuant to a local inclusionary housing  
18 program or used to qualify for a density bonus pursuant to Section  
19 65916.

20 (A) The analysis shall include a listing of each development by  
21 project name and address, the type of governmental assistance  
22 received, the earliest possible date of change from low-income  
23 use, and the total number of elderly and nonelderly units that could  
24 be lost from the locality’s low-income housing stock in each year  
25 during the 10-year period. For purposes of state and federally  
26 funded projects, the analysis required by this subparagraph need  
27 only contain information available on a statewide basis.

28 (B) The analysis shall estimate the total cost of producing new  
29 rental housing that is comparable in size and rent levels, to replace  
30 the units that could change from low-income use, and an estimated  
31 cost of preserving the assisted housing developments. This cost  
32 analysis for replacement housing may be done aggregately for  
33 each five-year period and does not have to contain a  
34 project-by-project cost estimate.

35 (C) The analysis shall identify public and private nonprofit  
36 corporations known to the local government which have legal and  
37 managerial capacity to acquire and manage these housing  
38 developments.

39 (D) The analysis shall identify and consider the use of all federal,  
40 state, and local financing and subsidy programs which can be used

1 to preserve, for lower income households, the assisted housing  
2 developments, identified in this paragraph, including, but not  
3 limited to, federal Community Development Block Grant Program  
4 funds, tax increment funds received by a redevelopment agency  
5 of the community, and administrative fees received by a housing  
6 authority operating within the community. In considering the use  
7 of these financing and subsidy programs, the analysis shall identify  
8 the amounts of funds under each available program which have  
9 not been legally obligated for other purposes and which could be  
10 available for use in preserving assisted housing developments.

11 (b) (1) A statement of the community's goals, quantified  
12 objectives, and policies relative to the maintenance, preservation,  
13 improvement, and development of housing.

14 (2) It is recognized that the total housing needs identified  
15 pursuant to subdivision (a) may exceed available resources and  
16 the community's ability to satisfy this need within the content of  
17 the general plan requirements outlined in Article 5 (commencing  
18 with Section 65300). Under these circumstances, the quantified  
19 objectives need not be identical to the total housing needs. The  
20 quantified objectives shall establish the maximum number of  
21 housing units by income category, including extremely low income,  
22 that can be constructed, rehabilitated, and conserved over a  
23 five-year time period.

24 (c) A program which sets forth a schedule of actions during the  
25 planning period, each with a timeline for implementation, which  
26 may recognize that certain programs are ongoing, such that there  
27 will be beneficial impacts of the programs within the planning  
28 period, that the local government is undertaking or intends to  
29 undertake to implement the policies and achieve the goals and  
30 objectives of the housing element through the administration of  
31 land use and development controls, the provision of regulatory  
32 concessions and incentives, the utilization of appropriate federal  
33 and state financing and subsidy programs when available, and the  
34 utilization of moneys in a low- and moderate-income housing fund  
35 of an agency if the locality has established a redevelopment project  
36 area pursuant to the Community Redevelopment Law (Division  
37 24 (commencing with Section 33000) of the Health and Safety  
38 Code). In order to make adequate provision for the housing needs  
39 of all economic segments of the community, the program shall do  
40 all of the following:

1 (1) Identify actions that will be taken to make sites available  
2 during the planning period with appropriate zoning and  
3 development standards and with services and facilities to  
4 accommodate that portion of the city's or county's share of the  
5 regional housing need for each income level that could not be  
6 accommodated on sites identified in the inventory completed  
7 pursuant to paragraph (3) of subdivision (a) without rezoning, and  
8 to comply with the requirements of Section 65584.09. Sites shall  
9 be identified as needed to facilitate and encourage the development  
10 of a variety of types of housing for all income levels, including  
11 multifamily rental housing, factory-built housing, mobilehomes,  
12 housing for agricultural employees, supportive housing,  
13 single-room occupancy units, emergency shelters, and transitional  
14 housing.

15 (A) Where the inventory of sites, pursuant to paragraph (3) of  
16 subdivision (a), does not identify adequate sites to accommodate  
17 the need for groups of all household income levels pursuant to  
18 Section 65584, rezoning of those sites, including adoption of  
19 minimum density and development standards, for jurisdictions  
20 with an eight-year housing element planning period pursuant to  
21 Section 65588, shall be completed no later than three years after  
22 either the date the housing element is adopted pursuant to  
23 subdivision (f) of Section 65585 or the date that is 90 days after  
24 receipt of comments from the department pursuant to subdivision  
25 (b) of Section 65585, whichever is earlier, unless the deadline is  
26 extended pursuant to subdivision (f). Notwithstanding the  
27 foregoing, for a local government that fails to adopt a housing  
28 element within 120 days of the statutory deadline in Section 65588  
29 for adoption of the housing element, rezoning of those sites,  
30 including adoption of minimum density and development standards,  
31 shall be completed no later than three years and 120 days from the  
32 statutory deadline in Section 65588 for adoption of the housing  
33 element.

34 (B) Where the inventory of sites, pursuant to paragraph (3) of  
35 subdivision (a), does not identify adequate sites to accommodate  
36 the need for groups of all household income levels pursuant to  
37 Section 65584, the program shall identify sites that can be  
38 developed for housing within the planning period pursuant to  
39 subdivision (h) of Section 65583.2. The identification of sites shall

1 include all components specified in subdivision (b) of Section  
2 65583.2.

3 (C) Where the inventory of sites pursuant to paragraph (3) of  
4 subdivision (a) does not identify adequate sites to accommodate  
5 the need for farmworker housing, the program shall provide for  
6 sufficient sites to meet the need with zoning that permits  
7 farmworker housing use by right, including density and  
8 development standards that could accommodate and facilitate the  
9 feasibility of the development of farmworker housing for low- and  
10 very low income households.

11 (2) Assist in the development of adequate housing to meet the  
12 needs of extremely low, very low, low-, and moderate-income  
13 households.

14 (3) Address and, where appropriate and legally possible, remove  
15 governmental constraints to the maintenance, improvement, and  
16 development of housing, including housing for all income levels  
17 and housing for persons with disabilities. The program shall remove  
18 constraints to, and provide reasonable accommodations for housing  
19 designed for, intended for occupancy by, or with supportive  
20 services for, persons with disabilities.

21 (4) Conserve and improve the condition of the existing  
22 affordable housing stock, which may include addressing ways to  
23 mitigate the loss of dwelling units demolished by public or private  
24 action.

25 (5) Promote housing opportunities for all persons regardless of  
26 race, religion, sex, marital status, ancestry, national origin, color,  
27 familial status, or disability.

28 (6) Preserve for lower income households the assisted housing  
29 developments identified pursuant to paragraph (9) of subdivision  
30 (a). The program for preservation of the assisted housing  
31 developments shall utilize, to the extent necessary, all available  
32 federal, state, and local financing and subsidy programs identified  
33 in paragraph (9) of subdivision (a), except where a community has  
34 other urgent needs for which alternative funding sources are not  
35 available. The program may include strategies that involve local  
36 regulation and technical assistance.

37 (7) Include an identification of the agencies and officials  
38 responsible for the implementation of the various actions and the  
39 means by which consistency will be achieved with other general  
40 plan elements and community goals.

1 (8) Include a diligent effort by the local government to achieve  
2 public participation of all economic segments of the community  
3 in the development of the housing element, and the program shall  
4 describe this effort.

5 (d) (1) A local government may satisfy all or part of its  
6 requirement to identify a zone or zones suitable for the  
7 development of emergency shelters pursuant to paragraph (4) of  
8 subdivision (a) by adopting and implementing a multijurisdictional  
9 agreement, with a maximum of two other adjacent communities,  
10 that requires the participating jurisdictions to develop at least one  
11 year-round emergency shelter within two years of the beginning  
12 of the planning period.

13 (2) The agreement shall allocate a portion of the new shelter  
14 capacity to each jurisdiction as credit towards its emergency shelter  
15 need, and each jurisdiction shall describe how the capacity was  
16 allocated as part of its housing element.

17 (3) Each member jurisdiction of a multijurisdictional agreement  
18 shall describe in its housing element all of the following:

19 (A) How the joint facility will meet the jurisdiction's emergency  
20 shelter need.

21 (B) The jurisdiction's contribution to the facility for both the  
22 development and ongoing operation and management of the  
23 facility.

24 (C) The amount and source of the funding that the jurisdiction  
25 contributes to the facility.

26 (4) The aggregate capacity claimed by the participating  
27 jurisdictions in their housing elements shall not exceed the actual  
28 capacity of the shelter.

29 (e) Except as otherwise provided in this article, amendments to  
30 this article that alter the required content of a housing element  
31 shall apply to both of the following:

32 (1) A housing element or housing element amendment prepared  
33 pursuant to subdivision (e) of Section 65588 or Section 65584.02,  
34 when a city, county, or city and county submits a draft to the  
35 department for review pursuant to Section 65585 more than 90  
36 days after the effective date of the amendment to this section.

37 (2) Any housing element or housing element amendment  
38 prepared pursuant to subdivision (e) of Section 65588 or Section  
39 65584.02, when the city, county, or city and county fails to submit

1 the first draft to the department before the due date specified in  
2 Section 65588 or 65584.02.

3 (f) The deadline for completing required rezoning pursuant to  
4 subparagraph (A) of paragraph (1) of subdivision (c) shall be  
5 extended by one year if the local government has completed the  
6 rezoning at densities sufficient to accommodate at least 75 percent  
7 of the units for low- and very low income households and if the  
8 legislative body at the conclusion of a public hearing determines,  
9 based upon substantial evidence, that any of the following  
10 circumstances exist:

11 (1) The local government has been unable to complete the  
12 rezoning because of the action or inaction beyond the control of  
13 the local government of any other state, federal, or local agency.

14 (2) The local government is unable to complete the rezoning  
15 because of infrastructure deficiencies due to fiscal or regulatory  
16 constraints.

17 (3) The local government must undertake a major revision to  
18 its general plan in order to accommodate the housing-related  
19 policies of a sustainable communities strategy or an alternative  
20 planning strategy adopted pursuant to Section 65080.

21 The resolution and the findings shall be transmitted to the  
22 department together with a detailed budget and schedule for  
23 preparation and adoption of the required rezonings, including plans  
24 for citizen participation and expected interim action. The schedule  
25 shall provide for adoption of the required rezoning within one year  
26 of the adoption of the resolution.

27 (g) (1) If a local government fails to complete the rezoning by  
28 the deadline provided in subparagraph (A) of paragraph (1) of  
29 subdivision (c), as it may be extended pursuant to subdivision (f),  
30 except as provided in paragraph (2), a local government may not  
31 disapprove a housing development project, nor require a  
32 conditional use permit, planned unit development permit, or other  
33 locally imposed discretionary permit, or impose a condition that  
34 would render the project infeasible, if the housing development  
35 project (A) is proposed to be located on a site required to be  
36 rezoned pursuant to the program action required by that  
37 subparagraph and (B) complies with applicable, objective general  
38 plan and zoning standards and criteria, including design review  
39 standards, described in the program action required by that  
40 subparagraph. Any subdivision of sites shall be subject to the

1 Subdivision Map Act (Division 2 (commencing with Section  
2 66410)). Design review shall not constitute a “project” for purposes  
3 of Division 13 (commencing with Section 21000) of the Public  
4 Resources Code.

5 (2) A local government may disapprove a housing development  
6 described in paragraph (1) if it makes written findings supported  
7 by substantial evidence on the record that both of the following  
8 conditions exist:

9 (A) The housing development project would have a specific,  
10 adverse impact upon the public health or safety unless the project  
11 is disapproved or approved upon the condition that the project be  
12 developed at a lower density. As used in this paragraph, a “specific,  
13 adverse impact” means a significant, quantifiable, direct, and  
14 unavoidable impact, based on objective, identified written public  
15 health or safety standards, policies, or conditions as they existed  
16 on the date the application was deemed complete.

17 (B) There is no feasible method to satisfactorily mitigate or  
18 avoid the adverse impact identified pursuant to paragraph (1), other  
19 than the disapproval of the housing development project or the  
20 approval of the project upon the condition that it be developed at  
21 a lower density.

22 (3) The applicant or any interested person may bring an action  
23 to enforce this subdivision. If a court finds that the local agency  
24 disapproved a project or conditioned its approval in violation of  
25 this subdivision, the court shall issue an order or judgment  
26 compelling compliance within 60 days. The court shall retain  
27 jurisdiction to ensure that its order or judgment is carried out. If  
28 the court determines that its order or judgment has not been carried  
29 out within 60 days, the court may issue further orders to ensure  
30 that the purposes and policies of this subdivision are fulfilled. In  
31 any such action, the city, county, or city and county shall bear the  
32 burden of proof.

33 (4) For purposes of this subdivision, “housing development  
34 project” means a project to construct residential units for which  
35 the project developer provides sufficient legal commitments to the  
36 appropriate local agency to ensure the continued availability and  
37 use of at least 49 percent of the housing units for very low, low-,  
38 and moderate-income households with an affordable housing cost  
39 or affordable rent, as defined in Section 50052.5 or 50053 of the

- 1 Health and Safety Code, respectively, for the period required by
- 2 the applicable financing.
- 3 (h) An action to enforce the program actions of the housing
- 4 element shall be brought pursuant to Section 1085 of the Code of
- 5 Civil Procedure.

O