

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1403

Introduced by Assembly Member Maienschein

February 27, 2015

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 amended, Maienschein. Housing: joint powers agreement.

The Joint Exercise of Powers Act authorizes 2 of 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 *form a joint powers agency* or 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 bill would require the public agency or agencies to determine the composition of a board of directors to govern an agency formed pursuant to these provisions and would prohibit representation of private nonprofit corporations on the board in excess of 50%.*

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

15 (b) *The purpose of a joint powers agency or agreement*
16 *authorized by this section shall be to encourage and ease the*
17 *sharing of information between public agencies and nonprofit*
18 *corporations, pursuant to subdivision (a), necessary to identify*
19 *the most costly, frequent users of publicly funded emergency*
20 *services in order to provide frequent user coordinated care housing*
21 *services, as defined in subdivision (e) of Section 65582, to homeless*
22 *persons or to prevent homelessness.*

23 (c) *An agency formed pursuant to subdivision (a) shall be*
24 *governed by a board of directors, the composition of which shall*
25 *be determined by the participating public agency or agencies. The*
26 *representation of private nonprofit corporations on the board of*
27 *directors shall not exceed 50 percent.*

28 SEC. 2. Section 65582 of the Government Code is amended
29 to read:

30 65582. As used in this article, the following definitions apply:

- 1 (a) “Community,” “locality,” “local government,” or
2 “jurisdiction” means a city, city and county, or county.
- 3 (b) “Council of governments” means a single or multicounty
4 council created by a joint powers agreement pursuant to Chapter
5 5 (commencing with Section 6500) of Division 1 of Title 1.
- 6 (c) “Department” means the Department of Housing and
7 Community Development.
- 8 (d) “Emergency shelter” has the same meaning as defined in
9 subdivision (e) of Section 50801 of the Health and Safety Code.
- 10 (e) “Frequent user coordinated care housing services” means
11 housing combined with other supportive services for homeless
12 persons identified by a city or county as the most costly, frequent
13 users of publicly funded emergency services.
- 14 (f) “Housing element” or “element” means the housing element
15 of the community’s general plan, as required pursuant to this article
16 and subdivision (c) of Section 65302.
- 17 (g) “Supportive housing” means housing with no limit on length
18 of stay, that is occupied by the target population, and that is linked
19 to an onsite or offsite service that assists the supportive housing
20 resident in retaining the housing, improving his or her health status,
21 and maximizing his or her ability to live and, when possible, work
22 in the community.
- 23 (h) “Supportive services” include, but are not limited to, a
24 combination of subsidized, permanent housing, intensive case
25 management, medical and mental health care, substance abuse
26 treatment, employment services, and benefits advocacy.
- 27 (i) “Target population” means persons with low incomes who
28 have one or more disabilities, including mental illness, HIV or
29 AIDS, substance abuse, or other chronic health condition, or
30 individuals eligible for services provided pursuant to the Lanterman
31 Developmental Disabilities Services Act (Division 4.5
32 (commencing with Section 4500) of the Welfare and Institutions
33 Code) and may include, among other populations, adults,
34 emancipated minors, families with children, elderly persons, young
35 adults aging out of the foster care system, individuals exiting from
36 institutional settings, veterans, and homeless people.
- 37 (j) “Transitional housing” means buildings configured as rental
38 housing developments, but operated under program requirements
39 that require the termination of assistance and recirculating of the
40 assisted unit to another eligible program recipient at a

1 predetermined future point in time that shall be no less than six
2 months from the beginning of the assistance.

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

5 65583. The housing element shall consist of an identification
6 and analysis of existing and projected housing needs and a
7 statement of goals, policies, quantified objectives, financial
8 resources, and scheduled programs for the preservation,
9 improvement, and development of housing. The housing element
10 shall identify adequate sites for housing, including rental housing,
11 factory-built housing, mobilehomes, and emergency shelters, and
12 shall make adequate provision for the existing and projected needs
13 of all economic segments of the community. The element shall
14 contain all of the following:

15 (a) An assessment of housing needs and an inventory of
16 resources and constraints relevant to the meeting of these needs.
17 The assessment and inventory shall include all of the following:

18 (1) An analysis of population and employment trends and
19 documentation of projections and a quantification of the locality's
20 existing and projected housing needs for all income levels,
21 including extremely low income households, as defined in
22 subdivision (b) of Section 50105 and Section 50106 of the Health
23 and Safety Code. These existing and projected needs shall include
24 the locality's share of the regional housing need in accordance
25 with Section 65584. Local agencies shall calculate the subset of
26 very low income households allotted under Section 65584 that
27 qualify as extremely low income households. The local agency
28 may either use available census data to calculate the percentage
29 of very low income households that qualify as extremely low
30 income households or presume that 50 percent of the very low
31 income households qualify as extremely low income households.
32 The number of extremely low income households and very low
33 income households shall equal the jurisdiction's allocation of very
34 low income households pursuant to Section 65584.

35 (2) An analysis and documentation of household characteristics,
36 including level of payment compared to ability to pay, housing
37 characteristics, including overcrowding, and housing stock
38 condition.

39 (3) An inventory of land suitable for residential development,
40 including vacant sites and sites having potential for redevelopment,

1 and an analysis of the relationship of zoning and public facilities
2 and services to these sites.

3 (4) (A) The identification of a zone or zones where emergency
4 shelters are allowed as a permitted use without a conditional use
5 or other discretionary permit. The identified zone or zones shall
6 include sufficient capacity to accommodate the need for emergency
7 shelter identified in paragraph (7), except that each local
8 government shall identify a zone or zones that can accommodate
9 at least one year-round emergency shelter. If the local government
10 cannot identify a zone or zones with sufficient capacity, the local
11 government shall include a program to amend its zoning ordinance
12 to meet the requirements of this paragraph within one year of the
13 adoption of the housing element. The local government may
14 identify additional zones where emergency shelters are permitted
15 with a conditional use permit. The local government shall also
16 demonstrate that existing or proposed permit processing,
17 development, and management standards are objective and
18 encourage and facilitate the development of, or conversion to,
19 emergency shelters. Emergency shelters may only be subject to
20 those development and management standards that apply to
21 residential or commercial development within the same zone except
22 that a local government may apply written, objective standards
23 that include all of the following:

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

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

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

32 (iv) The provision of onsite management.

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

35 (vi) The length of stay.

36 (vii) Lighting.

37 (viii) Security during hours that the emergency shelter is in
38 operation.

39 (B) The permit processing, development, and management
40 standards applied under this paragraph shall not be deemed to be

1 discretionary acts within the meaning of the California
2 Environmental Quality Act (Division 13 (commencing with Section
3 21000) of the Public Resources Code).

4 (C) A local government that can demonstrate to the satisfaction
5 of the department the existence of one or more emergency shelters
6 either within its jurisdiction or pursuant to a multijurisdictional
7 agreement that can accommodate that jurisdiction’s need for
8 emergency shelter identified in paragraph (7) may comply with
9 the zoning requirements of subparagraph (A) by identifying a zone
10 or zones where new emergency shelters are allowed with a
11 conditional use permit.

12 (D) A local government with an existing ordinance or ordinances
13 that comply with this paragraph shall not be required to take
14 additional action to identify zones for emergency shelters. The
15 housing element must only describe how existing ordinances,
16 policies, and standards are consistent with the requirements of this
17 paragraph.

18 (5) An analysis of potential and actual governmental constraints
19 upon the maintenance, improvement, or development of housing
20 for all income levels, including the types of housing identified in
21 paragraph (1) of subdivision (c), and for persons with disabilities
22 as identified in the analysis pursuant to paragraph (7), including
23 land use controls, building codes and their enforcement, site
24 improvements, fees and other exactions required of developers,
25 and local processing and permit procedures. The analysis shall
26 also demonstrate local efforts to remove governmental constraints
27 that hinder the locality from meeting its share of the regional
28 housing need in accordance with Section 65584 and from meeting
29 the need for housing for persons with disabilities, supportive
30 housing, transitional housing, and emergency shelters identified
31 pursuant to paragraph (7). Transitional housing and supportive
32 housing shall be considered a residential use of property, and shall
33 be subject only to those restrictions that apply to other residential
34 dwellings of the same type in the same zone.

35 (6) An analysis of potential and actual nongovernmental
36 constraints upon the maintenance, improvement, or development
37 of housing for all income levels, including the availability of
38 financing, the price of land, and the cost of construction.

39 (7) An analysis of any special housing needs, such as those of
40 the elderly; persons with disabilities, including a developmental

1 disability, as defined in Section 4512 of the Welfare and
2 Institutions Code; large families; farmworkers; families with female
3 heads of households; and families and persons in need of
4 emergency shelter. The need for emergency shelter shall be
5 assessed based on annual and seasonal need. The need for
6 emergency shelter may be reduced by the number of supportive
7 housing units that are identified in an adopted 10-year plan to end
8 chronic homelessness and that are either vacant or for which
9 funding has been identified to allow construction during the
10 planning period. An analysis of special housing needs by a city or
11 county may include an analysis of the need for frequent user
12 coordinated care housing services.

13 (8) An analysis of opportunities for energy conservation with
14 respect to residential development. Cities and counties are
15 encouraged to include weatherization and energy efficiency
16 improvements as part of publicly subsidized housing rehabilitation
17 projects. This may include energy efficiency measures that
18 encompass the building envelope, its heating and cooling systems,
19 and its electrical system.

20 (9) An analysis of existing assisted housing developments that
21 are eligible to change from low-income housing uses during the
22 next 10 years due to termination of subsidy contracts, mortgage
23 prepayment, or expiration of restrictions on use. "Assisted housing
24 developments," for the purpose of this section, shall mean
25 multifamily rental housing that receives governmental assistance
26 under federal programs listed in subdivision (a) of Section
27 65863.10, state and local multifamily revenue bond programs,
28 local redevelopment programs, the federal Community
29 Development Block Grant Program, or local in-lieu fees. "Assisted
30 housing developments" shall also include multifamily rental units
31 that were developed pursuant to a local inclusionary housing
32 program or used to qualify for a density bonus pursuant to Section
33 65916.

34 (A) The analysis shall include a listing of each development by
35 project name and address, the type of governmental assistance
36 received, the earliest possible date of change from low-income
37 use, and the total number of elderly and nonelderly units that could
38 be lost from the locality's low-income housing stock in each year
39 during the 10-year period. For purposes of state and federally

1 funded projects, the analysis required by this subparagraph need
2 only contain information available on a statewide basis.

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

10 (C) The analysis shall identify public and private nonprofit
11 corporations known to the local government which have legal and
12 managerial capacity to acquire and manage these housing
13 developments.

14 (D) The analysis shall identify and consider the use of all federal,
15 state, and local financing and subsidy programs which can be used
16 to preserve, for lower income households, the assisted housing
17 developments, identified in this paragraph, including, but not
18 limited to, federal Community Development Block Grant Program
19 funds, tax increment funds received by a redevelopment agency
20 of the community, and administrative fees received by a housing
21 authority operating within the community. In considering the use
22 of these financing and subsidy programs, the analysis shall identify
23 the amounts of funds under each available program which have
24 not been legally obligated for other purposes and which could be
25 available for use in preserving assisted housing developments.

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

29 (2) It is recognized that the total housing needs identified
30 pursuant to subdivision (a) may exceed available resources and
31 the community's ability to satisfy this need within the content of
32 the general plan requirements outlined in Article 5 (commencing
33 with Section 65300). Under these circumstances, the quantified
34 objectives need not be identical to the total housing needs. The
35 quantified objectives shall establish the maximum number of
36 housing units by income category, including extremely low income,
37 that can be constructed, rehabilitated, and conserved over a
38 five-year time period.

39 (c) A program which sets forth a schedule of actions during the
40 planning period, each with a timeline for implementation, which

1 may recognize that certain programs are ongoing, such that there
2 will be beneficial impacts of the programs within the planning
3 period, that the local government is undertaking or intends to
4 undertake to implement the policies and achieve the goals and
5 objectives of the housing element through the administration of
6 land use and development controls, the provision of regulatory
7 concessions and incentives, the utilization of appropriate federal
8 and state financing and subsidy programs when available, and the
9 utilization of moneys in a low- and moderate-income housing fund
10 of an agency if the locality has established a redevelopment project
11 area pursuant to the Community Redevelopment Law (Division
12 24 (commencing with Section 33000) of the Health and Safety
13 Code). In order to make adequate provision for the housing needs
14 of all economic segments of the community, the program shall do
15 all of the following:

16 (1) Identify actions that will be taken to make sites available
17 during the planning period with appropriate zoning and
18 development standards and with services and facilities to
19 accommodate that portion of the city's or county's share of the
20 regional housing need for each income level that could not be
21 accommodated on sites identified in the inventory completed
22 pursuant to paragraph (3) of subdivision (a) without rezoning, and
23 to comply with the requirements of Section 65584.09. Sites shall
24 be identified as needed to facilitate and encourage the development
25 of a variety of types of housing for all income levels, including
26 multifamily rental housing, factory-built housing, mobilehomes,
27 housing for agricultural employees, supportive housing,
28 single-room occupancy units, emergency shelters, and transitional
29 housing.

30 (A) Where the inventory of sites, pursuant to paragraph (3) of
31 subdivision (a), does not identify adequate sites to accommodate
32 the need for groups of all household income levels pursuant to
33 Section 65584, rezoning of those sites, including adoption of
34 minimum density and development standards, for jurisdictions
35 with an eight-year housing element planning period pursuant to
36 Section 65588, shall be completed no later than three years after
37 either the date the housing element is adopted pursuant to
38 subdivision (f) of Section 65585 or the date that is 90 days after
39 receipt of comments from the department pursuant to subdivision
40 (b) of Section 65585, whichever is earlier, unless the deadline is

1 extended pursuant to subdivision (f). Notwithstanding the
2 foregoing, for a local government that fails to adopt a housing
3 element within 120 days of the statutory deadline in Section 65588
4 for adoption of the housing element, rezoning of those sites,
5 including adoption of minimum density and development standards,
6 shall be completed no later than three years and 120 days from the
7 statutory deadline in Section 65588 for adoption of the housing
8 element.

9 (B) Where the inventory of sites, pursuant to paragraph (3) of
10 subdivision (a), does not identify adequate sites to accommodate
11 the need for groups of all household income levels pursuant to
12 Section 65584, the program shall identify sites that can be
13 developed for housing within the planning period pursuant to
14 subdivision (h) of Section 65583.2. The identification of sites shall
15 include all components specified in subdivision (b) of Section
16 65583.2.

17 (C) Where the inventory of sites pursuant to paragraph (3) of
18 subdivision (a) does not identify adequate sites to accommodate
19 the need for farmworker housing, the program shall provide for
20 sufficient sites to meet the need with zoning that permits
21 farmworker housing use by right, including density and
22 development standards that could accommodate and facilitate the
23 feasibility of the development of farmworker housing for low- and
24 very low income households.

25 (2) Assist in the development of adequate housing to meet the
26 needs of extremely low, very low, low-, and moderate-income
27 households.

28 (3) Address and, where appropriate and legally possible, remove
29 governmental constraints to the maintenance, improvement, and
30 development of housing, including housing for all income levels
31 and housing for persons with disabilities. The program shall remove
32 constraints to, and provide reasonable accommodations for housing
33 designed for, intended for occupancy by, or with supportive
34 services for, persons with disabilities.

35 (4) Conserve and improve the condition of the existing
36 affordable housing stock, which may include addressing ways to
37 mitigate the loss of dwelling units demolished by public or private
38 action.

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

4 (6) Preserve for lower income households the assisted housing
5 developments identified pursuant to paragraph (9) of subdivision
6 (a). The program for preservation of the assisted housing
7 developments shall utilize, to the extent necessary, all available
8 federal, state, and local financing and subsidy programs identified
9 in paragraph (9) of subdivision (a), except where a community has
10 other urgent needs for which alternative funding sources are not
11 available. The program may include strategies that involve local
12 regulation and technical assistance.

13 (7) Include an identification of the agencies and officials
14 responsible for the implementation of the various actions and the
15 means by which consistency will be achieved with other general
16 plan elements and community goals.

17 (8) Include a diligent effort by the local government to achieve
18 public participation of all economic segments of the community
19 in the development of the housing element, and the program shall
20 describe this effort.

21 (d) (1) A local government may satisfy all or part of its
22 requirement to identify a zone or zones suitable for the
23 development of emergency shelters pursuant to paragraph (4) of
24 subdivision (a) by adopting and implementing a multijurisdictional
25 agreement, with a maximum of two other adjacent communities,
26 that requires the participating jurisdictions to develop at least one
27 year-round emergency shelter within two years of the beginning
28 of the planning period.

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

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

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

37 (B) The jurisdiction's contribution to the facility for both the
38 development and ongoing operation and management of the
39 facility.

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

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

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

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

14 (2) Any housing element or housing element amendment
15 prepared pursuant to subdivision (e) of Section 65588 or Section
16 65584.02, when the city, county, or city and county fails to submit
17 the first draft to the department before the due date specified in
18 Section 65588 or 65584.02.

19 (f) The deadline for completing required rezoning pursuant to
20 subparagraph (A) of paragraph (1) of subdivision (c) shall be
21 extended by one year if the local government has completed the
22 rezoning at densities sufficient to accommodate at least 75 percent
23 of the units for low- and very low income households and if the
24 legislative body at the conclusion of a public hearing determines,
25 based upon substantial evidence, that any of the following
26 circumstances exist:

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

30 (2) The local government is unable to complete the rezoning
31 because of infrastructure deficiencies due to fiscal or regulatory
32 constraints.

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

37 The resolution and the findings shall be transmitted to the
38 department together with a detailed budget and schedule for
39 preparation and adoption of the required rezonings, including plans
40 for citizen participation and expected interim action. The schedule

1 shall provide for adoption of the required rezoning within one year
2 of the adoption of the resolution.

3 (g) (1) If a local government fails to complete the rezoning by
4 the deadline provided in subparagraph (A) of paragraph (1) of
5 subdivision (c), as it may be extended pursuant to subdivision (f),
6 except as provided in paragraph (2), a local government may not
7 disapprove a housing development project, nor require a
8 conditional use permit, planned unit development permit, or other
9 locally imposed discretionary permit, or impose a condition that
10 would render the project infeasible, if the housing development
11 project (A) is proposed to be located on a site required to be
12 rezoned pursuant to the program action required by that
13 subparagraph and (B) complies with applicable, objective general
14 plan and zoning standards and criteria, including design review
15 standards, described in the program action required by that
16 subparagraph. Any subdivision of sites shall be subject to the
17 Subdivision Map Act (Division 2 (commencing with Section
18 66410)). Design review shall not constitute a “project” for purposes
19 of Division 13 (commencing with Section 21000) of the Public
20 Resources Code.

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

25 (A) The housing development project would have a specific,
26 adverse impact upon the public health or safety unless the project
27 is disapproved or approved upon the condition that the project be
28 developed at a lower density. As used in this paragraph, a “specific,
29 adverse impact” means a significant, quantifiable, direct, and
30 unavoidable impact, based on objective, identified written public
31 health or safety standards, policies, or conditions as they existed
32 on the date the application was deemed complete.

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

38 (3) The applicant or any interested person may bring an action
39 to enforce this subdivision. If a court finds that the local agency
40 disapproved a project or conditioned its approval in violation of

1 this subdivision, the court shall issue an order or judgment
2 compelling compliance within 60 days. The court shall retain
3 jurisdiction to ensure that its order or judgment is carried out. If
4 the court determines that its order or judgment has not been carried
5 out within 60 days, the court may issue further orders to ensure
6 that the purposes and policies of this subdivision are fulfilled. In
7 any such action, the city, county, or city and county shall bear the
8 burden of proof.

9 (4) For purposes of this subdivision, “housing development
10 project” means a project to construct residential units for which
11 the project developer provides sufficient legal commitments to the
12 appropriate local agency to ensure the continued availability and
13 use of at least 49 percent of the housing units for very low, low-,
14 and moderate-income households with an affordable housing cost
15 or affordable rent, as defined in Section 50052.5 or 50053 of the
16 Health and Safety Code, respectively, for the period required by
17 the applicable financing.

18 (h) An action to enforce the program actions of the housing
19 element shall be brought pursuant to Section 1085 of the Code of
20 Civil Procedure.