

Memorandum 79-44

Subject: Study J-101 - Security for Costs

Assembly Bill 145 was introduced at the 1979 session to effectuate the Commission's Recommendation Relating to Security for Costs. A copy of the recommendation is attached. The bill was supported by the State Bar and the California Trial Lawyers Association. The bill was opposed by the California Newspapers Publishers Association which took the position that a constitutional statute should be enacted to require an undertaking in a libel action instead of merely repealing the existing unconstitutional statute as proposed by Assembly Bill 145.

The Commission had at an earlier session submitted a recommendation that would have revised the existing statutes that provide for an undertaking for costs to make them constitutional. The Assembly Judiciary Committee rejected that bill because the committee members doubted that the existing cost bond statutes serve a desirable public purpose.

Assembly Bill 145 was never put to a vote of the Assembly Judiciary Committee because Assemblyman McAlister (who was carrying the bill) preferred the earlier bill and had introduced it again. Both bills were heard at the same time. The Committee rejected the bill to amend the cost bond statutes to make them constitutional, and Assemblyman McAlister then asked the Committee to hold the other bill (Assembly Bill 145) in Committee. He later amended Assembly Bill 145 to use it for another purpose. I believe that there were sufficient votes for Assembly Bill 145 to obtain Committee approval had the bill been put to a vote.

The staff believes that it is undesirable to retain in the codes statutes that have been held unconstitutional. There is always the chance some lawyer will mistakenly rely on such statutes. In fact, one lawyer (representing a group covered by an existing cost bond statute) originally opposed Assembly Bill 145 but withdrew his opposition when the case holding the particular statute unconstitutional was called to his attention. Accordingly, the staff recommends that the Commission request that its Senate member introduce at the 1980 session a bill to effectuate this recommendation.

Respectfully submitted,

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Executive Secretary