

# ROHLFING & OBERHOLTZER

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## **Senate Bill 1505 - Costs Article**

This Bill would amend the archaic article of the Illinois Code of Civil Procedure concerning court costs. The entire article is rewritten for clarity and consistency, with very little of substance being changed. The effected sections are: 735 ILCS 5/5-101 through 735 ILCS 5/5-126. This is a proposal generated by the Chicago Bar Association after very careful consideration over a period of several years.

For more than one hundred years, Illinois law has permitted the victorious party in a lawsuit to recover certain “costs” which that party incurred in the litigation. These costs do not include attorneys’ fees but do include certain out-of-pocket expenses such as court filing fees and the expense of serving process. This law is presently found in Article V of the Code of Civil Procedure, 735 ILCS 5/5-101, et. seq. Costs recoverable by a prevailing party in litigation continue to be relatively nominal amounts compared to attorneys’ fees and other litigation expenses that are borne by litigants and are not recoverable by a prevailing party.

Article V is written in old English, contains ambiguities and inconsistencies, and has several sections that are repetitious, unnecessary or outdated. The purpose of this bill is to modernize Article V and to make it clearer and simpler while making very modest changes in existing law.

Article 5 currently has twenty-seven sections; the bill reduces this to eight sections with no real loss of substance. The bill would renumber existing sections, placing them in a logical order.

The bill eliminates sections 5-101 through 5-104, which entitled a litigant to require an out-of-state party to post security for costs with the court. In practice, the procedure was almost never used, probably because the cost of filing the necessary motions would far exceed any potential benefit. Furthermore, if this procedure were used, the burden it would place on the courts would not justify the small amounts involved.

Eleven of the article’s twenty-seven sections are consolidated into one section, which simply states that the prevailing party in litigation shall recover costs. The repealed sections restate that same principal eleven different ways, depending upon who the prevailing party might be.

Finally, the bill would more clearly define recoverable “costs”, rather than requiring practitioners and judges to review case law, court rules and assorted statutes to determine what costs might be recovered by a prevailing party. Section 5-101 more clearly and comprehensively defines costs, thereby avoiding unnecessary contests over that issue.

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Following is a table listing the sections of article five, and how the bill would effect them:

<b>Existing Section</b>	<b>Disposition under bill</b>	<b>Comment</b>
<b>5/5-101</b>	<b>Repeal</b>	Sections 5-101 through 5-104, are eliminated, as antiquated and unused
<b>5/5-102</b>	<b>Repeal</b>	
<b>5/5-103</b>	<b>Repeal</b>	
<b>5/5-104</b>	<b>Repeal</b>	
<b>5/5-105</b>	<b>106</b>	Renumbered only
<b>5/5-105.5</b>	<b>107</b>	Same
<b>5/5-106</b>	<b>108</b>	Same
<b>5/5-107</b>	<b>106</b>	Duplicative due to amendment made in 1999
<b>108</b>	<b>102</b>	Eleven sections all provide the same thing; that the prevailing party in litigation shall recover costs. Section 5-102 now so provides.
<b>109</b>	<b>102</b>	
<b>110</b>	<b>102</b>	
<b>111</b>	<b>102</b>	
<b>112</b>	<b>102</b>	
<b>113</b>	<b>102</b>	
<b>114</b>	<b>102</b>	
<b>115</b>	<b>101</b>	One element of costs, which are now more fully defined in section 5-101
<b>116</b>	<b>103</b>	Renumbered only
<b>117</b>	<b>102</b>	Same as sections 5-108 through 5-114, above.
<b>118</b>	<b>102</b>	
<b>119</b>	<b>102</b>	
<b>120</b>	<b>102</b>	
<b>121</b>	<b>104</b>	See section 5-123 below
<b>122</b>	<b>101</b>	See section 5-115 above
<b>123</b>	<b>104</b>	Provides a more complete procedure for assessing and contesting costs
<b>124</b>	<b>104</b>	
<b>125</b>	<b>104</b>	
<b>126</b>	<b>105</b>	Renumbered only

The cost proposal is a project of the Civil Practice Committee of the Chicago Bar Association. Its primary authors are James T. Rohlfling, and Mitchell Marinello. If you have questions, please contact Jim Rohlfling, Rohlfling & Oberholtzer, One East Wacker Drive, Suite 2420, Chicago, Illinois; (312) 923-7100; JTR@ROlaw.net.