



March 30, 2023

ENGROSSED SENATE BILL No. 284

DIGEST OF SB 284 (Updated March 29, 2023 2:21 pm - DI 106)

Citations Affected: IC 4-6; IC 33-39; IC 34-30.

Synopsis: Prosecuting attorneys. Removes the attorney general's concurrent criminal jurisdiction in certain cases. Establishes a prosecutor review board. Establishes a special prosecutor unit as a division of the prosecuting attorneys council of Indiana (IPAC) to: (1) take special prosecutor appointments; (2) increase the number of qualified special prosecutors; and (3) exercise concurrent criminal jurisdiction with a prosecuting attorney if authorized by the prosecutor review board. Establishes the Indiana prosecuting attorney commission as a division of IPAC to: (1) make recommendations to the general assembly concerning staffing for prosecuting services; (2) adopt guidelines and standards for attorney services; and (3) provide reimbursement to counties for expenses incurred in connection with attorney services. Makes conforming amendments.

Effective: July 1, 2023.

**Freeman, Sandlin, Doriot, Crane,
Raatz**

(HOUSE SPONSOR — STEUERWALD)

January 11, 2023, read first time and referred to Committee on Corrections and Criminal Law.

February 23, 2023, amended, reported favorably — Do Pass.

February 27, 2023, read second time, amended, ordered engrossed.

February 28, 2023, engrossed. Read third time, passed. Yeas 40, nays 9.

HOUSE ACTION

March 6, 2023, read first time and referred to Committee on Courts and Criminal Code.

March 30, 2023, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

ES 284—LS 7358/DI 144



March 30, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 284

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-2-1.1, AS AMENDED BY P.L.205-2013,
2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 1.1. The attorney general has concurrent
4 jurisdiction with the prosecuting attorney in the prosecution of ~~the~~
5 following:
6 (1) ~~Actions in which a person is accused of committing, while a~~
7 ~~member of an unlawful assembly as defined in IC 35-45-1-1, a~~
8 ~~homicide (IC 35-42-1).~~
9 (2) ~~Actions in which a person is accused of assisting a criminal~~
10 ~~(IC 35-44.1-2-5); if the person alleged to have been assisted is a~~
11 ~~person described in subdivision (1).~~
12 (3) ~~Actions in which a sheriff is accused of any offense that~~
13 ~~involves a failure to protect the life of a prisoner in the sheriff's~~
14 ~~custody.~~
15 (4) ~~Actions~~ **an action** in which a violation of IC 2-8.2-4-6
16 (concerning constitutional convention delegates) has occurred.
17 SECTION 2. IC 33-39-8-5.5 IS ADDED TO THE INDIANA CODE

ES 284—LS 7358/DI 144



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2023]: **Sec. 5.5. (a) The following definitions apply throughout
3 this section:**

4 (1) "Board" means the prosecutor review board established
5 by subsection (b).

6 (2) "Court of appeals district" means the First District,
7 Second District, and Third District of the court of appeals, as
8 set forth in IC 33-25-1-2(1) through IC 33-25-1-2(3).

9 (b) The prosecutor review board is established. The board has
10 the authority to do one (1) or both of the following:

11 (1) Receive and review a request for the special prosecutor
12 unit to assist in a prosecution that is submitted by the
13 prosecuting attorney of a particular judicial circuit. A request
14 for assistance under this subdivision is confidential.

15 (2) Authorize the special prosecutor unit to exercise its
16 concurrent jurisdiction.

17 A prosecuting attorney who receives assistance under subdivision
18 (1) retains jurisdiction over the case.

19 (c) The board consists of three (3) members appointed after:

20 (1) nomination by the board of directors of the council; and

21 (2) approval by the membership of the council.

22 The membership of the council shall select the chairperson of the
23 board. Not more than two (2) members may be members of the
24 same political party. Each member must be from a separate court
25 of appeals district.

26 (d) Each member serves a two (2) year term. A member may be
27 reappointed to subsequent terms. A vacancy occurring among the
28 members of the board before the expiration of a term shall be filled
29 in the same manner as the original appointment. An appointment
30 to fill a vacancy occurring before the expiration of a term is for the
31 remainder of the unexpired term.

32 (e) A member of the board is entitled to reimbursement for
33 traveling expenses as provided under IC 4-13-1-4 and other
34 expenses actually incurred in connection with the member's duties
35 as provided in the state policies and procedures established by the
36 Indiana department of administration and approved by the budget
37 agency. A member of the board may be entitled to reimbursement
38 from a county under IC 33-39-10-2, but is not entitled to more than
39 one (1) reimbursement for the same expense.

40 (f) The board of directors of the council may not nominate a
41 person to serve as a member of the board unless:

42 (1) the person is an elected prosecuting attorney; and



- 1 (2) the person has served at least twelve (12) years as an
 2 elected prosecuting attorney.
 3 **However, if the board of directors of the council is unable to**
 4 **nominate an elected prosecuting attorney with at least twelve (12)**
 5 **years of experience who meets the other requirements to serve as**
 6 **a member of the board, the board of directors shall nominate the**
 7 **most experienced prosecuting attorney who meets the other**
 8 **requirements.**
- 9 (g) Two (2) members of the board constitute a quorum. A
 10 majority of the members appointed to the board is required to take
 11 action on any issue. The board shall meet at the call of the
 12 chairperson.
- 13 (h) Individual members of the board have the same immunity
 14 for their duties carried out as members in the normal course of
 15 business as the elected prosecutor of their judicial circuit. Each
 16 member is immune from all civil liability for acts performed in the
 17 course of his or her official duties required under this section.
- 18 SECTION 3. IC 33-39-8-8 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2023]: **Sec. 8. (a) For purposes of this section, "unit" means the**
 21 **special prosecutor unit established by subsection (b).**
- 22 (b) The special prosecutor unit is established within the council.
- 23 (c) The unit reports to the executive director of the council or
 24 the executive director's designee.
- 25 (d) The unit is established to:
- 26 (1) take appointments as a special prosecuting attorney under
 27 IC 33-39-10; and
- 28 (2) increase the number of qualified special prosecuting
 29 attorneys available for appointment under this article.
- 30 (e) The unit consists of the following:
- 31 (1) A division chief.
- 32 (2) Attorneys serving as special prosecuting attorneys.
- 33 (3) Other support staff deemed necessary to support the unit.
- 34 (f) The unit has concurrent jurisdiction with the prosecuting
 35 attorney of a judicial circuit in all matters of criminal law.
- 36 (g) Individual members of the unit have the same immunity
 37 relating to investigations and prosecutions as those carried out by
 38 elected prosecutors and deputy prosecutors of any individual
 39 judicial circuit.
- 40 (h) The council shall establish staffing ratios for support staff
 41 and workload measures for attorneys assigned to the unit.
- 42 (i) The division chief, unit attorneys, and support staff must be



1 **appointed by the executive director of the council.**

2 SECTION 4. IC 33-39-8-9 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2023]: **Sec. 9. (a) The maximum salary paid to an attorney
5 appointed by the executive director under this chapter may not
6 exceed the annual salary paid by the state to a chief deputy
7 prosecuting attorney.**

8 **(b) The salary of support staff must be consistent with pay
9 schedules approved by the executive director of the council.**

10 SECTION 5. IC 33-39-8-10 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2023]: **Sec. 10. (a) The special prosecutor unit fund is established.
13 The council shall administer the fund. Expenditures from the fund
14 may be made only in accordance with appropriations made by the
15 general assembly.**

16 **(b) The council may use money from the fund to provide:**

- 17 **(1) supplies;**
- 18 **(2) logistics;**
- 19 **(3) administration;**
- 20 **(4) personnel;**
- 21 **(5) training;**
- 22 **(6) technical assistance; and**
- 23 **(7) other reasonable support;**

24 **to establish and maintain the special prosecutor unit established by
25 section 8 of this chapter.**

26 **(c) The treasurer of state shall invest the money in the fund not
27 currently needed to meet the obligations of the fund in the same
28 manner as other public funds may be invested.**

29 **(d) The council may supplement the fund with money received
30 under IC 33-39-10-2(g), if:**

- 31 **(1) the council makes a claim with an appointing county under
32 IC 33-39-10-2(g) for a special prosecuting attorney's services;
33 and**
- 34 **(2) the claim is approved by the judge from the appointing
35 judicial circuit.**

36 **(e) In:**

- 37 **(1) criminal matters in which the unit exercises concurrent
38 jurisdiction as authorized under section 5.5(b)(2) of this
39 chapter; or**
- 40 **(2) a matter in which the unit provides assistance under
41 section 5.5(b)(1) of this chapter;**

42 **the council may make a claim for expenses incurred with the**



1 county in which the matter is prosecuted or the assistance
2 provided.

3 (f) Money in the fund at the end of each state fiscal year does not
4 revert to the state general fund.

5 SECTION 6. IC 33-39-10-2, AS ADDED BY P.L.57-2014,
6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2023]: Sec. 2. (a) A person may be appointed as a special
8 prosecutor:

9 (1) as provided under this section; or

10 (2) in accordance with IC 4-2-7-7.

11 (b) A circuit court or superior court judge:

12 (1) shall appoint a special prosecutor if:

13 (A) any person, other than a prosecuting attorney or the
14 prosecuting attorney's deputy, files a verified petition
15 requesting the appointment of a special prosecutor; and

16 (B) the prosecuting attorney agrees that a special prosecutor is
17 needed;

18 (2) may appoint a special prosecutor if:

19 (A) a person files a verified petition requesting the
20 appointment of a special prosecutor; and

21 (B) the court, after:

22 (i) notice is given to the prosecuting attorney; and

23 (ii) an evidentiary hearing is conducted at which the
24 prosecuting attorney is given an opportunity to be heard;

25 finds by clear and convincing evidence that the appointment
26 is necessary to avoid an actual conflict of interest or there is
27 probable cause to believe that the prosecuting attorney has
28 committed a crime;

29 (3) may appoint a special prosecutor if:

30 (A) the prosecuting attorney files a petition requesting the
31 court to appoint a special prosecutor; and

32 (B) the court finds that the appointment is necessary to avoid
33 the appearance of impropriety;

34 (4) may appoint a special prosecutor if:

35 (A) an elected public official who is a defendant in a criminal
36 proceeding files a verified petition requesting a special
37 prosecutor within ten (10) days after the date of the initial
38 hearing; and

39 (B) the court finds that the appointment of a special prosecutor
40 is in the best interests of justice; and

41 (5) shall appoint a special prosecutor if:

42 (A) a previously appointed special prosecutor:



- 1 (i) files a motion to withdraw as special prosecutor; or
 2 (ii) has become incapable of continuing to represent the
 3 interests of the state; and
 4 (B) the court finds that the facts that established the basis for
 5 the initial appointment of a special prosecutor still exist.
 6 The elected prosecuting attorney who serves in the jurisdiction of
 7 the appointing court shall receive notice of all pleadings filed and
 8 orders issued under this subdivision.
- 9 (c) A person appointed to serve as a special prosecutor:
 10 (1) must consent to the appointment; and
 11 (2) must be:
 12 (A) the prosecuting attorney or a deputy prosecuting attorney
 13 in a county other than the county in which the person is to
 14 serve as special prosecutor; or
 15 (B) a senior prosecuting attorney as described in section 1 of
 16 this chapter. A senior prosecuting attorney may be appointed
 17 to serve as a special prosecutor in a county in which the senior
 18 prosecuting attorney previously served if the court finds that
 19 the appointment would not create the appearance of
 20 impropriety.
- 21 (d) A person appointed to serve as a special prosecutor in a county
 22 has the same powers as the prosecuting attorney of the county.
 23 However, the appointing judge shall limit the scope of the special
 24 prosecutor's duties to include only the investigation or prosecution of
 25 a particular case or particular grand jury investigation.
- 26 (e) Upon making an appointment under this section, the court shall
 27 establish the length of the special prosecutor's term. At least one (1)
 28 time every six (6) months throughout the appointed term, a special
 29 prosecutor shall file a progress report with the appointing court. A
 30 progress report:
 31 (1) must inform the court of the:
 32 (A) status of the investigation; and
 33 (B) estimated time for completion of the special prosecutor's
 34 duties; and
 35 (2) may not:
 36 (A) include substantive facts or legal issues; or
 37 (B) offer preliminary conclusions.
- 38 The court may extend the term of appointment upon the request of the
 39 special prosecutor or terminate any appointment if the special
 40 prosecutor has failed to file reports or a request for an extended term
 41 under this subsection.
- 42 (f) If the target of an investigation by the special prosecutor is a



1 public servant (as defined in IC 35-31.5-2-261), the court shall order
 2 the special prosecutor to file a report of the investigation with the court
 3 at the conclusion of the investigation. A report filed under this
 4 subsection is a public record under IC 5-14-3.

5 (g) If a special prosecutor is not regularly employed as a full-time
 6 prosecuting attorney or full-time deputy prosecuting attorney, the
 7 compensation for the special prosecutor's services:

8 (1) shall be paid, as incurred:

9 (A) to the special prosecutor; or

10 (B) for a special prosecutor employed by the special
 11 prosecutor unit (IC 33-39-8-8), to the prosecuting
 12 attorneys council;

13 following an application to the county auditor, from the
 14 unappropriated funds of the appointing county; and

15 (2) may not exceed:

16 (A) an hourly rate based upon the regular salary of a full-time
 17 prosecuting attorney of the appointing circuit;

18 (B) travel expenses and reasonable accommodation expenses
 19 actually incurred; and

20 (C) other reasonable expenses actually incurred, including the
 21 costs of investigation, trial and discovery preparation, and
 22 other trial expenses.

23 The amount of compensation a special prosecutor receives for services
 24 performed during a calendar day under subdivision (2)(A) may not
 25 exceed the amount of compensation a full-time prosecuting attorney
 26 would receive in salary for the calendar day.

27 (h) If the special prosecutor is regularly employed as a full-time
 28 prosecuting attorney or deputy prosecuting attorney, the compensation
 29 for the special prosecutor's services:

30 (1) shall be paid out of the appointing county's unappropriated
 31 funds to the treasurer of the county in which the special
 32 prosecutor regularly serves; and

33 (2) must include a per diem equal to the regular salary of a
 34 full-time prosecuting attorney of the appointing circuit, travel
 35 expenses, and reasonable accommodation expenses actually
 36 incurred.

37 SECTION 7. IC 33-39-11 IS ADDED TO THE INDIANA CODE
 38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]:

40 **Chapter 11. Indiana Prosecuting Attorney Commission**

41 **Sec. 1. As used in this chapter, "commission" means the Indiana**
 42 **prosecuting attorney commission established by section 2 of this**



1 chapter.

2 Sec. 2. (a) The Indiana prosecuting attorney commission is
3 established as a division of the prosecuting attorneys council of
4 Indiana.

5 (b) The commission is composed of the following nine (9)
6 members, none of whom may be a public defender or a court
7 employee:

8 (1) One (1) member appointed by the governor.

9 (2) One (1) supreme court justice, appointed by the chief
10 justice.

11 (3) One (1) member of the ways and means committee of the
12 house of representatives, to be appointed by the speaker of the
13 house of representatives.

14 (4) One (1) member of the senate appropriations committee,
15 to be appointed by the president pro tempore of the senate.

16 (5) Four (4) members appointed by the prosecuting attorneys
17 council of Indiana.

18 (6) The executive director of the prosecuting attorneys council
19 of Indiana, who serves ex officio.

20 Not more than three (3) of the members appointed under
21 subdivisions (3), (4), and (5) may be members of the same political
22 party.

23 Sec. 3. (a) The executive director of the prosecuting attorneys
24 council of Indiana shall serve as chairperson of the commission.

25 (b) The executive director of the prosecuting attorneys council
26 of Indiana shall appoint an employee of the prosecuting attorneys
27 council of Indiana to manage the day to day operations of the
28 commission.

29 (c) The term of office of each member of the commission other
30 than the executive director of the prosecuting attorneys council of
31 Indiana is four (4) years. A vacancy occurring among the members
32 of the commission before the expiration of a term shall be filled in
33 the same manner as the original appointment. An appointment to
34 fill a vacancy occurring before the expiration of a term is for the
35 remainder of the unexpired term.

36 (d) Each member of the commission who is a state employee is
37 entitled to reimbursement for traveling expenses and other
38 expenses actually incurred in connection with the member's duties,
39 as provided in the state travel policies and procedures established
40 by the Indiana department of administration and approved by the
41 budget agency.

42 (e) A member of the commission who is not a state employee is



1 entitled to:

2 (1) the minimum salary per diem provided by
3 IC 4-10-11-2.1(b); and

4 (2) reimbursement for traveling expenses and other expenses
5 actually incurred in connection with the member's duties, as
6 provided in the state travel policies and procedures
7 established by the Indiana department of administration and
8 approved by the budget agency.

9 (f) The commission shall meet at least quarterly and at times
10 called by the chairperson or at the request of three (3) commission
11 members.

12 **Sec. 4. The commission shall do the following:**

13 (1) Make recommendations to the general assembly
14 concerning personnel and staffing for prosecution services.

15 (2) Adopt guidelines and standards for prosecution services
16 under which counties will be eligible for reimbursement under
17 IC 33-39-12, including the following:

18 (A) Compensation rates for employees appointed by the
19 prosecuting attorney under IC 33-39-6.

20 (B) Minimum and maximum caseloads for staff.

21 (C) Victim services.

22 (3) Make an annual report to the governor, the general
23 assembly, the supreme court, and the prosecuting attorneys
24 council of Indiana on the operation of the prosecuting
25 attorney services fund under IC 33-39-12. The report to the
26 general assembly must be in an electronic format under
27 IC 5-14-6.

28 **Sec. 5. The executive director of the prosecuting attorneys**
29 **council of Indiana shall hire staff to support the commission.**
30 **However, the executive director may delegate this authority to the**
31 **employee appointed under section 3(b) of this chapter to manage**
32 **the day to day operations of the commission. The commission, with**
33 **the assistance of the executive director of the prosecuting attorneys**
34 **council of Indiana, may enter into contracts for any additional staff**
35 **support that the commission determines is necessary to implement**
36 **this chapter.**

37 SECTION 8. IC 33-39-12 IS ADDED TO THE INDIANA CODE
38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2023]:

40 **Chapter 12. Prosecuting Attorney Services Fund**

41 **Sec. 1. As used in this chapter, "county auditor" includes a**
42 **person who is:**



- 1 (1) the auditor of a county; and
 2 (2) responsible for the receipt, disbursement, and accounting
 3 of all funds distributed to a prosecuting attorney's office in
 4 the county.

5 Sec. 2. As used in this chapter, "fund" means the prosecuting
 6 attorney services fund established by section 3 of this chapter.

7 Sec. 3. The prosecuting attorney services fund is established to
 8 receive court costs or other revenues for county reimbursement
 9 and administrative expenses. The fund shall be administered by the
 10 Indiana prosecuting attorney commission established by
 11 IC 33-39-11-2.

12 Sec. 4. The treasurer of state shall invest the money in the fund
 13 not currently needed to meet the obligations of the fund in the same
 14 manner as other public funds may be invested.

15 Sec. 5. Money in the fund at the end of the state fiscal year does
 16 not revert to the state general fund.

17 Sec. 6. A county auditor may submit on a quarterly basis a
 18 certified request to the Indiana prosecuting attorney commission
 19 for reimbursement from the fund for an amount equal to seventy
 20 percent (70%) of the county's expenditures for prosecuting
 21 attorney services provided to the public.

22 Sec. 7. (a) Upon certification by a county auditor and a
 23 determination by the Indiana prosecuting attorney commission
 24 that the request is in compliance with the guidelines and standards
 25 set by the commission, the commission shall quarterly authorize an
 26 amount of reimbursement due the county that is equal to seventy
 27 percent (70%) of the county's certified expenditures for
 28 prosecuting attorney services. The Indiana prosecuting attorney
 29 commission shall then certify to the auditor of state the amount of
 30 reimbursement owed to a county under this chapter.

31 (b) Upon receiving certification from the Indiana prosecuting
 32 attorney commission, the auditor of state shall issue a warrant to
 33 the treasurer of state for disbursement to the county of the amount
 34 certified.

35 SECTION 9. IC 34-30-2.1-550.5 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2023]: **Sec. 550.5. IC 33-39-8-5.5 (Concerning
 38 the prosecutor review board).**

39 SECTION 10. IC 34-30-2.1-550.6 IS ADDED TO THE INDIANA
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2023]: **Sec. 550.6. IC 33-39-8-8 (Concerning
 42 the special prosecutor unit).**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 284, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 33-39-8-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 5.5. (a) The following definitions apply throughout this section:**

(1) **"Board"** means the prosecutor review board established by subsection (b).

(2) **"Court of appeals district"** means the First District, Second District, and Third District of the court of appeals, as set forth in IC 33-25-1-2(1) through IC 33-25-1-2(3).

(b) **The prosecutor review board is established to investigate an allegation that a prosecutor is a noncompliant prosecutor under IC 33-39-10-4.**

(c) **The board consists of three (3) members appointed after:**

(1) **nomination by the board of directors of the council; and**

(2) **approval by the membership of the council.**

The membership of the council shall select the chairperson of the board. Not more than two (2) members may be members of the same political party. Each member must be from a separate court of appeals district.

(d) **Each member serves a two (2) year term. A member may be reappointed to subsequent terms. A vacancy occurring among the members of the board before the expiration of a term shall be filled in the same manner as the original appointment. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.**

(e) **A member of the commission is not entitled to reimbursement for traveling expenses and other expenses incurred in connection with the member's duties from the state, but may be entitled to reimbursement from a county under IC 33-39-10-2.**

(f) **The board of directors of the council may not nominate a person to serve as a member of the board unless:**

(1) **the person is an elected prosecuting attorney; and**

(2) **the person has served at least twelve (12) years as an elected prosecuting attorney.**

However, if the board of directors of the council is unable to



nominate an elected prosecuting attorney with at least twelve (12) years of experience who meets the other requirements to serve as a member of the board, the board of directors shall nominate the most experienced prosecuting attorney who meets the other requirements.

(g) Two (2) members of the board constitute a quorum. A majority of the members appointed to the board is required to take action on any issue. The board shall meet at the call of the chairperson."

Delete pages 2 through 3.

Page 4, delete lines 1 through 12.

Page 5, line 22, reset in roman "or".

Page 5, delete line 28 and insert "impropriety."

Page 5, delete lines 29 through 31.

Page 7, between lines 1 and 2, begin a new paragraph and insert:

"(i) If a special prosecutor is appointed under section 4 of this chapter, each member of the prosecutor review board (established by IC 33-39-8-5.5) is entitled to compensation from the appointing county for the member's services and expenses in investigating the noncompliant prosecutor in the same manner as a special prosecutor described in subsection (g).

(j) For a special prosecutor appointed under section 4 of this chapter, and for a member of the prosecutor review board under subsection (i), the county or circuit in which the special prosecutor serves is the appointing county for purposes of subsections (g) through (i)."

Page 7, delete lines 6 through 42, begin a new line block indented and insert:

"(1) "Board" means the prosecutor review board established by IC 33-39-8-5.5.

(2) "Categorically refusing to enforce a criminal law" means a blanket refusal to enforce a criminal law. The term includes the refusal to enforce a criminal law unless certain conditions are met. The term does not include the refusal to enforce a criminal law:

(A) on the basis that enforcement would violate federal law or an order issued by a state or federal court; or

(B) in one (1) or more specific instances, if the determination not to enforce the law is based on an individual investigation of the facts and circumstances of each particular case.

(3) "Court of appeals district" means the First District,



Second District, and Third District of the court of appeals, as set forth in IC 33-25-1-2(1) through IC 33-25-1-2(3).

(4) "Noncompliant prosecuting attorney" means a prosecuting attorney who has:

(A) made a public declaration to categorically refuse to enforce a criminal law enacted by the general assembly; and

(B) engaged in a pattern of conduct of categorically refusing to enforce a criminal law enacted by the general assembly.

(b) If the board receives credible information that rises to the level of probable cause that a prosecuting attorney is categorically refusing to enforce a criminal law enacted by the general assembly, the board shall conduct an investigation to determine whether the prosecuting attorney is a noncompliant prosecuting attorney. An investigation under this section is limited in scope to the prosecuting attorney's:

(1) public declaration to categorically refuse to enforce a criminal law; and

(2) pattern of conduct described in subsection (a)(4)(B).

(c) If the board, after conducting its investigation, determines that a prosecuting attorney is a noncompliant prosecuting attorney, the board may file a verified petition for appointment of a special prosecuting attorney with a circuit or superior court judge in a county that is not located in the same court of appeals district as the alleged noncompliant prosecuting attorney. In the verified petition, the board shall set forth why:

(1) the board believes that the prosecuting attorney is a noncompliant prosecuting attorney; and

(2) the board believes that appointment of a special prosecutor is in the best interests of justice.

The board may support the verified petition by including relevant documents, transcripts, or written statements in support of the board's position. The board shall serve a copy of the verified petition, along with any supporting evidence, on the alleged noncompliant prosecuting attorney.

(d) The alleged noncompliant prosecuting attorney may file a verified response to the board's petition for appointment of a special prosecuting attorney not later than fifteen (15) days after receipt of the board's petition.

(e) If the board, after conducting the investigation described in subsection (b), determines that a prosecuting attorney is not a



noncompliant prosecuting attorney, the board shall issue a report, which may include relevant documents, transcripts, or written statements in support of the board's position to the circuit court in the alleged noncompliant prosecuting attorney's judicial circuit as well as the original complainant and the alleged noncompliant prosecuting attorney.

(f) Individual members of the board have the same investigative powers and immunity during the investigation as the duties carried out by the members in the normal course of business as the elected prosecutor of their judicial circuit. Each member is immune from all civil liability for acts performed in the course of his or her official duties relating to the investigation and report required under this section.

(g) After considering the petition described in subsection (c), and the response described in subsection (d), if any, the judge shall appoint a person to serve as a special prosecuting attorney if the judge finds that:

- (1) the prosecuting attorney is a noncompliant prosecuting attorney; and
- (2) appointment of a special prosecuting attorney is in the best interest of justice.

In making a determination under this subsection, the judge shall consider only the arguments and evidence contained in the petition and response.

(h) To appoint a special prosecuting attorney, the judge shall select three (3) persons described in section 2(c) of this chapter as special prosecuting attorney candidates.

None of the three (3) candidates selected may serve as a prosecuting attorney, deputy prosecuting attorney, or senior prosecuting attorney in the same judicial district as another special prosecuting attorney candidate. In addition, not more than two (2) special prosecuting attorney candidates may be members of the same political party.

(i) Not later than fifteen (15) days after the selection of the three (3) special prosecuting attorney candidates, the noncompliant prosecuting attorney may strike one (1) candidate. The judge shall appoint one of the remaining candidates who have not been struck.

(j) A special prosecuting attorney appointed under this section has the same powers as the prosecuting attorney of the judicial circuit. However, the judge shall:

- (1) limit the scope of the special prosecuting attorney's duties as a special prosecuting attorney to include only the



investigation or prosecution of the cases or category or cases that the noncompliant prosecuting attorney refused to prosecute, including any matter that reasonably results from the investigation or prosecution; and

(2) establish for a time certain the length of the special prosecuting attorney's term.

For good cause shown, the judge may at any time increase the scope of the special prosecuting attorney's duties, establish a longer term for the special prosecuting attorney, or appoint one (1) or more additional special prosecuting attorneys to assist the special prosecuting attorney. A judge may appoint an additional special prosecuting attorney under this subsection without following the procedure in subsection (h); however, the special prosecuting attorney must meet the requirements of section 2(c) of this chapter. The judge may require the special prosecuting attorney to submit periodic reports.

(k) If the judge finds that the noncompliant prosecutor is no longer a noncompliant prosecutor and that a special prosecuting attorney is no longer required, the judge may discharge the special prosecuting attorney."

Delete pages 8 through 9.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 284 as introduced.)

FREEMAN, Chairperson

Committee Vote: Yeas 6, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 284 be amended to read as follows:

Page 7, line 36, delete "candidate." and insert "**candidate and the board may strike one (1) candidate.**".

Page 7, line 37, delete "one" and insert "**the remaining candidate or one (1)**".

(Reference is to SB 284 as printed February 24, 2023.)

YOUNG M

ES 284—LS 7358/DI 144



SENATE MOTION

Madam President: I move that Senate Bill 284 be amended to read as follows:

Page 2, line 10, after "reimbursement" insert "**from the state**".

Page 2, line 11, delete "duties from the state," and insert "**duties,**".

Page 7, line 21, delete "interest" and insert "**interests**".

Page 7, run in lines 27 through 28.

Page 7, line 37, after "one" insert "**(1)**".

Page 8, line 1, after "category" delete "or" and insert "**of**".

Page 8, line 13, delete "subsection (h); however," and insert "**subsection (h). However,**".

Page 8, after line 20, begin a new paragraph and insert:

"SECTION 4. IC 34-30-2.1-550.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 550.5. IC 33-39-10-4 (Concerning the prosecutor review board).**".

(Reference is to SB 284 as printed February 24, 2023.)

FREEMAN

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 284, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 4-6-2-1.1, AS AMENDED BY P.L.205-2013, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1.1. The attorney general has concurrent jurisdiction with the prosecuting attorney in the prosecution of ~~the~~ following:

(1) ~~Actions in which a person is accused of committing, while a member of an unlawful assembly as defined in IC 35-45-1-1; a homicide (IC 35-42-1);~~

(2) ~~Actions in which a person is accused of assisting a criminal (IC 35-44.1-2-5); if the person alleged to have been assisted is a person described in subdivision (1);~~

(3) ~~Actions in which a sheriff is accused of any offense that~~

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involves a failure to protect the life of a prisoner in the sheriff's custody:

(4) **Actions an action** in which a violation of IC 2-8.2-4-6 (concerning constitutional convention delegates) has occurred.

SECTION 2. IC 33-39-8-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 5.5. (a) The following definitions apply throughout this section:**

(1) **"Board"** means the prosecutor review board established by subsection (b).

(2) **"Court of appeals district"** means the First District, Second District, and Third District of the court of appeals, as set forth in IC 33-25-1-2(1) through IC 33-25-1-2(3).

(b) The prosecutor review board is established. The board has the authority to do one (1) or both of the following:

(1) Receive and review a request for the special prosecutor unit to assist in a prosecution that is submitted by the prosecuting attorney of a particular judicial circuit. A request for assistance under this subdivision is confidential.

(2) Authorize the special prosecutor unit to exercise its concurrent jurisdiction.

A prosecuting attorney who receives assistance under subdivision (1) retains jurisdiction over the case.

(c) The board consists of three (3) members appointed after:

(1) nomination by the board of directors of the council; and

(2) approval by the membership of the council.

The membership of the council shall select the chairperson of the board. Not more than two (2) members may be members of the same political party. Each member must be from a separate court of appeals district.

(d) Each member serves a two (2) year term. A member may be reappointed to subsequent terms. A vacancy occurring among the members of the board before the expiration of a term shall be filled in the same manner as the original appointment. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(e) A member of the board is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency. A member of the board may be entitled to reimbursement



from a county under IC 33-39-10-2, but is not entitled to more than one (1) reimbursement for the same expense.

(f) The board of directors of the council may not nominate a person to serve as a member of the board unless:

- (1) the person is an elected prosecuting attorney; and
- (2) the person has served at least twelve (12) years as an elected prosecuting attorney.

However, if the board of directors of the council is unable to nominate an elected prosecuting attorney with at least twelve (12) years of experience who meets the other requirements to serve as a member of the board, the board of directors shall nominate the most experienced prosecuting attorney who meets the other requirements.

(g) Two (2) members of the board constitute a quorum. A majority of the members appointed to the board is required to take action on any issue. The board shall meet at the call of the chairperson.

(h) Individual members of the board have the same immunity for their duties carried out as members in the normal course of business as the elected prosecutor of their judicial circuit. Each member is immune from all civil liability for acts performed in the course of his or her official duties required under this section.

SECTION 3. IC 33-39-8-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) For purposes of this section, "unit" means the special prosecutor unit established by subsection (b).

(b) The special prosecutor unit is established within the council.

(c) The unit reports to the executive director of the council or the executive director's designee.

(d) The unit is established to:

- (1) take appointments as a special prosecuting attorney under IC 33-39-10; and
- (2) increase the number of qualified special prosecuting attorneys available for appointment under this article.

(e) The unit consists of the following:

- (1) A division chief.
- (2) Attorneys serving as special prosecuting attorneys.
- (3) Other support staff deemed necessary to support the unit.

(f) The unit has concurrent jurisdiction with the prosecuting attorney of a judicial circuit in all matters of criminal law.

(g) Individual members of the unit have the same immunity relating to investigations and prosecutions as those carried out by



elected prosecutors and deputy prosecutors of any individual judicial circuit.

(h) The council shall establish staffing ratios for support staff and workload measures for attorneys assigned to the unit.

(i) The division chief, unit attorneys, and support staff must be appointed by the executive director of the council.

SECTION 4. IC 33-39-8-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) The maximum salary paid to an attorney appointed by the executive director under this chapter may not exceed the annual salary paid by the state to a chief deputy prosecuting attorney.

(b) The salary of support staff must be consistent with pay schedules approved by the executive director of the council.

SECTION 5. IC 33-39-8-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) The special prosecutor unit fund is established. The council shall administer the fund. Expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The council may use money from the fund to provide:

- (1) supplies;
- (2) logistics;
- (3) administration;
- (4) personnel;
- (5) training;
- (6) technical assistance; and
- (7) other reasonable support;

to establish and maintain the special prosecutor unit established by section 8 of this chapter.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) The council may supplement the fund with money received under IC 33-39-10-2(g), if:

- (1) the council makes a claim with an appointing county under IC 33-39-10-2(g) for a special prosecuting attorney's services; and
- (2) the claim is approved by the judge from the appointing judicial circuit.

(e) In:

- (1) criminal matters in which the unit exercises concurrent



jurisdiction as authorized under section 5.5(b)(2) of this chapter; or

(2) a matter in which the unit provides assistance under section 5.5(b)(1) of this chapter;

the council may make a claim for expenses incurred with the county in which the matter is prosecuted or the assistance provided.

(f) Money in the fund at the end of each state fiscal year does not revert to the state general fund.

SECTION 6. IC 33-39-10-2, AS ADDED BY P.L.57-2014, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) A person may be appointed as a special prosecutor:

(1) as provided under this section; or

(2) in accordance with IC 4-2-7-7.

(b) A circuit court or superior court judge:

(1) shall appoint a special prosecutor if:

(A) any person, other than a prosecuting attorney or the prosecuting attorney's deputy, files a verified petition requesting the appointment of a special prosecutor; and

(B) the prosecuting attorney agrees that a special prosecutor is needed;

(2) may appoint a special prosecutor if:

(A) a person files a verified petition requesting the appointment of a special prosecutor; and

(B) the court, after:

(i) notice is given to the prosecuting attorney; and

(ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard;

finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecuting attorney has committed a crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and

(B) the court finds that the appointment is necessary to avoid the appearance of impropriety;

(4) may appoint a special prosecutor if:

(A) an elected public official who is a defendant in a criminal proceeding files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial



hearing; and

(B) the court finds that the appointment of a special prosecutor is in the best interests of justice; and

(5) shall appoint a special prosecutor if:

(A) a previously appointed special prosecutor:

(i) files a motion to withdraw as special prosecutor; or

(ii) has become incapable of continuing to represent the interests of the state; and

(B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney who serves in the jurisdiction of the appointing court shall receive notice of all pleadings filed and orders issued under this subdivision.

(c) A person appointed to serve as a special prosecutor:

(1) must consent to the appointment; and

(2) must be:

(A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or

(B) a senior prosecuting attorney as described in section 1 of this chapter. A senior prosecuting attorney may be appointed to serve as a special prosecutor in a county in which the senior prosecuting attorney previously served if the court finds that the appointment would not create the appearance of impropriety.

(d) A person appointed to serve as a special prosecutor in a county has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit the scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(e) Upon making an appointment under this section, the court shall establish the length of the special prosecutor's term. At least one (1) time every six (6) months throughout the appointed term, a special prosecutor shall file a progress report with the appointing court. A progress report:

(1) must inform the court of the:

(A) status of the investigation; and

(B) estimated time for completion of the special prosecutor's duties; and

(2) may not:

(A) include substantive facts or legal issues; or

(B) offer preliminary conclusions.



The court may extend the term of appointment upon the request of the special prosecutor or terminate any appointment if the special prosecutor has failed to file reports or a request for an extended term under this subsection.

(f) If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-31.5-2-261), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. A report filed under this subsection is a public record under IC 5-14-3.

(g) If a special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid, as incurred:

(A) to the special prosecutor; or

(B) for a special prosecutor employed by the special prosecutor unit (IC 33-39-8-8), to the prosecuting attorneys council;

following an application to the county auditor, from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit;

(B) travel expenses and reasonable accommodation expenses actually incurred; and

(C) other reasonable expenses actually incurred, including the costs of investigation, trial and discovery preparation, and other trial expenses.

The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day.

(h) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

SECTION 7. IC 33-39-11 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 11. Indiana Prosecuting Attorney Commission

Sec. 1. As used in this chapter, "commission" means the Indiana prosecuting attorney commission established by section 2 of this chapter.

Sec. 2. (a) The Indiana prosecuting attorney commission is established as a division of the prosecuting attorneys council of Indiana.

(b) The commission is composed of the following nine (9) members, none of whom may be a public defender or a court employee:

- (1)** One (1) member appointed by the governor.
- (2)** One (1) supreme court justice, appointed by the chief justice.
- (3)** One (1) member of the ways and means committee of the house of representatives, to be appointed by the speaker of the house of representatives.
- (4)** One (1) member of the senate appropriations committee, to be appointed by the president pro tempore of the senate.
- (5)** Four (4) members appointed by the prosecuting attorneys council of Indiana.
- (6)** The executive director of the prosecuting attorneys council of Indiana, who serves ex officio.

Not more than three (3) of the members appointed under subdivisions (3), (4), and (5) may be members of the same political party.

Sec. 3. (a) The executive director of the prosecuting attorneys council of Indiana shall serve as chairperson of the commission.

(b) The executive director of the prosecuting attorneys council of Indiana shall appoint an employee of the prosecuting attorneys council of Indiana to manage the day to day operations of the commission.

(c) The term of office of each member of the commission other than the executive director of the prosecuting attorneys council of Indiana is four (4) years. A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointment. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(d) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other



expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) A member of the commission who is not a state employee is entitled to:

- (1) the minimum salary per diem provided by IC 4-10-11-2.1(b); and
- (2) reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(f) The commission shall meet at least quarterly and at times called by the chairperson or at the request of three (3) commission members.

Sec. 4. The commission shall do the following:

- (1) Make recommendations to the general assembly concerning personnel and staffing for prosecution services.
- (2) Adopt guidelines and standards for prosecution services under which counties will be eligible for reimbursement under IC 33-39-12, including the following:
 - (A) Compensation rates for employees appointed by the prosecuting attorney under IC 33-39-6.
 - (B) Minimum and maximum caseloads for staff.
 - (C) Victim services.
- (3) Make an annual report to the governor, the general assembly, the supreme court, and the prosecuting attorneys council of Indiana on the operation of the prosecuting attorney services fund under IC 33-39-12. The report to the general assembly must be in an electronic format under IC 5-14-6.

Sec. 5. The executive director of the prosecuting attorneys council of Indiana shall hire staff to support the commission. However, the executive director may delegate this authority to the employee appointed under section 3(b) of this chapter to manage the day to day operations of the commission. The commission, with the assistance of the executive director of the prosecuting attorneys council of Indiana, may enter into contracts for any additional staff support that the commission determines is necessary to implement this chapter.

SECTION 8. IC 33-39-12 IS ADDED TO THE INDIANA CODE



AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 12. Prosecuting Attorney Services Fund

Sec. 1. As used in this chapter, "county auditor" includes a person who is:

- (1) the auditor of a county; and
- (2) responsible for the receipt, disbursement, and accounting of all funds distributed to a prosecuting attorney's office in the county.

Sec. 2. As used in this chapter, "fund" means the prosecuting attorney services fund established by section 3 of this chapter.

Sec. 3. The prosecuting attorney services fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the Indiana prosecuting attorney commission established by IC 33-39-11-2.

Sec. 4. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

Sec. 5. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

Sec. 6. A county auditor may submit on a quarterly basis a certified request to the Indiana prosecuting attorney commission for reimbursement from the fund for an amount equal to seventy percent (70%) of the county's expenditures for prosecuting attorney services provided to the public.

Sec. 7. (a) Upon certification by a county auditor and a determination by the Indiana prosecuting attorney commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county that is equal to seventy percent (70%) of the county's certified expenditures for prosecuting attorney services. The Indiana prosecuting attorney commission shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the Indiana prosecuting attorney commission, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified."

Delete pages 2 through 7.

Page 8, delete lines 1 through 21.

Page 8, line 24, delete "IC 33-39-10-4" and insert "IC 33-39-8-5.5".



Page 8, after line 25, begin a new paragraph and insert:

"SECTION 12. IC 34-30-2.1-550.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 550.6. IC 33-39-8-8 (Concerning the special prosecutor unit).**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 284 as reprinted February 28, 2023.)

MCNAMARA

Committee Vote: yeas 9, nays 4.

