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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3844

03/15/2018 Authored by Moran and Dehn, R., The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; requiring that certain peace officer-initiated use of force
1.3 cases be prosecuted by a special prosecutor; establishing the Board of Special
1.4 Prosecution and a special prosecutorial office; prohibiting the use of grand juries
1.5 in certain peace officer-initiated use of force cases; appropriating money; proposing
1.6 coding for new law as Minnesota Statutes, chapter 626B.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. 626B.01 DEFINITIONS.

1.9 Subdivision 1. Terms defined. As used in this chapter, the terms defined in this section
1.10 have the meanings given them.

1.11 Subd. 2. Board. "Board" means the Board of Special Prosecution.

1.12 Subd. 3. Deadly force. "Deadly force" has the meaning given in section 609.066,
1.13 subdivision 1.

1.14 Subd. 4. Great bodily harm. "Great bodily harm" means bodily injury that creates a
1.15 high probability of death, or causes serious permanent disfigurement, or causes a permanent
1.16 or protracted loss or impairment of the function of any bodily member or organ.

1.17 Subd. 5. Law enforcement agency. "Law enforcement agency" has the meaning given
1.18 in section 626.84, subdivision 1, paragraph (f).

1.19 Subd. 6. Officer-involved incident. "Officer-involved incident" means the use of deadly
1.20 force by a peace officer while the officer is on duty or off duty but performing activities
1.21 that are within the scope of the officer's law enforcement duties that results in great bodily
1.22 harm or death of another.

2.1 Subd. 7. **Peace officer.** "Peace officer" has the meaning given in section 626.84,  
2.2 subdivision 1, paragraph (c).

2.3 Sec. 2. **[626B.02] BOARD OF SPECIAL PROSECUTION.**

2.4 Subdivision 1. **Board established; members.** (a) The Board of Special Prosecution  
2.5 consists of the following five members appointed by the governor:

2.6 (1) three public members, at least one of whom has been the subject of peace  
2.7 officer-initiated use of force or has a close association with someone who has, and another  
2.8 who is a person of color;

2.9 (2) a county or city attorney with experience prosecuting criminal offenses; and

2.10 (3) a peace officer.

2.11 (b) All members shall demonstrate an interest in and be supportive of maintaining a  
2.12 high-quality, permanent, independent special prosecutorial office to investigate and prosecute  
2.13 officer-involved incidents.

2.14 Subd. 2. **Board duties and responsibilities.** The board shall: (1) appoint an attorney  
2.15 with sufficient prosecutorial experience to serve as state special prosecutor and establish  
2.16 the prosecutor's compensation; (2) approve and recommend to the legislature a budget for  
2.17 the board and the special prosecutorial office; (3) provide appropriate oversight and  
2.18 supervision for the prosecutor and the office; and (4) make recommendations to the legislature  
2.19 regarding changes in law relating to the responsibilities and jurisdiction of the prosecutor  
2.20 and the office, and other related matters.

2.21 Subd. 3. **Meetings; chair.** The board shall meet at least annually and may meet as often  
2.22 as necessary to fulfill its duties and responsibilities. The board shall elect a chair from among  
2.23 its members.

2.24 Subd. 4. **Terms.** Board members shall serve two-year terms. The initial terms of the  
2.25 peace officer and the county or city attorney are one year.

2.26 Subd. 5. **Limitation.** In no event shall the board or its members interfere with the  
2.27 discretion, judgment, or zealous advocacy of the state special prosecutor or other members  
2.28 of the special prosecutorial office in their handling of individual cases within their  
2.29 jurisdiction.

2.30 Subd. 6. **Workload; outside employment.** The board shall monitor the workload of  
2.31 the state special prosecutor and other members of the special prosecutorial office. If the  
2.32 board determines that a position need not be full time, the board shall adjust the individual's

3.1 compensation and working arrangements accordingly. If this occurs, the board may allow  
3.2 the individual to work outside the scope of the office if doing so does not jeopardize the  
3.3 integrity or the real or perceived independence of the office.

3.4 **Sec. 3. [626B.03] STATE SPECIAL PROSECUTOR.**

3.5 Subdivision 1. **Term; office.** The state special prosecutor's term is two years. The  
3.6 prosecutor serves in the unclassified service and may be removed only for cause by the  
3.7 board. The prosecutor shall direct the operation of the special prosecutorial office and,  
3.8 subject to the approval of the board, may hire or retain other individuals to assist in the  
3.9 investigation and prosecution of officer-involved incidents within the state.

3.10 Subd. 2. **Jurisdiction.** (a) The state special prosecutor has sole prosecutorial jurisdiction  
3.11 over officer-involved incidents in the state. In addition, upon written request of the governor  
3.12 or a county attorney, the prosecutor shall prosecute, when appropriate, cases involving other  
3.13 peace officer-initiated use of force.

3.14 (b) In situations described in paragraph (a), the prosecutor shall exercise the powers of  
3.15 a county attorney.

3.16 (c) The prosecutor is subject to the same ethical standards as a county attorney. The  
3.17 prosecutor shall prosecute only those cases that the prosecutor considers appropriate, based  
3.18 on the prosecutor's professional judgment and experience.

3.19 **Sec. 4. [626B.04] COMMENCEMENT OF PROSECUTION BY COMPLAINT AND**  
3.20 **NOT INDICTMENT.**

3.21 If, after proper investigation, the state special prosecutor determines that a prosecution  
3.22 is warranted in a peace officer-initiated use of force case, the prosecutor shall commence  
3.23 the criminal action by complaint and not by indictment, regardless of the maximum  
3.24 punishment for the offense.

3.25 **Sec. 5. [626B.05] CONFLICTING PROVISIONS SUPERSEDED.**

3.26 To the extent of a conflict, the provisions in this chapter supersede contrary provisions  
3.27 in sections 8.01, 388.051, and 388.12, and Minnesota Rules of Criminal Procedure, rule  
3.28 17.01, and any other conflicting provision in law or rule.

4.1 Sec. 6. **[626B.06] NOTIFICATIONS.**

4.2 (a) A chief law enforcement officer of a law enforcement agency shall ensure that the  
4.3 special prosecutorial office is notified when a peace officer employed by the agency is  
4.4 involved in an officer-involved incident. If a county attorney is aware that an officer-involved  
4.5 incident has occurred in the county, the attorney shall notify the office of this unless the  
4.6 attorney knows that the office has already been notified.

4.7 (b) The notifications required in paragraph (a) must be made immediately.

4.8 (c) In addition, any other person may report a suspected officer-involved incident to the  
4.9 office.

4.10 Sec. 7. **[626B.07] REPORTING.**

4.11 (a) If the state special prosecutor determines that a criminal charge is not warranted in  
4.12 a case within the prosecutor's jurisdiction, the prosecutor shall issue a public report explaining  
4.13 the reasons for the decision.

4.14 (b) By November 15 of each even-numbered year, the board shall submit a detailed  
4.15 report to the chairs and ranking minority members of the senate and house of representatives  
4.16 committees and divisions having jurisdiction over criminal justice policy and funding that  
4.17 addresses the activities of the board, the state special prosecutor, and the special prosecutorial  
4.18 office, along with any recommended changes in law as required in section 626B.02,  
4.19 subdivision 2.

4.20 Sec. 8. **GOVERNANCE.**

4.21 The governor shall appoint members of the Board of Special Prosecution described in  
4.22 section 2 by July 1, 2017, and ensure that the first meeting of the board is convened by July  
4.23 15, 2017.

4.24 Sec. 9. **APPROPRIATION.**

4.25 \$...... from the general fund for the fiscal year ending June 30, 2018, is appropriated to  
4.26 the commissioner of management and budget to implement this act.

4.27 Sec. 10. **EFFECTIVE DATE.**

4.28 Sections 1 to 8 are effective the day following final enactment. The provisions of section  
4.29 3 relating to the jurisdiction of the state special prosecutor are effective September 1, 2017,  
4.30 and apply to crimes committed on or after that date.