



TO: Members of the House Committee on Judiciary
FROM: Jay Diaz, Staff Attorney / Interim Policy Director, ACLU-VT
DATE: March 2, 2017
SUBJECT: S. 79 - Comments and Recommended Amendments

Given that S. 79 has been fast-tracked, and that it seems unlikely that any major changes will be added by the House (such as adding a requirement for *full* adoption of the Fair and Impartial Policing policy statewide), we only have a one small, but important, suggestion.

While we *strongly* prefer eliminating the possibility that 287(g) and Title 19 agreements could ever be entered into by Vermont law enforcement agencies, if they must remain permissible in S. 79 upon a Governor's approval, then (1) the public must receive notice of actions related to these agreements and (2) there must be an additional check on the Governor's authority to enter into, modify, or extend those agreements.. We propose specific language below.

For specific information regarding the 287(g) and Title 19 agreement, we have provided separate documents.

In S. 79, the Governor is given sole authority to enter into, modify, or extend 287(g) and Title 19 agreements with federal immigration enforcement with local and state law enforcement agencies. Should Vermont ever have a governor that favors immigration enforcement collaboration, she or he could sign such agreements without any institutionalized check on their power or notice to the public.

In addition to public notice and a check on executive authority, we would also strike subdivision (b). It is unnecessary and leaves too much wiggle room for agencies to enter agreements with federal immigration officials without the Governor's approval.

Sec. 2 of S. 79

§ 4652. AUTHORIZATION TO ENTER INTO AGREEMENTS PURSUANT TO 8 U.S.C. § 1357(g) AND 19 U.S.C. § 1401(i)

(a) Notwithstanding any other provision of law, only the Governor, in consultation with the Vermont Attorney General, is authorized to enter into, modify, or extend an agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i). **The Governor shall publicly announce that an agreement pursuant to 8 U.S.C. 1357(g) or 19 U.S.C. 1401(i) is under review at least 30**

days before entering into, modifying, or extending such agreement. The Governor shall only enter into or extend such agreements:

(1) in the case of non-state law enforcement agencies, with advice and consent of the impacted municipalities legislative body;

(2) in the case of state law enforcement agencies, with advice and consent of the Vermont legislature.

~~(b) Notwithstanding subsection (a) of this section, a State, county, or municipal law enforcement agency is authorized to enter into an agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i) when necessary to address threats to the public safety or welfare of Vermont residents arising out of a declaration of a State or national emergency~~

Or

(b) Notwithstanding subsection (a) of this section, a State, county, or municipal law enforcement agency is authorized to enter into an agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i) when necessary to address threats to the public safety or welfare of Vermont residents arising out of a declaration of a State or national emergency, and shall only enter into such agreements:

(1) in the case of non-state law enforcement agencies, with advice and consent of the municipality's executive;

(2) in the case of state law enforcement agencies, with advice and consent of the Governor.