

From: Michael O'Grady MOGrady@leg.state.vt.us
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To: Robert Starr RStarr@leg.state.vt.us

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Sen. Starr

Sorry about the late reply. I was out of state Thursday through Sunday.

To answer your question of what the difference is between the Milk Commission language in the statute and the milk commission language you enacted in Act No. 77 of 2017, Act No. 77 of 2017 only directs the Secretary of Agriculture, Food and Markets shall convene the Vermont Milk Commission under 6 V.S.A. chapter 161 to review and evaluate proposals that enhance and stabilize the dairy industry in Vermont and New England and that may be appropriate for inclusion in the federal Farm Bill 2018. Act No. 77 of 2017 also directs the Secretary of Agriculture, Food and Markets to submit to the congressional delegation of Vermont proposals that the Milk Commission recommends for inclusion in the federal Farm Bill 2018.

In contrast, the Vermont Milk Commission authority in statute is much broader and vigorous authority. The Milk Commission is granted multiple authorities under 6 V.S.A. chapter 161, which you can access here: <http://legislature.vermont.gov/statutes/chapter/06/161>

The general purpose of the statute creating the Milk Commission is to protect and promote the public welfare by insuring at all times an adequate supply of clean, pure milk and cream of proper quality to meet the needs of the inhabitants of this state and to ensure the continuing economic vitality of the dairy industry by stabilizing the price received by farmers for their milk at a level allowing them an equitable rate of return.

These purposes are to be accomplished through regulation of the milk-marketing industry, and through control in general, consistent with constitutional limitations, of the price of all fluid dairy products sold or offered or exposed for sale to the inhabitants of this state and by Vermont farmers, to the end that the public health and economic welfare of the state shall not be menaced or jeopardized.

The Milk Commission's general authority is set forth under 6 VSA 2924, which you can read here. <http://legislature.vermont.gov/statutes/section/06/161/02924>

The authority under 6 VSA 2924 includes the following:

- Authority over milk prices. The commission may establish an equitable minimum or maximum price, or both, and the manner of payments, which shall be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers.
- Equitable minimum producer prices. The commission may establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms.
- Authority to establish premiums on handlers and distributors for milk used in dairy products sold at retail in Vermont. The commission may assess a premium on handlers and distributors

for milk used in dairy products sold at retail in Vermont.

In addition, under 6 VSA 2625, the Commission has authority to issue an order setting minimum producer prices if the commission finds that the federal milk marketing order minimum price is adequate or inadequate as the case may be to ensure that the price paid to dairy producers will cover the costs of milk production and provide a reasonable economic return to dairy producers sufficient to ensure a stable milk production and distribution system in Vermont.

These are just a few of the powers the Commission has under 6 V.S.A. chapter 161, and all of these powers are still good law. They have not been repealed and, to my knowledge, they have not been found unconstitutional by a court.

I expect that the Agency and the co-ops argue that some of the authority if exercised would be unconstitutional. For example, they might argue that providing premiums over and above the market order price solely to instate producers would be considered a violation of the Commerce Clause of the U.S. Constitution. They might be correct, but I also think there are options that could be explored that are constitutional.

So, when the Milk Commission convenes to comply with the requirements of Act No. 77 of 2017, it also has all of the broader and more vigorous authority granted to it in statute in 6 VSA chapter 161.

The Agency may argue that any hearing should be limited in scope to what Act 77 requires. However, under 6 VSA 2922, the milk commission is required to meet: at least annually; when the chair (the secretary of agriculture) requires, and when required by the general assembly.

You could argue that any meeting scheduled must be viewed as an annual meeting since the Milk Commission has not met in years.

I hope this answers your questions.