



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing the use of the Term “County Commissioner” in the New Jersey Statutes

December 06, 2021

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary

Amid a statewide, and national, move to reexamine statutory terms rooted in systemic racism, the Commission undertook an examination of the use of the term “workhouse” in New Jersey’s statutes.¹ The term “Freeholder” appears in many of the same statutes as the term “workhouse.”²

In August of 2020, Governor Phil Murphy signed into law bills eliminating the titles “Freeholder” and “chosen freeholder” from County government.³ The change in the law replaced the terms “Freeholder” and “chosen freeholder” with the term “County Commissioner”, required the counties to update materials to reflect the title change, and created a definition of “Freeholder” and “chosen freeholder” to clarify that any statutory reference to either means a “county commissioner.”⁴

Although the change in the definition is an important step for the statutes of the State, the continuing presence of the term “freeholder” in more than 1,000 New Jersey statutes supports a recommendation for its elimination from the statutes.⁵

Historical Background

Following the Norman Conquest of 1066 A.D., the British Monarchy called together a group of individuals to act as advisors and grant taxes to defend the Kingdom.⁶ This group consisted of “higher Clergy, Earls and Barons of Nobility and later Knights of the Realm.”⁷ By the Thirteenth Century, “the British Parliament was enlarged to include ... Freemen who owned their land free and clear, who were called ‘Freeholders.’”⁸ Almost 600 years later, the term Freeholder found its way to North America.

In 1664, Lord John Berkeley and Sir George Carteret as the “lords proprietors” of the province of Nova-Caesarea, or New Jersey, issued a series of concessions and agreements “to and

¹ Final Report Relating to the Use of the Word “Workhouse” in the New Jersey Statutes (Apr. 15, 2021), New Jersey Law Revision Commission, <https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/6080322de8190e18e75e0f8a/1619014193269/workhouseFR041521.pdf> (last visited Dec 3, 2021).

² See N.J. STAT. ANN. § 2C:43-10g. (West 2021); N.J. STAT. ANN. § 30:4-85.1b. (West 2021); N.J. STAT. ANN. § 30:8-16.1 (West 2021); N.J. STAT. ANN. § 30:8-16.2 (West 2021); N.J. STAT. ANN. § 30:8-29 (West 2021); N.J. STAT. ANN. § 30:8-30 (West 2021); N.J. STAT. ANN. § 8-31 (West 2021); N.J. STAT. ANN. § 8-32 (West 2021); N.J. STAT. ANN. § 30:8-34 (West 2021); N.J. STAT. ANN. § 8-37 (West 2021); N.J. STAT. ANN. § 8-39 (West 2021); N.J. STAT. ANN. § 30:8-40 (West 2021); and N.J. STAT. ANN. § 40:23-31 (West 2021).

³ See S.B. 855 and A.B. 3594, 219th Leg., First Annual Sess. (N.J. 2020) (P.L. 2020, c.67).

⁴ See N.J.S. 1:1-2, N.J.S. 40:41A-1 and N.J.S. 40:20-1.

⁵ See also Comments of Assemblywoman Verlina Reynolds-Jackson contained in the Press Release, Governor Phil Murphy, Governor Murphy Signs Legislation to Eliminate the Title “Freeholder” from Public Officer (Aug. 21, 2020) (on file with the NJLRC).

⁶ ATLANTIC COUNTY MANUAL *7 (2020). Available at <https://www.atlantic-county.org/documents/county-manual20/2020-manual.pdf> (last visited May 05, 2021).

⁷ *Id.*

⁸ *Id.*

with all and every of the adventurers, and all such as shall settle or plant there.”⁹ This document provided that as “soon as parishes, divisions, tribes, and other distinctions are made, that then the inhabitants or freeholders of the several respective parishes, tribes, divisions and districts aforesaid, do by under our writs, under our seals... annually meet on the first day of January, and choose freeholders for each respective division, tribe or parish, to be deputies or representatives of the same....”¹⁰

Following the Revolutionary War, the term “Freeholder” appeared in the 1776 Constitution of New Jersey.¹¹ To be a member of the State’s Legislative Council, a person was required to be “an inhabitant and freeholder in the county in which he [was] chosen, and worth at least one-thousand pounds proclamation money, of real and personal estate, within the same county....”¹²

By 1798, each of New Jersey’s 104 townships were incorporated and required to “elect two freeholders to a new county governing body” known as the board of chosen freeholders.¹³ These individuals constituted the county legislative authority, with the power to “vote, grant and raise money for the building, purchasing or repairing of poor houses, gaols,¹⁴ courthouses, and bridges, the surveying and ascertaining of the lines and other legal purposes.”¹⁵ This term, “coined when only white male landowners could hold public office,”¹⁶ remained in New Jersey’s statutes until 2021.

Elimination of the Use of the Term Freeholder

In 2020, New Jersey was “the only state that still use[d] the centuries-old term *chosen freeholder* for the county board.”¹⁷ On August 21, 2020, to implement a “corrective action to replace an outdated designation that is rooted in institutional prejudice,”¹⁸ Governor Phil Murphy approved P.L. 202, c.67¹⁹, “An Act concerning boards of chosen freeholders and amending [N.J.S.] 1:1-2²⁰, ... [N.J.S.] 40:20-1²¹, and [N.J.S.] 40:41A-1”²² (the Act). The Act changed the title of “chosen freeholder” to “county commissioner” and created a definition for “Freeholder”

⁹ SAMUEL SMITH, THE HISTORY OF THE COLONY OF NOVA-CAESARIA: CONTAINING, AN ACCOUNT OF ITS FIRST SETTLEMENT, PROGRESSIVE IMPROVEMENTS, THE ORIGINAL AND PRESENT CONSTITUTION AND OTHER EVENTS, TO THE YEAR 1721, p. 514 (1877).

¹⁰ *Id.*

¹¹ N.J. Const. art. III, XII, XIV (1776).

¹² N.J. Const. art. III (1776).

¹³ ENCYCLOPEDIA OF NEW JERSEY 290 (2004) (edited by Maxine N. Lurie & Marc Mappen).

¹⁴ Jails.

¹⁵ *Id.*

¹⁶ Press Release, Office of the Governor, “Governor Murphy, Senate President Sweeney & Speaker Coughlin Announce Support of Legislation to Change Outdated Term of ‘Freeholder’ to ‘Commissioner’” (Jul. 09, 2020) (available at <https://www.nj.gov/governor/news/news/562020/approved/20200709c.shtml>).

¹⁷ Melanie Burney, *Gov. Phil Murphy signs a bill abolishing the ‘slave-era’ freeholder title in New Jersey*, (updated Aug. 21, 2020), <https://www.inquirer.com/news/nj-murphy-freeholder-bill-abolish-slavery-20200821.html>.

¹⁸ *Id.*

¹⁹ New Jersey Legislature, https://www.njleg.state.nj.us/2020/Bills/AL20/67_.PDF (last visited Dec. 3, 2021)

²⁰ N.J.S. 1:1-2, entitled “Words and phrases defined”.

²¹ N.J.S. 40:20-1, formerly entitled “Management vested in board of county freeholders; delegation of powers and duties to county administrator”.

²² N.J.S. 40:41A-1, entitled “Submission of charter study question”.

and “chosen freeholder” to clarify that any statutory reference to either means “county commissioner.”²³

The term freeholder appears in 1,253 New Jersey statutes.²⁴ An examination of those statutes indicates that the word “freeholder” appears in three distinct contexts – governmental, individual, and organizational.²⁵

- *Governmental*

The terms “Freeholder” and “chosen freeholder” are defined in N.J.S. 1:1-2 to mean a “county commissioner.” A county commissioner is a member of the board which manages, controls, and governs the property, finances, and affairs of a county, and in which the executive and legislative powers of the county or solely the legislative powers of the county are vested and designated in this individual.²⁶ In this context, these terms appear in 1,132 of New Jersey’s statutes.

- *Non-Governmental*

The term “freeholder,” appears in forty-one statutes in which it does not refer to a governmental actor. The non-governmental definition of this term provides that a freeholder is “[o]ne having title to realty; either of inheritance or for life; either legal or equitable title....”²⁷ Of the forty-one statutory references to “freeholder,” six of these references may be found in statutes that also contain a reference to a freeholder as a governmental actor.²⁸

- *Organization*

Finally, the term “freeholder” appears in N.J.S. 26:2C-3.2. In establishing the Clean Air Council, the Legislature invited the New Jersey *Freeholders’* Association to submit nominees for service on the Council.²⁹ Although Staff was unable to locate this specific organization, Staff was able to locate the Southern New Jersey Freeholders’ Association.³⁰

Outreach

In connection with this Report, Staff sought comments from knowledgeable individuals and organizations including: the Department of Community Affairs; the New Jersey Office of the Attorney General; the Administrative Office of the Courts; Legal Services of New Jersey; the Department of Military and Veterans’ Affairs; the New Jersey State Board of Agriculture; the

²³ See N.J.S. 40:20-1, N.J.S. 40:41A-1, and N.J.S. 1:1-2.

²⁴ See N.J.S. 1:1-2 *infra* in the Appendix that follows this Report.

²⁵ There are 85 statutes in the Appendix that have been identified being appropriate for repeal. These statutes are contained in the Appendix that follows this Report.

²⁶ *Id.*

²⁷ BLACK’S LAW DICTIONARY 665 (6th ed. 1990). See also discussion *supra* page 2.

²⁸ See N.J. STAT. ANN. § 1:1-2 (West 2021); N.J. STAT. ANN. § 12:4-5 (West 2021); N.J. STAT. ANN. § 27:17-1(6) (West 2021); N.J. STAT. ANN. § 40:160-3(10) (West 2021); and N.J. STAT. ANN. § 46:24-1 (West 2021).

²⁹ N.J. STAT. ANN. § 26:2C-3.2 (West 2021).

³⁰ SOUTHERN N.J. FREEHOLDERS’ ASS’N, <https://capemaycountynj.gov/336/S-New-Jersey-Freeholders-Association-Mee> (Last visited Aug. 11, 2021). See also N.J. ASS’N OF COUNTIES, County Affiliate Groups, <https://njac.org/county-affiliate-groups/> (Last visited Aug. 11, 2021).

Office of the Public Guardian; the New Jersey State League of Municipalities; the New Jersey Association of Counties; the New Jersey Institute of Local Government Attorneys; each of the twenty-one County Counsels; the New Jersey Secretary of State; the Board of Public Utilities; the New Jersey Department of Education; the Division of Elections; the Constitutional Officers Association of New Jersey; the New Jersey Department of the Treasury; the Department of Human Services; the New Jersey Department of Transportation; the Department of Children and Families; the New Jersey Department of Banking and Insurance; the Department of Labor and Workforce Development; the New Jersey Department of Transportation Trust Fund Authority; the New Jersey Department of Health; the Port Authority of New York and New Jersey; the Division of State Police; the New Jersey Motor Vehicle Commission; private practitioners; and the Department of Environmental Protection.

• *Support*

The Commission received support for this project from the Department of Community Affairs.³¹ The Department “agrees with the recommendation to replace the terms ‘Freeholder’ and ‘county freeholder’ in the various statutory provisions with the term ‘county commissioner.’”³² In addition, the “Department . . . agrees that such revision should be addressed in all relevant statutory provisions to ensure that the term ‘Freeholder’ is removed in all instances.”³³

Conclusion

The term “freeholder” is rooted in systemic racism. The presence of this term in New Jersey’s body of statutes ties back to the oppressive ideals of its colonial-era origins and is appropriate for elimination.

Governor Murphy said that the 2020 Act resulted from an “obligation to ensure that governance in New Jersey is inclusive and representative of the tremendous diversity of [this] great state.”³⁴ The change in the law was designed to “forever eliminate the archaic and hurtful term freeholder” from the New Jersey statutes.³⁵ The continuing existence of this term in the New Jersey statutes, however, means that individuals accessing the statutes will still encounter it.³⁶

The Appendix to this Report contains the relevant text of each statute in which the term “freeholder” appears along with the proposed modifications to effectuate the intent of the Legislature to eliminate the use of this term in the New Jersey statutes.

³¹ Letter from Sheila Y. Oliver, Lieutenant Governor, Comm’r of the Dept. of Cmty. Affairs, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Nov. 15, 2021) (on file with the NJLRC).

³² *Id.*

³³ *Id.*

³⁴ See Burney, *supra* note 17, quoting Governor Phil Murphy.

³⁵ *Id.* quoting Assemblywoman Angela McKnight.

³⁶ As part of the Commission’s work relating to the term “workhouse” in the New Jersey Statutes, *supra* note 1, the Bergen Cnty. Counsel asked that the reference to the term “Freeholder”, as it appears in N.J.S. 2C:43-10g, be replaced with the term County Commissioner to reflect the current law. See e-mail from the Office of the Bergen County Counsel to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Mar. 22, 2021, 08:10 PM EST) (on file with the NJLRC).