

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Deputy Director
Re: Use of the Term “Freeholder” in New Jersey Statutes
Date: June 07, 2021

MEMORANDUM

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 This 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 may be a concern sufficient to support a recommendation for its elimination from the statutes.⁵

Historical Background

Following the Norman Conquest of 1066 A.D., the British Monarchy would call together advisors and grant taxes to defend the Kingdom.⁶ This assemblage 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

¹ Final Report Relating to the Use of the Word “Workhouse” in the New Jersey Statutes from Samuel M. Silver, Dep. Dir., to the New Jersey Law Rev. Comm’n (Apr. 15, 2021) (on file with the Commission).

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.*

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 New-Caesarea, or New Jersey, issued a series of concessions and agreements “to and 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.67, “An Act concerning boards of chosen freeholders and amending [N.J.S.]

⁸ *Id.*

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, OR NEW JERSEY 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 Jail.

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.*

1:1-2¹⁹, ... [N.J.S.] 40:20-1²⁰, and [N.J.S.] 40:41A-1” (the Act).²¹ The Act mandates that the title of “chosen freeholder” be changed to “county commissioner” and created a definition for “Freeholder” and “chosen freeholder” to clarify that any statutory reference to either means a “county commissioner.”²²

Governor Murphy said that the Act resulted from an “obligation to ensure that governance in New Jersey is inclusive and representative of the tremendous diversity of [this] great state.”²³ The change in the law was designed to “forever eliminate the archaic and hurtful term freeholder” from the New Jersey statutes.²⁴ Although the term “Freeholder” and “chosen freeholder” are now defined in N.J.S. 1:1-2 to mean a “county commissioner,” a preliminary examination of the State’s statutes indicates that the word “Freeholder” still appears in 1,235 statutes, which means that individuals accessing the statutes will still encounter the term.²⁵

Conclusion

Staff seeks authorization to conduct additional research and outreach to ascertain whether it would be appropriate to update the statutes by removing the term freeholder, as appropriate.

¹⁹ N.J.S. 1:1-2, entitled “Words and phrases defined”.

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

²¹ N.J.S. 40:41A-1, entitled “Submission of charter study question”.

²² See N.J.S. 40:20-1, N.J.S. 40:41A-1, and N.J.S. 1:1-2.

²³ See Burney, *supra* note 17, quoting Governor Phil Murphy.

²⁴ *Id.* quoting Assemblywoman Angela McKnight.

²⁵ 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).