

40:41A-32 et al.

LEGISLATIVE HISTORY CHECKLIST

NJSA 40:41A-32 et al. (Optional County Charter Law - clarification and technical changes)

LAWS OF 1978 CHAPTER 141

Bill No. S1001

Sponsor(s) Perskie

Date Introduced March 17, 1978

Committee: Assembly County Government

Senate County & Municipal Government

Amended during passage Yes

Amendments during passage denoted by asterisks.

Date of Passage: Assembly Sept. 25, 1978

Senate May 1, 1978

Date of approval Nov. 13, 1978

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly Yes

Senate Yes

Fiscal Note YES No

Veto message YES No

Message on signing YES No

Following were printed:

Reports YES No

Hearings YES No

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SENATE, No. 1001

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1978

By Senator PERSKIE

Referred to Committee on County and Municipal Government

AN ACT to amend *****and supplement***** the "Optional County Charter Law," approved September 19, 1972 (P. L. 1972, c. 154).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 32 of P. L. 1972, c. 154 (C. 40:41A-32) is amended to
2 read as follows:

3 32. a. Elected officers. Each county operating under this article
4 shall be governed by an elected board of freeholders and an elected
5 county executive and by such other officers and employees as may
6 be duly appointed pursuant to this act, general law, or ordinance.

7 b. In each county operating under this article, the term "gov-
8 erning body" of the county shall be construed to include both the
9 board of freeholders and the county executive. For the purpose
10 of the construction of all other applicable statutes, any and all
11 administrative or executive functions heretofore assigned by
12 general law to the board of freeholders shall be exercised by the
13 county executive, and any and all legislative and investigative
14 functions heretofore assigned by general law to the board of free-
15 holders shall be exercised by the board, all in accordance with the
16 separation of powers provided for in section 86 of the act of which
17 this act is amendatory (C. 40:41A-86).

1 2. Section 37 of P. L. 1972, c. 154 (C. 40:41A-37) is amended to
2 read as follows:

3 37. Powers. The county executive:

4 a. Shall supervise, direct and control all county administrative
5 departments;

6 b. With the advice and consent of the board, shall appoint the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

7 *county counsel, the administrator, the heads of [departments and,*
 8 *if so provided in the administrative code, of any designated*
 9 *divisions]* *all departments and any divisions created* within such
 10 departments, and the members of all county boards, commissions
 11 and authorities;

12 c. May, at his discretion, remove or suspend any official in the
 13 unclassified service of the county over whose office the county execu-
 14 tive has power of appointment in accordance with the provisions of
 15 section 87 b.;

16 d. May, at his discretion, but subject to any pertinent provisions
 17 of the administrative code or civil service requirements, delegate
 18 to department heads powers of appointment and removal of their
 19 departmental employees. If the county executive does not so
 20 delegate his power he may appoint and remove, subject to civil
 21 service requirements, all employees whose positions have been
 22 created in accordance with the administrative code, and the manner
 23 of whose appointment is not specified elsewhere in this article;

24 e. May require reports and examine the accounts, records and
 25 operations of any agency of county government;

26 f. May at his discretion order any agency under his jurisdiction
 27 as specified in the administrative code to undertake any task for any
 28 other agency on a temporary basis if he deems it necessary for the
 29 proper and efficient administration of the county government to do
 30 so;

31 g. Shall approve each ordinance of the board by signing it, or
 32 may veto any ordinance by returning it to the clerk of the board
 33 within 10 days of passage with a written statement of his objections
 34 to the ordinance. If two-thirds of the full membership of the
 35 board, upon reconsideration of the measure, shall vote for it,
 36 the executive's veto shall be overridden and the ordinance shall
 37 become law without the executive's signature in accordance with
 38 the provisions of law.

1 3. Section 38 of P. L. 1972, c. 154 (C. 40:41A-38) is amended to
 2 read as follows:

3 38. The legislative power of the county shall be vested in the
 4 board of chosen freeholders. *Such legislative power shall be ex-*
 5 *ercised by ordinance, except for the exercise of the following powers*
 6 *which are required to be, or are permitted to be, exercised by*
 7 *resolution:*

8 a. *The establishment of a municipal advisory council pursuant*
 9 *to section 29 of the act of which this act is amendatory*
 10 *(C. 40:41A-29);*

11 b. *The conduct of an inquiry or investigation pursuant to section*
 12 *86 of such act (C. 40:41A-86);*

13 c. *The expression of disapproval of the suspension or dismissal*
 14 *of officers or employees pursuant to section 87 of such act*
 15 *(C. 40:41A-87);*

16 d. *The exercise of the power of advice and consent to actions of*
 17 *the executive pursuant to section 41a. of such act (C. 40:41A-41a.);*

18 e. *The override of a veto of the county executive pursuant to*
 19 *section 41f. of such act (C. 40:41A-41f.);*

20 f. *The adoption of rules for the board pursuant to section 100 of*
 21 *such act (C. 40:41A-100);*

22 g. *The establishment of times and places for board meetings*
 23 *pursuant to section 99 of such act (C. 40:41A-99);*

24 h. *The establishment of the board as a committee of the whole*
 25 *and the delegation of any number of its members as an ad hoc com-*
 26 *mittee, both pursuant to section 86 of such act (C. 40:41A-86);*

27 i. *The declaration of emergencies pursuant to section 101c. of*
 28 *such act (C. 40:41A-101c.);*

29 j. *The identification of emergency situations pursuant to section*
 30 *128 of such act (C. 40:41A-128);*

31 k. *Application for a county department of civil service pursuant*
 32 *to section 130 of such act (C. 40:41A-130);*

33 l. *Designation of qualified newspapers pursuant to section 142*
 34 *of such act (C. 40:41A-142);*

35 m. *The appointment and removal of such officers and employees*
 36 *as the board is permitted by law;*

37 n. *Approval of contracts presented by the county executive;*

38 o. *Actions specified as ***[resolution]*** *resolutions* in the "Local*
 39 *Budget Law" (N. J. S. 40A:4-1 et seq.); and,*

40 p. *The expression of such board policies or opinions as require*
 41 *no formal action by the governing body.*

1 4. Section 41 of P. L. 1972, c. 154 (C. 40:41A-41) is amended
 2 to read as follows:

3 41. Board powers. The board of freeholders:

4 a. Shall advise and consent to all appointments by the executive
 5 for which board confirmation is specified under this article;

6 b. Shall pass in accordance with this act whatever ordinances
 7 and resolutions it deems necessary and proper for the good gov-
 8 ernance of the county;

9 c. Shall appoint a clerk to the board who shall **[serve at its**
 10 **pleasure and]** keep the records and minutes of the board, *and who*
 11 *shall serve at the pleasure of the board or for such term, not to*
 12 *exceed 3 years, as may be provided by the administrative code;*

12A ***provided, however, that an ordinance providing for the adoption
 12B of any such term shall not be enacted between October 1 of any year
 12C and January 1 of the succeeding year;***

13 d. [Shall appoint the county counsel, to serve at the pleasure of
 14 the board and head the county's legal department] *May appoint*
 15 *counsel to the board, if such position is created by the administra-*
 16 *tive code, to serve at the pleasure of the board;*

17 e. May pass a resolution of disapproval or dismissal, subject to
 18 the provisions of section 87 b. of this act;

19 f. May override a veto of the county executive by a two-thirds
 20 vote of its full membership;

21 g. Shall approve the annual operating and capital budgets pur-
 22 suant to the Local Budget Law.

1 5. Section 51 of P. L. 1972, c. 154 (C. 40:41A-51) is amended to
 2 read as follows:

3 51. Powers. The county manager:

4 a. Shall supervise, direct and control all county administrative
 5 departments;

6 b. Shall appoint the deputy manager, if that position is created
 7 by the board, the heads of all county departments and [if so pro-
 8 vided in the administrative code, of any designated] *any* divisions
 9 *created* within such departments, and all other administrative offi-
 10 cers and county personnel the manner of whose appointment is
 11 not prescribed elsewhere in this article;

12 c. May, at his discretion, remove or suspend any official in the
 13 unclassified service of the county over whose office the county man-
 14 ager has power of appointment in accordance with the provisions
 15 of section 87 b.;

16 d. May, at his discretion, but subject to any pertinent provisions
 17 of the administrative code or civil service requirements, delegate
 18 to any department head powers of appointment and removal of
 19 their departmental employees. If the county manager does not so
 20 delegate his power he may appoint and remove, subject to civil
 21 service requirements, all employees whose positions have been
 22 created in accordance with the administrative code, and the manner
 23 of whose appointment is not specified elsewhere in the article;

24 e. May require reports and examine the accounts, records and
 25 operations of any agency of county government;

26 f. May, at his discretion, order any agency under his jurisdiction
 27 as specified in the administrative code to undertake any task for
 28 any other agency on a temporary basis if he deems it necessary for
 29 the proper and efficient administration to do so.

1 6. Section 52 of P. L. 1972, c. 154 (C. 40:41A-52 is amended to
2 read as follows:

3 52. The legislative power of the county shall be vested in the
4 board of chosen freeholders. *Such legislative power shall be exer-*
5 *cised by ordinance, except for the exercise of the following powers*
6 *which are required to be, or are permitted to be, exercised by*
7 *resolution:*

8 a. *The establishment of a municipal advisory council pursuant*
9 *to section 29 of the act of which this act is amendatory*
10 *(C. 40:41A-29);*

11 b. *The conduct of an inquiry or investigation pursuant to sec-*
12 *tion 86 of such act (C. 40:41A-86);*

13 c. *The expression of disapproval of the suspension or dismissal*
14 *of officers or employees pursuant to section 87 of such act*
15 *(C. 40:41A-87);*

16 d. *The adoption of rules for the board pursuant to section 100*
17 *of such act (C. 40:41A-100);*

18 e. *The establishment of times and places for board meetings*
19 *pursuant to section 99 of such act (C. 40:41A-99);*

20 f. *The establishment of the board as a committee of the whole,*
21 *and the delegation of any number of its members as an ad hoc*
22 *committee, both pursuant to section 86 of such act (C. 40:41A-86);*

23 g. *The declaration of emergencies pursuant to section 101c. of*
24 *such act (C. 40:41A-101c.);*

25 h. *The identification of emergency situations pursuant to sec-*
26 *tion 128 of such act (C. 40:41A-128);*

27 i. *Application for a county department of civil service pursuant*
28 *to section 130 of such act (C. 40:41A-130);*

29 j. *The election, appointment and removal of such officers and*
30 *employees as the board is permitted by law;*

31 k. *Designation of qualified newspapers pursuant to section 142*
32 *of such act (C. 40:41A-142);*

33 l. *Approval of contracts presented by the county manager;*

34 m. *Actions specified as ***[resolution]*** *resolutions* in the "Lo-*
35 *cal Budget Law" (N. J. S. 40A:4-1 et seq.); and*

36 n. *The expression of such board policies or opinions as require*
37 *no formal board action.*

1 7. Section 55 of P. L. 1972, c. 154 (C. 40:41A-55) is amended to
2 read as follows:

3 55. Board powers. The board of freeholders:

4 a. Shall appoint a county manager under the provisions of sec-
5 tion 47 of this article and may create the office of deputy manager;

6 b. Shall appoint a clerk to the board who shall [serve at its
7 pleasure and] keep the records and minutes of the board, *and who*
8 *shall serve at the pleasure of the board or for such term, not to*
9 *exceed 3 years, as may be provided by the administrative code;*
9A ****provided, however, that an ordinance providing for the adoption*
9B *of any such term shall not be enacted between October 1 of any year*
9C *and January 1 of the succeeding year;****

10 c. Shall appoint a county counsel, [to serve at the pleasure of the
11 board,] who shall head the county's legal department, *and who*
12 *shall serve at the pleasure of the board or for such term, not to*
13 *exceed 4 years, as may be provided by the administrative code;*
13A ****provided, however, that an ordinance providing for the adoption*
13B *of any such term shall not be enacted between October 1 of any*
13C *year and January 1 of the succeeding year. The administrative code*
13D *may also establish a term, not to exceed 3 years, for the position of*
13E *assistant county counsel;****

14 d. Shall appoint members of all boards and commissions and
15 other bodies whose manner of appointment is not otherwise speci-
16 fied in this article;

17 e. May pass a resolution of disapproval of a suspension or dis-
18 missal, subject to the provisions of section 87 b. of this act;

19 f. Shall approve the annual operating and capital budgets;

20 g. Shall pass in accordance with this act whatever ordinances
21 and resolutions it deems necessary and proper for the good
22 governance of the county.

1 8. Section 60 of P. L. 1972, c. 154 (C. 40:41A-60) is amended to
2 read as follows:

3 60. a. Elected officers. Each county operating under this article
4 shall be governed by an elected board of freeholders and an elected
5 county supervisor and by such other officers and employees as may
6 be duly appointed pursuant to this article, general law, or ordinance.

7 b. *In each county operating under this article, the term "govern-*
8 *ing body" of the county shall be construed to include the board of*
9 *freeholders***[.]*** and*** the county supervisor*
10 ****[and the county administrator]***. For the purpose of the*
11 *construction of all other applicable statutes, any and all admin-*
12 *istrative or executive functions heretofore assigned by general law*
13 *to the board of freeholders shall be exercised by the county super-*
14 *visor ***[and the county administrator]***, and any and all*
15 *legislative and investigative functions heretofore assigned by*
16 *general law to the board of freeholders shall be exercised by the*
17 *board, all in accordance with the separation of powers provided*
18 *for in section 86 of the act of which this act is amendatory*
19 *(C. 40:41A-86).*

1 9. Section 66 of P. L. 1972, c. 154 (C. 40:41A-66) is amended to
2 read as follows:

3 66. The legislative power of the county shall be vested in the
4 board of chosen freeholders. *Such legislative power shall be exer-*
5 *cised by ordinance, except for the exercise of the following powers*
6 *which are required to be, or are permitted to be, exercised by*
7 *resolution:*

8 a. *The establishment of a municipal advisory council pursuant to*
9 *section 29 of the act of which this act is amendatory (C. 40:41A-29);*

10 b. *The conduct of an inquiry or investigation pursuant to sec-*
11 *tion 86 of such act (C. 40:41A-86);*

12 c. *The expression of disapproval of the suspension or dismissal*
13 *of officers or employees pursuant to section 87 of such act*
14 *(C. 40:41A-87);*

15 d. *The exercise of the power of advice and consent to actions of*
16 *the supervisor pursuant to section 67c. of such act (C. 40:41A-67c.);*

17 e. *The override of a veto of the county supervisor pursuant to*
18 *section 67g. of such act (C. 40:41A-67g.);*

19 f. *The adoption of rules for the board pursuant to section 100*
20 *of such act (C. 40:41A-100);*

21 g. *The establishment of times and places for board meetings*
22 *pursuant to section 99 of such act (C. 40:41A-99);*

23 h. *The establishment of the board as a committee of the whole*
24 *and the delegation of any number of its members as an ad hoc*
25 *committee, both pursuant to section 86 of such act (C. 40:41A-86);*

26 i. *The declaration of emergencies pursuant to section 101c. of*
27 *such act (C. 40:41A-101c.);*

28 j. *The identification of emergency situations pursuant to section*
29 *128 of such act (C. 40:41A-128);*

30 k. *Application for a county department of civil service pursuant*
31 *to section 130 of such act (C. 40:41A-130);*

32 l. *Designation of qualified newspapers pursuant to section 142*
33 *of such act (C. 40:41A-142);*

34 m. *The appointment and removal of such officers and employees*
35 *as the board is permitted by law;*

36 n. *Approval of contracts presented by the county administrator;*

37 o. *Actions specified as ***[resolution]*** *resolutions* in the "Local*
38 *Budget Law" (N. J. S. 40A:4-1 et seq.); and,*

39 p. *The expression of such board policies or opinions as require*
40 *no formal action by the governing body.*

1 10. Section 67 of P. L. 1972, c. 154 (C. 40:41A-67) is amended to
2 read as follows:

3 67. Board powers. The board of freeholders:

4 a. Shall pass in accordance with this act whatever ordinances
5 and resolutions it deems necessary and proper for the good govern-
6 ance of the county;

7 b. Shall appoint and remove the county administrative officer by
8 a majority vote and may create the office of, appoint and remove,
9 a deputy administrative officer by a majority vote;

10 c. Shall advise and consent to all appointments by the supervisor;

11 d. Shall appoint a clerk to the board who shall [serve at its
12 pleasure and] keep the records and minutes of the board, *and who*
13 *shall serve at the pleasure of the board or for such term, not to*
14 *exceed 3 years, as may be provided by the administrative code;*
14A ****provided, however, that an ordinance providing for the adoption*
14B *of any such term shall not be enacted between October 1 of any*
14C *year and January 1 of the succeeding year;****

15 e. Shall appoint the county counsel, [to serve at the pleasure of
16 the board and head the county's legal department] *who shall head*
17 *the county's legal department, and who shall serve at the pleasure*
18 *of the board or for such term, not to exceed 4 years, as may be*
19 *provided by the administrative code; ***provided, however, that an*
19A *ordinance providing for the adoption of any such term shall not be*
19B *enacted between October 1 of any year and January 1 of the*
19C *succeeding year. The administrative code may also establish a term,*
19D *not to exceed 3 years, for the position of assistant county*
19E *counsel;****

20 f. May pass a resolution of disapproval of a suspension or dis-
21 missal, subject to the provisions of section 87 b. of this act;

22 g. May override a veto of the county supervisor by a two-thirds
23 vote of its full membership;

24 h. Shall approve the annual operating and capital budgets.

1 11. Section 79 of P. L. 1972, c. 154 (C. 40:41A-79) is amended to
2 read as follows:

3 79. The legislative power of the county shall be vested in the
4 board of chosen freeholders. *Such legislative power shall be*
5 *exercised by ordinance, except for the exercise of the following*
6 *powers which are required to be, or are permitted to be, exercised*
7 *by resolution:*

8 a. *The establishment of a municipal advisory council pursuant*
9 *to section 29 of the act of which this act is amendatory*
10 *(C. 40:41A-29);*

11 b. *The conduct of an inquiry or investigation pursuant to section*
12 *86 of such act (C. 40:41A-86);*

13 *c. The expression of disapproval of the suspension or dismissal*
 14 *of officers or employees pursuant to section 87 of such act*
 15 *(C. 40:41A-87);*

16 *d. The exercise of the power of advice and consent to actions of*
 17 *the president and administrative officer pursuant to section 81c.*
 18 *of such act (C. 40:41A-81c.);*

19 *e. The adoption of rules for the board pursuant to section 100*
 20 *of such act (C. 40:41A-100);*

21 *f. The establishment of times and places for board meetings*
 22 *pursuant to section 99 of such act (C. 40:41A-99);*

23 *g. The establishment of the board as a committee of the whole*
 24 *and the delegation of any number of its members as an ad hoc*
 25 *committee, both pursuant to section 86 of such act (C. 40:41A-86);*

26 *h. The declaration of emergencies pursuant to section 101c. of*
 27 *such act (C. 40:41A-101c.);*

28 *i. The identification of emergency situations pursuant to section*
 29 *128 of such act (C. 40:41A-128);*

30 *j. Application for a county department of civil service pursuant*
 31 *to section 130 of such act (C. 40:41A-130);*

32 *k. Designation of qualified newspapers pursuant to section 142*
 33 *of such act (C. 40:41A-142);*

34 *l. The appointment and removal of such officers and employees*
 35 *as the board is permitted by law;*

36 *m. Approval of contracts presented by the county administrator;*

37 *n. Actions specified as ***[resolution]*** *resolutions* in the "Local*
 38 *Budget Law" (N. J. S. 40A:4-1 et seq.); and,*

39 *o. The expression of such board policies or opinions as require*
 40 *no formal board action.*

1 12. Section 81 of P. L. 1972, c. 154 (C. 40:41A-81) is amended to
 2 read as follows:

3 81. Board powers. The board of freeholders:

4 a. Shall pass in accordance with this act whatever ordinances or
 5 resolutions it deems necessary and proper for the good governance
 6 of the county;

7 b. Shall appoint and remove the administrative officer by a
 8 majority vote and may create the office of, appoint and remove,
 9 a deputy administrative officer by a majority vote;

10 c. Shall advise and consent to all appointments by the president
 11 and administrative officer for which board confirmation is specified
 12 under this article;

13 d. Shall appoint a clerk to the board who shall **[serve at its**
 14 **pleasure and]** keep the records and minutes of the board, *and who*

15 *shall serve at the pleasure of the board or for such term, not to*
 16 *exceed 3 years, as may be provided by the administrative code;*
 16A ****provided, however, that an ordinance providing for the adoption*
 16B *of any such term shall not be enacted between October 1 of any*
 16C *year and January 1 of the succeeding year;****

17 e. Shall appoint the county counsel, to [serve at the pleasure of
 18 the board and] head the county's legal department, *and serve at*
 19 *the pleasure of the board or for such term, not to exceed 4 years,*
 20 *as may be provided by the administrative code; ***provided, how-*
 20A *ever, that an ordinance providing for the adoption of any such term*
 20B *shall not be enacted between October 1 of any year and January 1*
 20C *of the succeeding year. The administrative code may also establish*
 20D *a term, not to exceed 3 years, for the position of assistant county*
 20E *counsel;****

21 f. May pass a resolution of disapproval of a suspension or dis-
 22 missal, subject to the provisions of section 87 b. of this act;

23 g. Shall approve the annual operating and capital budgets.

1 13. Section 129 of P. L. 1972, c. 154 (C. 40:41A-129) is amended
 2 to read as follows:

3 129. Employees in the classified service. On the effective date
 4 of the administrative code, all officers and employees in the
 5 classified service of the county shall be transferred to the depart-
 6 ment, division or agency to which the functions, powers or duties
 7 in which they were engaged are allocated under the administrative
 8 code. Such transfer shall, *except as otherwise provided in this*
 9 *section*, be without examination or diminution of existing com-
 10 pensation, pension or retirement rights, privileges or obligations
 11 of any such officer or employee. It is the intent of the Legislature
 12 that the adoption of any plan found in this charter shall not, *except*
 13 *as otherwise provided in this section*, adversely affect the civil
 14 service tenure, pension, seniority or promotional rights of any
 15 county officer or employee in the classified service. *With respect to*
 16 *the positions of heads of departments, or any divisions thereof,*
 17 *which are placed in the unclassified service pursuant to the pro-*
 18 *visions of R. S. 11:22-2, ***other than a position subject to the re-*
 18A *quirements of 42 U. S. C. 602 (a),*** and notwithstanding the provi-*
 19 *sions of this section, or chapter 27 of Title 11 of the Revised Statutes*
 20 *or R. S. 11:28-3 or R. S. 38:16-1, any officer or employee in the*
 21 *classified service who shall have exercised the same or substantially*
 22 *the same responsibilities prior to the effective date of the adminis-*
 23 *trative code, and who shall not be appointed thereafter by the*
 24 *appointing authority as head of a department, or a division thereof,*
 25 *shall be entitled to * [such rights and privileges as are provided pur-*

26 *suant to the provisions of P. L. 1952, c. 323 (C. 11:22-10.1 et seq.),*
 27 *with respect to seniority rights and the right of employment or re-*
 28 *employment in a comparable position】* *such lay-off, demotional*
 29 *and special reemployment rights as are provided under applicable*
 30 *provisions of Title 11 (Civil Service) and rules and regulations*
 30A *adopted pursuant thereto.* Any such officer or employee who shall*
 31 *be appointed by the appointing authority as head of a department,*
 32 *or a division thereof, shall be *【separated from the classified service*
 33 *and shall be placed in the unclassified service, pursuant to the pro-*
 34 *visions of R. S. 11:22-2.】* *deemed to be entitled to such classified*
 35 *title as may be provided by the lay-off, demotional or special re-*
 36 *employment rights **【provided in sections 1 and 2 of P. L. 1946,*
 37 *c. 148 (C. 11:24A-6.1 and 6.2)】** **as are provided under ap-*
 38 *plicable provisions of Title 11 (Civil Service) and rules and*
 39 *regulations adopted pursuant thereto**, and shall be placed on*
 40 *leave of absence **pursuant to sections 1 and 2 of P. L. 1946, c. 148*
 41 *(C. 11:24A-6.1 and 6.2)** from such classified title while serving*
 42 *as the head of a department or a division thereof.**

1 14. Section 142 of P. L. 1972, c. 154 (C. 40:41A-142) is amended
 2 to read as follows:

3 142. Whenever notice by publication is required under this act
 4 the clerk to the board of freeholders or the county counsel, which-
 5 ever shall be charged by the board to do so, or any other person
 6 charged under any section of this act with the duty of causing such
 7 publication, shall cause all such notices to be published in *at least*
 8 *one of the two newspapers* qualified by law and designated by
 9 majority vote of the board of freeholders to publish the county's
 10 legal notices. The two newspapers designated by the board of free-
 11 holders shall be:

12 a. Both printed and published in the county, one of which shall be
 13 either a newspaper published at the county seat of such county or a
 14 newspaper published in a municipality in such county having the
 15 largest population according to the last population estimate pub-
 16 lished by the New Jersey Department of Labor and Industry; or

17 b. One printed and published in such county and one circulating
 18 in such county, if only one daily newspaper is printed and published
 19 in such county; or

20 c. One published at the county seat and one circulating in the
 21 county if no daily newspaper is published; or

22 d. Both circulating in such county, if no newspapers are printed
 23 and published in such county.

1 ***15. (New section) Whenever a vacancy occurs in the member-
 2 ship of the board of chosen freeholders for any reason other than
 3 the expiration of the term, it shall be filled for the unexpired term
 4 at the next general election occurring not less than 60 days from the
 5 date of such vacancy; provided, however, that if the vacancy occurs
 6 at any time after 60 days prior to the general election occurring in
 7 the next to the last year in the term of office, the vacancy may be
 8 filled by appointment for the remainder of the unexpired term in the
 9 same manner as hereinafter provided for temporary appointments.
 10 Nominations and elections for the filling of a vacancy for the unex-
 11 pired term shall be made in accordance with the pertinent provisions
 12 of Title 19 of the Revised Statutes and the "Optional County
 13 Charter Law" (P. L. 1972, c. 154).

14 The board of chosen freeholders may, by majority vote of its
 15 remaining members, fill a vacancy temporarily by appointment until
 16 the election and qualification of a successor. If the board of chosen
 17 freeholders shall fail to fill the vacancy within 30 days of its occur-
 18 rence, the office shall remain vacant until the election and qualifica-
 19 tion of a person to fill the vacancy for the unexpired term or to
 20 fill a full new term, as the case may be.

1 16. (New section) Whenever the offices of all or a majority of the
 2 members of the board of chosen freeholders shall become vacant
 3 for any reason, the existence of the vacancies shall be immediately
 4 certified to the Governor by any remaining member of the board
 5 of chosen freeholders or by the county clerk. The Governor upon
 6 receipt of such certification shall forthwith fill the vacancies tempo-
 7 rarily by appointment until successors are elected and certified for
 8 the unexpired terms at the next general election occurring not less
 9 than 60 days subsequent to the certification of the existence of such
 10 vacancies. Any appointment made pursuant to this section to fill
 11 a vacancy occurring in the next to the last year of the term and
 12 certified any time after 60 days prior to the holding of the general
 13 election, shall be made for the remainder of the term.

1 17. (New section) Any person appointed by the board of chosen
 2 freeholders or the Governor to fill a vacancy either for the unex-
 3 pired term or temporarily, shall have all the qualifications required
 4 by statute to qualify for election to said office, and if the previous
 5 incumbent had been elected to office as the nominee of a political
 6 party as defined in Title 19 of the Revised Statutes, the person so
 7 appointed shall be of the same political party as the preceding
 8 incumbent.***

1 ***[15.]*** ***18.*** This act shall take effect immediately.

- 17 b. One printed and published in such county and one circulating
 18 in such county, if only one daily newspaper is printed and published
 19 in such county; or
 20 c. One published at the county seat and one circulating in the
 21 county if no daily newspaper is published; or
 22 d. Both circulating in such county, if no newspapers are printed
 23 and published in such county.
- 1 15. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to clarify certain ambiguities of, and to rectify certain technical deficiencies in the "Optional County Charter Law." These objectives are accomplished by providing:

1. A clear delineation of which powers of the board of chosen freeholders may be exercised by resolution, and a requirement that all legislative power of the board be exercised by ordinance except for those specifically delineated;

2. A statement of legislative intent that in those forms of government where the executive officer has veto power over actions of the freeholder board (the county executive plan and the county supervisor plan) the term "governing body" shall be construed to include both the board and the executive officer, and that in the construction of all other applicable statutes, all administrative and executive functions previously assigned to the board of freeholders shall be exercised by the executive officer, and all legislative and investigative functions previously so assigned shall be exercised by the board;

3. A technical clarification concerning the power of the executive officer to appoint heads of departmental divisions which removes the phrase "if so provided in the administrative code" which is unclear as to its reference;

4. A provision that the clerk of the board may either serve at the pleasure of the board, or be appointed to a fixed term of 3 years, as provided in the county administrative code;

5. A provision that, in the case of the county executive plan, the executive shall appoint county counsel to head the county's legal department, and that the board may appoint its own board counsel, if such position is created by the administrative code, which counsel shall not head the county's legal department;

6. Provision that, in all other forms of government, the county counsel may either serve at the pleasure of the board, or be appointed to a fixed term of 4 years, as provided in the county administrative code;

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7. A section providing discretion to the appointing authority of any optional county charter county in appointing heads of county departments, and the heads of divisions thereof, when such positions are placed in the unclassified service by the administrative code. A recent judicial decision was held that under existing law, a county reorganizing its departmental structure after adoption of the plan of government is required to retain as head of a county department, or a division thereof, any incumbent holding such position in the classified service. Such is contrary to the broad reorganization powers granted charter counties by subsection 27a of the Optional County Charter Law (C. 40:41A-27), and to the provisions of R. S. 11:22-1, which authorizes the placement of such positions in the unclassified service; and,

8. A requirement that county legal notices be published in at least one of the two newspapers designated by the county board, rather than in both of such newspapers.

ASSEMBLY COUNTY GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1001

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1978

The purpose of this bill is to clarify certain problems in the "Optional County Charter Law" and to provide greater specificity as to the powers of the board of chosen freeholders and the county executive, the county supervisor or the county manager in optional charter counties.

In those forms of county government in which the executive officer has veto power over the actions of the board of chosen freeholders, a statement of legislative intent has been incorporated to define the term "governing body." In counties which have adopted the county executive plan or the county supervisor plan, the governing body shall include both the board and the executive officer. All administrative and executive functions previously exercised by the board in such counties are assigned to the executive officer, while legislative and investigatory power is granted to the board. The bill also stipulates which powers of the board may be exercised by resolution and which necessitate action by ordinance. In the case of those counties which have adopted the county executive plan, the county executive is granted the right to appoint the county counsel to head the county legal department and grants to the board the permissive right to appoint its own counsel if that position is created by the administrative code.

The bill clarifies the power of the executive officer to appoint heads of county departments and divisions within such department by removing the phrase "if so provided in the administrative code."

The bill further provides that the clerk of the freeholders board may serve either at the pleasure of the board or be appointed to a 3 year term as provided in the county administrative code and that the county counsel may serve for a 4 year term or at the pleasure of the board, again, as provided in the administrative code. It also stipulates that county legal notices be published in one rather than in the two officially designated county newspapers.

The committee, at the request of the sponsor, made several amendments to the bill. The committee amended the bill to permit any county operating under the county manager, the county supervisor or the board president form of government to establish, in its administrative code, a term, not to exceed 3 years for the position of assistant county counsel.

The committee amended the bill to prohibit a board of chosen freeholders from enacting an ordinance establishing a term of office for the county counsel or for the clerk to the board from October 1 of any year to January 1 of the succeeding year. The purpose of this restriction is to prohibit a board from amending the administrative code to change the term of office of a board clerk or county counsel just prior to or following a general election. The committee felt that a newly elected board should be able to exercise its own choice in such matters.

The committee amended the bill to guarantee that the head of a county welfare department remain in the classified service despite the fact that all other department heads may be placed in the unclassified service pursuant to R. S. 11:22-2. Federal law requires that the heads of county welfare departments be in the classified service and the amendment simply clarifies that stipulation.

The committee amended the bill to establish a procedure whereby counties may fill vacancies which have arisen on a board of chosen freeholders. The Optional County Charter Law contains no provisions for the filling of such vacancies. All such vacancies shall be filled for unexpired terms at the next general election occurring not less than 60 days from the date of such vacancies. However, if a vacancy occurs at any time after 60 days prior to a general election occurring in the next to last year in the term of office, the vacancy shall be filled by appointment pursuant to the pertinent provision of Title 19 of the Revised Statutes and the Optional County Charter Law. In those instances when the offices of all or a majority of the board become vacant, the Governor may fill such vacancies by appointment. Such temporary appointments must have all the qualifications for such office and be of the same political party as the previous incumbents. Those provisions are substantially the same as provided in the "Municipal Governing Body Vacancy Law."

The committee received a number of statements of concern from county officials with regard to section 13 of the bill which the committee believes reflect some misunderstanding of the provisions and purposes of the section. The committee, therefore, wishes to set forth its understanding of the section in order to provide a clear statement of legislative intent. The purpose of the section is to reconcile the provisions of section 129 of the "Optional County Charter Law," which provides

for the protection of the civil service tenure rights of all county officers and employees existing prior to the reorganization of the county under the new charter during the period of reorganizational transition and thereafter, with the broad reorganization powers granted charter counties under section 27a of that law and with the provisions of R. S. 11:22-2 which provides that in charter counties the positions of heads of departments, and of divisions thereof, not to exceed 20 in number, shall be unclassified positions. Quite clearly some uncertainty exists under these statutes as to the status after reorganization of a department head or director who possessed civil service status prior to such reorganization. A judicial decision has attempted to clarify this uncertainty by interpreting section 129 to require that a charter county retain as the head of a county department, or a division thereof, any incumbent holding such position in the classified service prior to reorganization.

The provisions of section 13 of this bill would provide a clear statement of legislative intent that in the case of heads of departments and divisions thereof, the authority accorded a charter county under N. J. S. A. 40:41A-27a and R. S. 11:22-2 shall be determinant. In doing so, it would, however, protect the civil service status of those persons holding civil service status in such positions prior to the reorganization. Specifically, the bill would provide that whenever a department or division head possessing civil service status prior to reorganization, who exercises the same responsibilities, is not appointed as a department or division head after reorganization, that person shall retain his civil service status and shall be entitled to lay-off, demotional and special reemployment rights provided under civil service law. Whenever a department or division head possessing civil service status prior to reorganization is appointed as a department or division head after reorganization, that person shall retain his civil service status, but shall be required to take a leave of absence from such classified title to which he is entitled under civil service law while serving in the unclassified position of department head or division head, as the case may be. He shall be entitled to return to such classified title upon leaving such unclassified position.

The committee understands that the provisions of section 13 of the bill would apply only to the provisions of the administrative code of charter counties adopted at the time of reorganization, and not to subsequent amendments thereof. The committee also understands that the provisions of this section shall not negate any provision protecting the civil service status of persons or positions existing prior to the adoption of such code, which was adopted as part of the administrative code of a charter county prior to this act.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1001

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 17, 1978

The sponsor's statement adequately reflects the purposes and provisions of the bill.

The committee amendments are purely technical in nature. The amendments to section 13 of the bill were suggested by the Department of Civil Service, and were approved by the sponsor.