

HB 645-FN - AS INTRODUCED

2023 SESSION

23-0561

04/08

HOUSE BILL **645-FN**

AN ACT relative to the establishment of decentralized autonomous organizations as legal entities within the state.

SPONSORS: Rep. Ammon, Hills. 42; Rep. Berezhny, Graf. 11; Rep. Alexander Jr., Hills. 29; Rep. Osborne, Rock. 2; Rep. Potucek, Rock. 13; Sen. Avard, Dist 12; Sen. Murphy, Dist 16

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill establishes decentralized autonomous organizations within the state.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the establishment of decentralized autonomous organizations as legal entities within the state.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Decentralized Autonomous Organizations. Amend the RSA by inserting after
2 chapter 301-A the following new chapter:

3 CHAPTER 301-B

4 DECENTRALIZED AUTONOMOUS ORGANIZATIONS

5 301-B:1 Nature. A decentralized autonomous organization (DAO) is a legal entity that can be
6 used for commercial, mutualistic, social, environmental, or political purposes, the nature of which
7 shall be specified in its by-laws.

8 301-B:2 Legal Status.

9 I. A DAO shall be deemed a legal entity separate and distinct from its Members. A DAO
10 shall, by its own name, be capable of:

11 (a) Suing and being sued.

12 (b) Acquiring, owning, holding, developing, or disposing of property, both movable and
13 immovable.

14 (c) Doing and suffering such acts as bodies corporate may lawfully do and suffer.

15 II. A DAO shall meet its liabilities through its on-chain and off-chain assets.

16 III. The validity of an action by a DAO as authorized under this chapter shall not be
17 challenged on the ground that the DAO lacks power to act.

18 301-B:3 Definitions.

19 I. "Accreditation authority" means any public or private authority that a jurisdiction
20 recognizes as legitimate to ensure compliance with this chapter.

21 II. "Administrator" means a person, irrespective of title, that is appointed in a manner
22 specified in the by-laws to make discretionary decisions, either individually or collectively with other
23 administrators, with regard to specific, predefined operations of the DAO.

24 III. "Airdrop" means a free distribution of tokens initiated by a DAO to a public address, but
25 does not include distributions of tokens for which a person must execute a function to redeem the
26 distributed tokens.

27 IV. "Asset" includes both on-chain assets and off-chain assets.

28 V. "By-laws" means the rules and regulations that govern the procedures followed by a DAO
29 and the interaction of its members and participants, which shall be set out in plain language, in text
30 or sound, or visual or audiovisual recording.

1 VI. "Contentious fork" means a hard fork that results in 2 divergent and potentially
2 competing blockchains.

3 VII. "Decentralized autonomous organization" or (DAO) refers to smart contracts (i.e.
4 blockchain-based software) deployed on a public permissionless blockchain, which implements
5 specific decision-making or governance rules enabling a multiplicity of actors to coordinate
6 themselves in a decentralized fashion. These governance rules shall be technically, although not
7 necessarily operationally, decentralized.

8 VIII. "Developer" means a person involved in the development or maintenance of the DAO,
9 whether through the contribution of software code, design, business, legal, or ancillary support.

10 IX. "Dispute resolution mechanism" means an on-chain alternative dispute resolution
11 system, such as arbitration, expert determination, or an on-chain alternative court system, which
12 enables anyone to resolve their disputes, controversies or claims with, arising out of, or in connection
13 with, a DAO. Any such award, decision, or judgment shall be accorded the same status and
14 treatment as an international arbitral award.

15 X. "Externally owned account" means a public address controlled by a private key and that
16 has no associated code.

17 XI. "Failure event" means a DAO encountering a technical bug or exploit which renders the
18 DAO unoperational or fundamentally changes the expected operation of the DAO.

19 XII. "GUI" means a graphical user interface, publicly accessible by all DAO members and
20 participants, whether hosted via centralized or decentralized means, through which users interact
21 with computer software via visual indicator representations. This can include, but is not limited to,
22 a web interface or standalone application.

23 XIII. "Hard fork" means a blockchain software upgrade that is not compatible with previous
24 versions of the blockchain software, and therefore requires all users to upgrade.

25 XIV. "Jurisdiction" means a territory that is under a defined legal authority.

26 XV. "Legal representative" means a person who is appointed in a manner specified in the by-
27 laws to perform procedural functions off-chain.

28 XVI. "Majority chain" means the version of the chain accepted by more than 50 person of the
29 blockchain's validators following a hard fork.

30 XVII. "Meeting" means a synchronous or asynchronous event for the purpose of discussing
31 and acting upon DAO-related matters by members or participants.

32 XVIII. "Member" means any person or DAO who has governance rights in a DAO.

33 XIX. "Minority chain" means the version of the chain that is not the majority chain following
34 a hard fork.

35 XX. "Off-chain" means any action or transaction that is not on-chain.

36 XXI. "On-chain" means any action or transaction that is recorded and verified on a
37 blockchain.

1 XXII. "On-chain contribution" refers to any token segregated and locked in one of the DAO's
2 smart contracts for the purpose of member buy-in to the DAO and the provision of withdrawable
3 capital.

4 XXIII. "Open-source format" means the open source initiative's definition of open source.

5 XXIV. "Participants" means any person interacting with or holding native tokens in a DAO
6 other than members.

7 XXV. "Permissionless blockchain" means a public distributed ledger, allowing any entity to
8 transact and produce blocks in accordance with the blockchain protocol, whereby the validity of the
9 block is not determined by the identity of the producer.

10 XXVI. "Person" means an individual, a company or any other body of persons.

11 XXVII. "Proposal" means a suggestion for actions to be taken by the DAO, to be decided on
12 in accordance with the by-laws of the DAO.

13 XXVIII. "Public address" means a unique, durable identifier that person(s) can transact with
14 on a permissionless blockchain.

15 XXIX. "Public forum" means a freely accessible online environment that is commonly used
16 for the exercise of speech and public debate.

17 XXX. "Public signaling" means a declaration authorized by way of proposal by the DAO in a
18 public forum.

19 XXXI. "Quality assurance" means that the code of the DAO has undergone security review
20 according to industry standards, namely:

21 (a) The completion of professional software security audit with an audit report available
22 to the public with no significant security risks remaining, as well as the completion of a public bug
23 bounty;

24 (b) A formal verification by means of a mathematical proof-based methodology in which
25 the smart contract's byte code is directly checked as correct-by-construction to show the full
26 functional correctness of security-critical properties of the smart contract; or

27 (c) Any other process recognized as meeting the same security standards.

28 XXXII. "Smart contract" is code deployed in a blockchain environment. It is made of a set of
29 predefined and deterministic instructions executed in a distributed manner by the nodes of the
30 underlying blockchain network, if and when the underlying conditions are met. Execution of a smart
31 contract shall produce a change in the blockchain state.

32 XXXIII. "Token" means a record on a permissionless blockchain, typically representing an
33 asset, participation right, or other entitlement.

34 XXXIV. "Transaction" means a new entry in a permissionless blockchain, often but not
35 exclusively, recording a change in ownership of an asset or participation in a DAO.

36 301-B:4 Formation Requirements.

1 I. In order for a DAO to benefit from legal personality, it shall comply with the following
2 requirements:

3 (a) The DAO shall be deployed on a permissionless blockchain.

4 (b) The DAO shall provide a unique public address through which anyone can review the
5 DAOs' activities and monitor its operations.

6 (c) The whole software code of the DAO shall be in open-source format in a public forum
7 to allow anyone to review it.

8 (d) The software code of the DAO shall have undergone quality assurance.

9 (e) There shall be at least one GUI that shall allow a layperson to read the value of the
10 key variables of the DAO's smart contracts and monitor all transactions originating from, or
11 addressed to, any of the DAO's smart contracts. The GUI shall also specify whether members are
12 able to redeem their tokens without restrictions and if not, the GUI shall clearly mention the
13 restrictions that are in place.

14 (f) The DAO shall have by-laws that are comprehensible to a layperson. The by-laws
15 shall be publicly accessible via a GUI or a public forum. Sensitive information may be redacted from
16 the by-laws before their publication, if those redactions are necessary to protect the privacy of
17 individual members or participants in the DAO.

18 (g) The governance system of the DAO shall be technically decentralized, although not
19 necessarily operationally decentralized.

20 (h) Independent of the chosen governance system, there shall always be at least one
21 member of the DAO at any given time.

22 (i) There shall be a publicly specified mechanism that allows a layperson to contact the
23 DAO. All members and administrators of the DAO shall be able to access the contents of this
24 communication mechanism.

25 (j) The DAO shall refer to or provide a dispute resolution mechanism that the DAO,
26 members and participants shall be bound by.

27 (k) The DAO shall refer to or provide a dispute resolution mechanism to resolve any
28 disputes with third parties that, by their nature, are capable of being settled by alternative dispute
29 resolution.

30 (2) The DAO shall, upon meeting the formation requirements in this chapter, have
31 limited liability by default, subject to the provisions of this chapter.

32 (3) Fulfillment of the formation requirements of this section, and an announcement
33 by the DAO that it has fulfilled those requirements, shall be deemed conclusive evidence of the
34 DAO's recognition under this chapter and shall not require certification from, or registration by, an
35 accreditation authority.

36 (4) This state may authorize an accreditation authority to monitor whether a DAO
37 continues to meet the requirements for legal personality under this chapter.

1 (5) A DAO may request confirmation from an accreditation authority, if such an
2 authority exists, to determine whether the DAO complies with the requirements for legal personality
3 under this chapter.

4 301-B:5 Limited Liability.

5 I. Except as provided in paragraphs III and IV, members shall only be responsible for
6 providing the on-chain contributions that they have committed to the DAO, as required by the by-
7 laws. If the DAO exhausts its assets, the members shall not be liable for excess liability.

8 II. Except as provided in paragraphs III and IV, members shall not be held liable for any
9 obligations incurred by the DAO, including, but not limited to, labor and tax obligations.

10 III. If the DAO refuses to comply with an enforceable judgment, order, or award entered
11 against it, the members who voted against compliance shall be liable for any monetary payments
12 ordered in the judgment, order, or award in proportion to their share of governance rights in the
13 DAO.

14 IV. Paragraph IV shall not affect the personal liability of a member in tort for their own
15 wrongful act or omission, but a member shall not be personally liable for the wrongful act or
16 omission of any other member of the DAO.

17 301-B:6 Asset Subscription and Payment.

18 I. No minimum capital requirements shall apply to a DAO authorized under this chapter. If
19 the DAO wishes to maintain a minimum amount of capital, the by-laws of the DAO shall specify the
20 rules for subscription and payment.

21 II. The by-laws shall specify the rules for exiting the DAO that address the consequences of
22 voluntary and involuntary member and participant exit on subscriptions and payments they have
23 made.

24 III. No member shall compel the dissolution of the DAO for failure to return their on-chain
25 contribution.

26 301-B:7 Classes of Persons Participating in the DAO.

27 I. A DAO may have multiple classes of participation rights defined in, and granted in
28 accordance with, its by-laws.

29 II. Where the DAO has tokens providing governance powers to the token holder, the token
30 holder shall be considered a member of the DAO:

31 (a) From the time the ownership of the tokens is established to be in the possession of an
32 address, or

33 (b) From the time when ownership is first acknowledged by the token holder through an
34 on-chain interaction with the DAO, through staking the tokens, voting with the tokens off-chain
35 whereby results are implemented on-chain, submitting a proposal or transferring the tokens to
36 another address, in the event that no action has been taken by a token holder to acquire a token,
37 such as in an airdrop.

1 (3) This chapter shall not apply in the event of a contentious fork.

2 (4) This chapter shall not apply to airdrops.

3 301-B:8 Voting Rights. The by-laws shall set out the distribution of voting rights of the classes
4 of members in a DAO. The method by which these voting rights are computed and distributed shall
5 be accurately set out in the by-laws.

6 301-B:9 Proxies.

7 I. The members or participants may represent themselves or be represented by a proxy.

8 II. Proxies may ask questions, vote, and exercise all other rights of members or participants.

9 301-B:10 Minority Protection. The DAO shall clearly state in its by-laws whether it provides for
10 any kind of minority rights protection.

11 301-B:11 Internal Organization. The internal organization and procedures of the DAO shall be
12 set out in its by-laws.

13 301-B:12 Meetings.

14 I. A DAO shall not be required to convene a general meeting, but meetings may optionally
15 be included in the by-laws.

16 II. There shall be no requirement to have physical, in-person meetings, unless explicitly
17 specified in the by-laws.

18 III. If the by-laws do include a requirement to have meetings, it shall have an explicit and
19 transparent mechanism of giving notice of meetings to administrators, members, or participants, as
20 well as a defined time period for deliberating upon submitted proposals. This notice shall be
21 communicated through a GUI.

22 IV. The quorum and majority requirements for meetings of DAO administrators, members,
23 or participants shall be specified in the by-laws.

24 301-B:13 Administrators. With respect to the delegation of powers and duties to certain
25 persons:

26 I. The DAO is not required to have administrators, including a board of directors or a
27 trustee, unless mandated in its by-laws. In the absence of such a provision, all the powers and tasks
28 of administrators shall be vested in the DAO members as a class.

29 II. The voting mechanism for nominating and appointing and administrator shall be set out
30 in the by-laws.

31 301-B:14 Legal Representation. With respect to the appointment of persons to complete off-
32 chain tasks:

33 I. A DAO may choose to have one or more legal representatives to undertake tasks that
34 cannot be achieved on-chain. Legal representation may be limited to specific tasks, or it can be
35 generic to a broader category of tasks.

36 II. Legal representation of the DAO shall be carried out by the legal representative in the
37 manner provided in the by-laws and as evidenced by an authorization displayed on a public forum,

1 whose validity shall be verifiable by cryptographic proof. A legal representative may undertake and
2 execute any and all acts and contracts included within the scope of such authorization.

3 III. There shall be no requirements as to the residence or seat of the legal representative.

4 IV. A legal representative shall not be personally liable for acts done on behalf of the DAO.

5 301-B:15 No Implicit Fiduciary Status. Developers, members, participants, or legal
6 representative of a DAO shall not be imputed to have fiduciary duties towards each other or third
7 parties solely on the basis of their role, unless:

8 I. They explicitly hold themselves out as a fiduciary.

9 II. Their fiduciary status is stipulated in the DAO's by-laws.

10 301-B:16 Contentious Forks in the Underlying Blockchain. In the event of a hard fork in the
11 underlying permissionless blockchain:

12 I. By default, the legal representation of the DAO remains on the majority chain and any off-
13 chain assets shall belong to the DAO on the majority chain.

14 II. The DAO may choose to maintain legal presence on a minority chain if it expresses its
15 intent to do so by public signaling, and in that case any off-chain assets shall belong to the DAO on
16 the selected minority chain.

17 III. The DAO may liquidate its on-chain assets following a hard fork in order to move those
18 assets to the chosen chain.

19 IV. Alternatively, the DAO may choose to split into multiple legal entities, each on a
20 separate chain, if it communicates by public signaling:

21 (a) Its intent to do so, and

22 (b) There is a definitive distribution of off-chain assets between the majority and
23 minority chains.

24 301-B:17 DAO Restructuring.

25 I. In the event that there is not a contentious fork and a DAO's smart contract is
26 restructured through modification, upgrade or migration, it shall retain its legal personality and
27 limited liability only to the extent that:

28 (a) The new code of the DAO continues to fulfill all the formation requirements of RSA
29 301-B:4.

30 (b) In the event of migration, where the DAO has to be associated with a new unique
31 public address, proper notice is provided by way of public signaling.

32 II. Failure to meet these requirements shall result in a loss of legal personality and limited
33 liability effective at the time of restructuring.

34 III. The DAO restructured in accordance with paragraph I shall be the universal successor
35 of the original DAO and inherit its rights and obligations.

36 301-B:18 Failure Event. In the case of a failure event:

1 I. Legal personality and limited liability shall be maintained to the extent necessary to
2 protect DAO members and participants from personal liability.

3 II. A failure event may trigger liability on the person deploying or upgrading the DAO if that
4 person:

5 (a) Acted in bad faith; or

6 (b) Engaged in gross negligence.

7 301-B:19 Application of General Business Organization Law. The DAO shall be governed by:

8 I. The by-laws;

9 II. The provisions of this chapter; and

10 III. General business organization law of New Hampshire that recognizes the DAO. Any
11 ambiguity resulting from this application shall be resolved in a manner that upholds the provisions
12 of this chapter.

13 301-B:20 Taxation of DAOs. The taxation of DAOs organized under this chapter shall be based
14 on the following principles:

15 I. By default, any DAO organized under this chapter shall be treated as a pass-through
16 entity for tax purposes, with no entity-level tax accruing to the DAO. Any realized gains shall pass
17 through to the DAO's members in proportion to their token holdings.

18 II. Where a member itself is not a taxable entity, such as another DAO, the realized gains
19 allocated to such members shall pass to the first taxable person in the same manner as specified in
20 this section.

21 2 Effective Date. This act shall take effect 60 days after its passage.

HB 645-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the establishment of decentralized autonomous organizations as legal entities within the state.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable.
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill establishes decentralized autonomous organizations (DAOs) within the State. The Department of State indicates the bill prevents DAO's from requiring certification from, or registration by, an accreditation authority (such as Department of State). It does allow the State to authorize an accreditation authority to monitor whether a DAO continues to meet the requirements for legal personality under the new chapter. The Legislature would need to create this authorization. The bill also allows a DAO to request confirmation from an accreditation authority, if created by the State, to determine whether the DAO complies with the requirements for legal personality created in the legislation. As the bill does not give the Department of State authority, the Department cannot estimate potential impact on revenue or expenditures. The Department anticipates that an interminable number of New Hampshire companies that are currently registered with the Department of State and that file annual reports would now qualify as a DAO. This would result in an indeterminable loss of general fund revenues from annual report filing fees.

The Department of Revenue Administration is unable to estimate a fiscal impact for this bill because there is no data as to the income that would be generated from the DAOs and how members of the DAO would be taxed in New Hampshire. If the activities of the DAOs, without the official recognition of the DAO status under this bill, are already taxable in the State because of implications of current tax laws, the Department does not expect the proposed legislation would result in any revenue change. For the purposes of this fiscal note, the Department assumes the bill would be effective for taxable periods ending on or after December

31, 2023. Therefore, there would be an indeterminable impact on State revenue beginning in FY 2023.

The Department of Justice indicates it could investigate and bring actions against a DAO created under the bill. It is possible that, absent the bill, the same investigation or action might be brought against a different legal entity or natural person, or it maybe that the alleged wrongful conduct would not have occurred at all. The Department states it is uncertain whether or how the bill would impact the number of investigations or prosecutions that the Department undertakes, therefore, the expenditure fiscal impact is indeterminable. The Department does not anticipate any impact on its revenues.

AGENCIES CONTACTED:

Departments of Justice, Revenue Administration and State