SENATE, No. 4163



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED NOVEMBER 22, 2021

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Co-Sponsored by:

Senator O'Scanlon

SYNOPSIS

"Virtual Currency and Blockchain Regulation Act."

CURRENT VERSION OF TEXT

As introduced.



An Act concerning virtual currency and blockchain, and amending and supplementing various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the "Virtual Currency and Blockchain Regulation Act."

2. (New section) As used in P.L. , c. (C. )(pending before the Legislature as this bill):

“Affiliate” means any person that directly or indirectly controls, is controlled by, or is under common control with, another person.

"Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature.

“Commissioner” means the Commissioner of Banking and Insurance.

"Consumptive" means a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property.

"Department" means the Department of Banking and Insurance.

"Developer" means the person primarily responsible for creating an open blockchain token or otherwise designing the token, including by executing the technological processes necessary to create the token.

"Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format, and includes digital consumer assets, digital securities and virtual currency. As used in P.L. , c. (C. )(pending before the Legislature as this bill), the terms digital consumer asset, digital security, and virtual currency shall be mutually exclusive.

"Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal or household purposes and includes:

(1) An open blockchain token constituting intangible personal property as otherwise provided by law; and

(2) Any other digital asset which is not virtual currency or a digital security.

"Digital security" means a digital asset which constitutes a security, as defined in P.L.1967, c.93 (C.49:3-49), but shall exclude digital consumer assets and virtual currency.

"Facilitator" means a person who, as a business, makes open blockchain tokens pursuant to subsection a. of section 2 of P.L. , c. (C. )(pending before the Legislature as this bill) available for resale to the public after a token has been purchased by an initial buyer.

"Financial investment" means a contract, transaction or arrangement where a person invests money in a common enterprise and is led to expect profits solely from the efforts of a promoter or a third party.

“Open blockchain token" means a digital unit that is:

(1) created:

(a) in response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(b) by deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or

(c) using a combination of the methods specified in paragraphs (a) and (b) of this paragraph.

(2) recorded to a digital ledger or database, which may include a blockchain; and

(3) capable of being traded or transferred between persons without an intermediary or custodian of value.

"Open blockchain token" shall not include virtual currency or digital security as those terms are defined in this section.

“Person” means any individual, partnership, corporation, association, trust, or other business combination or entity, however organized.

"Seller" means a person who makes an open blockchain token available for purchase to an initial buyer.

"Virtual currency" means a digital asset that is:

(1) used as a medium of exchange, unit of account or store of value; and

(2) not recognized as legal tender by the United States government.

3. (New section) a. An open blockchain token shall be intangible personal property if it meets the following characteristics:

(1) the predominant purpose of the token is consumptive;

(2) the developer or seller did not market the token to the initial buyer as a financial investment; and

(3) at least one of the following is satisfied:

(a) the developer or seller reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) the token has a consumptive purpose that is available at or near the time of sale and can be used at or near the time of sale for a consumptive purpose;

(c) the initial buyer of the token is prohibited by the developer or seller of the token from reselling the token until the token is available to be used for a consumptive purpose; or

(d) the developer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the token as a financial investment.

b. Before making an open blockchain token available for sale, the developer or seller of a token, or the registered agent of the developer or seller, shall electronically file a notice of intent with the Department of the Banking and Insurance and pay a filing fee of $1,000. The notice of intent shall contain the name of the person acting as a developer or seller, the contact information of the person, or the registered agent of the person and comprehensive details, to be determined by the Commissioner of Banking and Insurance, on the open blockchain token made available for sale. A form shall be made available by the department for this purpose, which shall include a secure electronic form conspicuously posted on the department’s Internet website. A developer, seller and the registered agent of these persons, if applicable, shall have a continuing duty to update the contact information provided on a notice of intent as long as the open blockchain token associated with the notice is actively being sold.

c. A facilitator shall:

(1) before making any token available for resale to the public, confirm with the department that a notice of intent has been filed pursuant to subsection b. of this section;

(2) at all times, have a reasonable and good faith belief that a token subject to resale conforms to the requirements of subsection a. of this section; and

(3) take reasonably prompt action to terminate the resale of a token that does not conform to the requirements of subsection a. of this section.

d. A willful failure by a developer, seller or facilitator to comply with the duties imposed by P.L. , c. (C. )(pending before the Legislature as this bill) shall constitute an unlawful practice under P.L.1960, c.39 (C.56:8-1 et seq.), and shall be subject to all remedies and penalties available pursuant to P.L.1960, c.39 (C.56:8-1 et seq.) in addition to any other remedies or penalties provided by law. A developer, seller or facilitator is subject to all applicable criminal statutes.

e. The commissioner may refer the following to appropriate State or federal agencies for investigation, criminal prosecution, civil penalties and other appropriate enforcement actions:

(1) suspected violations of this section; and

(2) the developer, seller or facilitator of either an open blockchain token which conforms to the requirements of this section or another digital asset which substantially resembles an open blockchain token, but which, in the determination of the commissioner, is being sold for financial investment or fraudulent purposes.

4. (New section) a. Digital assets shall be classified in the following manner:

(1) Digital consumer assets are intangible personal property and shall be considered general intangibles, as defined in N.J.S.12A:9-102;

(2) Digital securities are intangible personal property and shall be considered securities, as defined in N.J.S.12A:8-102, and investment property, as defined in N.J.S.12A:9-102; and

(3) Virtual currency is intangible personal property and shall be considered money, notwithstanding N.J.S.12A:1-201.

b. Consistent with N.J.S.12A:8-102, a digital asset may be treated as a financial asset, pursuant to a written agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

c. Classification of digital assets under this section shall be construed in a manner to give the greatest effect to P.L.    , c.    (C.      )(pending before the Legislature as this bill), but shall not be construed to apply to any other asset.

5. (New section) a. Notwithstanding the financing statement requirement specified by N.J.S.12A:9-310, perfection of a security interest in a digital asset may be achieved through control, as defined in subsection e. of this section. A security interest held by a secured party having control of a digital asset has priority over a security interest held by a secured party that does not have control of the asset.

b. Before a secured party may take control of a digital asset under this section, the secured party shall enter into a control agreement with the debtor. A control agreement may also set forth the terms under which a secured party may pledge its security interest in the digital asset as collateral for another transaction.

c. A secured party may file a financing statement with the Division of Revenue and Enterprise Services, including to perfect a security interest in proceeds from a digital asset pursuant to N.J.S.12A:9-315.

d. Notwithstanding any law, rule, or regulation to the contrary, a transferee shall take a digital asset free of any security interest two years after the transferee takes the asset for value and does not have actual notice of an adverse claim. This subsection shall only apply to a security interest perfected by a method other than control.

e. Perfection by control creates a possessory security interest in a digital asset and does not require physical possession. For purposes of this section, a digital asset is located within the State if the asset is held by a custodian, debtor or secured party that is physically located within the State.

f. As used in this section:

"Control" means:

(1) a secured party, or an agent, custodian, fiduciary or trustee of the party, has the exclusive legal authority to conduct a transaction relating to a digital asset, including by means of a private key or the use of a multi signature arrangement authorized by the secured party; or

(2) a smart contract created by a secured party which has the exclusive legal authority to conduct a transaction relating to a digital asset.

"Multi signature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction, or any substantially similar analogue.

"Private key" means a unique element of cryptographic data, or any substantially similar analogue, which is:

(1) held by a person;

(2) paired with a unique, publicly available element of cryptographic data; and

(3) associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

“Smart Contract” means:

(1) an automated transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction; or

(2) any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

6. (New section) a. A bank may provide custodial services consistent with this section upon providing 60 days written notice to the Commissioner of the Department of Banking and Insurance. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. If a bank elects to provide custodial services under this section, it shall comply with all provisions of this section.

b. A bank may serve as a qualified custodian under federal Securities and Exchange Commission rules established pursuant to 17 C.F.R. s.275.206(4). In performing custodial services under this section, a bank shall:

(1) implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and regulations for custodial services;

(2) maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

(3) fully comply with applicable federal anti-money laundering, customer identification and beneficial ownership requirements; and

(4) take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

c. A bank providing custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. s.275.206(4) 2(a)(4) and (6), at the cost of the bank. The accountant shall transmit the results of the examination to the commissioner within 120 days of the examination and may file the results with the federal Securities and Exchange Commission as its rules may provide. Material discrepancies in an examination shall be reported to the commissioner within one business day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted pursuant to P.L.1948, c.67 (C.17:9A-260).

d. Digital assets held in custody pursuant to this section shall not be depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary. A bank shall maintain control over a digital asset while in custody. A customer shall elect, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in custody:

(1) Custody under a bailment as a nonfungible or fungible asset. Assets held under this paragraph shall be strictly segregated from other assets; or

(2) Custody under a bailment pursuant to subsection e. of this section.

e. If a customer makes an election under subsection d. of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank maintains control pursuant to subsection d. of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under this section.

f. A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under chapter 8 of Title 12A of the New Jersey Statutes. Any ambiguity under this subsection shall be resolved in favor of the customer.

g. A bank shall provide clear, written notice to each customer, and require written acknowledgement, of the following:

(1) prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities;

(2) the heightened risk of loss from transactions under subsection e. of this section;

(3) that some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under paragraph (2) of subsection d. of this section;

(4) that custody under paragraph (2) of subsection d. of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(5) that the bank is not liable for losses suffered under subsection e. of this section, except for liability consistent with fiduciary and trust powers as a custodian under this section.

h. A bank and a customer shall agree in writing to a time period within which the bank shall return a digital asset held in custody under this section. If a customer makes an election under paragraph (2) of subsection d. of this section, then the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

i. All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank shall not collect ancillary or subsidiary proceeds, unless the collection is disclosed in writing. A customer who makes an election under paragraph (1) of subsection d. of this section may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

j. A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.

k. A bank shall not take any action under this section which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

l. As used in this section:

"Bank" has the meaning ascribed to it in P.L.1948, c.67 (C.17:9A-1).

"Custodial services" means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers under this section as a custodian, and includes fund administration and the execution of customer instructions.

7. Section 2 of P.L.1998, c.14 (C.17:15C-2) is amended to read as follows:

2. As used in **[**this act**]** P.L.1998, c.14 (C.17:15C-1 et seq.):

"Applicant" means a person filing an application for a license under **[**this act**]** P.L.1998, c.14 (C.17:15C-1 et seq.).

"Authorized delegate" means an entity authorized by the licensee pursuant to the provisions of section 17 of **[**this act**]** P.L.1998, c.14 (C.17:15C-17) to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

"Commissioner" means the Commissioner of Banking and Insurance.

"Control" means ownership of, or the power to vote, 25 percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by that person or by any spouse, parent, or child of that person.

"Controlling person" means any person in control of a licensee.

"Department" means the Department of Banking and Insurance.

"Executive officer" means the licensee's president, chairman of the executive committee, senior officer responsible for the licensee's business in this State, chief financial officer and any other person who performs similar functions.

"Foreign money transmitter" means a person who engages, in this State, only in the business of the receipt of money for transmission or transmitting money to locations outside of the United States by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit.

"Key shareholder" means any person, or group of persons acting in concert, who is the owner of 25 percent or more of any voting class of an applicant's stock.

"Licensee" means a person licensed under **[**this act**]** P.L.1998, c.14 (C.17:15C-1 et seq.).

"Location" means a place of business at which activities regulated by **[**this act**]** P.L.1998, c.14 (C.17:15C-1 et seq.) occur.

"Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to any applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders or similar documents.

"Money" means a medium of exchange authorized or adopted by the United States or a foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

"Money transmitter" means a person who engages in this State in the business of:

(1) the sale or issuance of payment instruments for a fee, commission or other benefit;

(2) the receipt of money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit; or

(3) the receipt of money for obligors for the purpose of paying obligors' bills, invoices or accounts for a fee, commission or other benefit paid by the obligor.

"Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

"Payment instrument" means any check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

"Permissible investments" means:

(1) cash;

(2) certificates of deposit or other debt obligations of a bank, savings bank, savings and loan association, or credit union, either domestic or foreign;

(3) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System;

(4) any investment which is rated in one of the three highest rating categories by a nationally recognized statistical rating organization;

(5) investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality or any political subdivision thereof which is rated in one of the three highest rating categories by a nationally recognized statistical rating organization;

(6) shares in a money market mutual fund, interest-bearing bills, notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of those securities or a fund composed of one or more permissible investments as set forth in this section;

(7) demand borrowing agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) receivables which are due to a licensee from its authorized delegates pursuant to a contract described in section 17 of **[**this act**]** P.L.1998, c.14 (C.17:15C-17), which are not past due or doubtful of collection; or

(9) any other investments or security device which the commissioner may authorize by rule.

“Virtual currency” means any type of digital representation that:

(1) is used as a medium of exchange, unit of account or store of value; and

(2) is not recognized as legal tender by the United States government.

(cf: P.L.1998, c.14, s.2)

8. Section 3 of P.L.1998, c.14 (C.17:15C-3) is amended to read as follows:

3. a. **[**This act**]** P.L.1998, c.14 (C.17:15C-1 et seq.) shall not apply to:

(1) The United States or any department, agency, or instrumentality thereof;

(2) The United States Postal Service;

(3) The State or any political subdivision thereof;

(4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks;

(5) The provision of electronic transfer of government benefits for any federal, state or county agency as defined in Regulation E, 12 C.F.R. s.205.1 et seq., by a contractor for and on behalf of the United States or any department, agency or instrumentality thereof, or any state or political subdivision thereof; **[**and**]**

(6) A person licensed to conduct business as a debt adjuster pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.), when acting within the scope of activities regulated by that license; and

(7) Buying, selling, issuing, or taking custody of payment instruments or stored value in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States.

b. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 17 of **[**this act**]** P.L.1998, c.14 (C.17:15C-17) shall not be required to obtain a license pursuant to **[**this act**]** P.L.1998, c.14 (C.17:15C-1 et seq.).

(cf: P.L.1998, c.14, s.3)

9. (New section) As used in sections 9 thought 21 of P.L. , c. (C. )(pending before the Legislature as this bill):

"Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature.

"Decentralized autonomous organization" means a limited liability company organized under P.L. , c. (C. )(pending before the Legislature as this bill).

"Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency

"Limited liability autonomous organization" or "LAO" means a decentralized autonomous organization.

"Majority of the members," means the approval of more than 50 percent of participating membership interests in a vote for which a quorum of members is participating. A person dissociated as a member as set forth in section 46 of P.L.2012, c.50 (C.42:2C-46)shall not be included for the purposes of calculating the majority of the members;

"Membership interest" means a member's ownership share in a member managed decentralized autonomous organization, which may be defined in the entity's articles of organization, smart contract or operating agreement. A membership interest may also be characterized as either a digital security or a digital consumer asset, if designated as such in the organization's articles of organization or operating agreement.

"Open blockchain" means a blockchain that is publicly accessible and its ledger of transactions is transparent.

"Quorum" means a minimum requirement on the sum of membership interests participating in a vote for that vote to be valid.

“Smart Contract” means:

(1) an automated transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction; or

(2) any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement, and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

10. (New section) a. The "Revised Uniform Limited Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.) shall apply to decentralized autonomous organizations to the extent not inconsistent with the provisions of P.L. , c. (C. )(pending before the Legislature as this bill).

b. P.L. , c. (C. )(pending before the Legislature as this bill) shall not repeal or modify any statute or rule of law that applies to a limited liability company that is organized under P.L.2012, c.50 (C.42:2C-1 et seq.) that does not elect to become a decentralized autonomous organization.

11. (New section) a. A decentralized autonomous organization is a limited liability company the articles of organization of which contain a statement that the company is a decentralized autonomous organization as described in subsection c. of this section.

b. A limited liability company formed under P.L.2012, c.50 (C.42:2C-1 et seq.) may convert to a decentralized autonomous organization by amending its articles of organization to include the statement required by subsections a. and c. of this section and section 13 of P.L. , c. (C. )(pending before the Legislature as this bill).

c. A statement in substantially the following form shall appear conspicuously in the articles of organization or operating agreement, if applicable, in a decentralized autonomous organization:

NOTICE OF RESTRICTIONS ON DUTIES AND TRANSFERS

The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies. New Jersey’s decentralized autonomous organization law, underlying smart contracts, articles of organization and operating agreement, if applicable, of a decentralized autonomous organization may define, reduce or eliminate fiduciary duties and may restrict transfer of ownership interests, withdrawal or resignation from the decentralized autonomous organization, return of capital contributions and dissolution of the decentralized autonomous organization.

d. The registered name for a decentralized autonomous organization shall include wording or abbreviation to denote its status as a decentralized autonomous organization, specifically "DAO", "LAO", or "DAO LLC."

e. A statement in the articles of organization may define the decentralized autonomous organization as either a member managed decentralized autonomous organization or an algorithmically managed decentralized autonomous organization. If the type of decentralized autonomous organization is not otherwise provided for, the limited liability company will be presumed to be a member managed decentralized autonomous organization.

12. (New section) a. Any person may form a decentralized autonomous organization, which shall have one or more members by signing and delivering one original and one exact or conformed copy of the articles of organization to the filing office for filing. The person forming the decentralized autonomous organization need not be a member of the organization.

b. A decentralized autonomous organization shall have and continuously maintain in this State a registered agent as provided in section 14 of P.L.2012, c.50 (C.42:2C-14).

c. A decentralized autonomous organization may form and operate for any lawful purpose, regardless of whether for profit.

d. An algorithmically managed decentralized autonomous organization may only form under P.L. , c. (C. )(pending before the Legislature as this bill) if the underlying smart contracts are able to be updated, modified or otherwise upgraded.

13. (New section) a. The articles of organization of a decentralized autonomous organization shall include a statement that the organization is a decentralized autonomous organization, pursuant to section 11 of P.L. , c. (C. )(pending before the Legislature as this bill) and section 18 of P.L.2012, c.50 (C.42:2C-18).

b. In addition to the requirements of subsection a. of this section the articles of organization shall include a publicly available identifier of any smart contract directly used to manage, facilitate or operate the decentralized autonomous organization.

c. Except as otherwise provided in P.L. , c. (C.      )(pending before the Legislature as this bill), the articles of organization and the smart contracts for a decentralized autonomous organization shall govern all of the following:

(1) relations among the members and between the members and the decentralized autonomous organization;

(2) rights and duties under P.L. , c. (C. )(pending before the Legislature as this bill) of a person in the person’s capacity as a member;

(3) activities of the decentralized autonomous organization and the conduct of those activities;

(4) means and conditions for amending the operating agreement;

(5) rights and voting rights of members;

(6) transferability of membership interests;

(7) withdrawal of membership;

(8) distributions to members prior to dissolution;

(9) amendment of the articles of organization;

(10) procedures for amending, updating, editing or changing applicable smart contracts; and

(11) all other aspects of the decentralized autonomous organization.

d. Articles of organization shall be amended when:

(1) there is a change in the name of the decentralized autonomous organization;

(2) there is a false or erroneous statement in the articles of organization; or

(3) the decentralized autonomous organization's smart contracts have been updated or changed.

14. (New section) To the extent the articles of organization or smart contract do not otherwise provide for a matter described insection 13 of P.L. , c. (C. )(pending before the Legislature as this bill), the operation of a decentralized autonomous organization may be supplemented by an operating agreement.

15. (New section) Management of a decentralized autonomous organization shall be vested in its members, if member managed, or the smart contract, if algorithmically managed, unless otherwise provided in the articles of organization or operating agreement.

16. (New section) Unless otherwise provided for in the articles of organization or operating agreement, no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member except that the members shall be subject to the implied contractual covenant of good faith and fair dealing.

17. (New section) a. For purposes of this section and section 18 of P.L. , c. (C. )(pending before the Legislature as this bill) and unless otherwise provided for in the articles of organization, smart contract or operating agreement:

(1) membership interests in a member managed decentralized autonomous organization shall be calculated by dividing a member's contribution of digital assets to the organization divided by the total amount of digital assets contributed to the organization at the time of a vote;

(2) if members do not contribute digital assets to an organization as a prerequisite to becoming a member, each member shall possess one membership interest and be entitled to one vote;

(3) a quorum shall require not less than a majority of membership interests entitled to vote.

b. Members shall have no right to separately inspect or copy records of a decentralized autonomous organization and the organization shall have no obligation to furnish any information concerning the organization’s activities, financial condition or other circumstances to the extent the information is available on an open blockchain.

18. (New section) a. A member may only withdraw from a decentralized autonomous organization in accordance with the terms set forth in the articles of organization, the smart contracts or, if applicable, the operating agreement.

b. A member of a decentralized autonomous organization shall not have the organization dissolved for a failure to return the members' contribution to capital.

c. Unless the organization's articles of organization, smart contracts or operating agreement provide otherwise, a withdrawn member forfeits all membership interests in the decentralized autonomous organization, including any governance or economic rights.

19. (New section) a. A decentralized autonomous organization organized under P.L. , c. (C. )(pending before the Legislature as this bill) shall be dissolved upon the occurrence of any of the following events:

(1) the period fixed for the duration of the organization expires;

(2) by vote of the majority of members of a member managed decentralized autonomous organization;

(3) at the time or upon the occurrence of events specified in the underlying smart contracts or as specified in the articles of organization or operating agreement;

(4) the decentralized autonomous organization has failed to approve any proposals or take any actions for a period of one year;

(5) by order of the Division of Revenue and Enterprise Services if the decentralized autonomous organization is deemed to no longer perform a lawful purpose.

b. As soon as possible following the occurrence of any of the events specified in subsection a. of this section causing the dissolution of a decentralized autonomous organization, the organization shall execute a statement of intent to dissolve in the form prescribed by the Division of Revenue and Enterprise Services.

20. (New section) The articles of organization and the operating agreement of a decentralized autonomous organization are effective as statements of authority. Where the underlying articles of organization and operating agreement are in conflict, the articles of organization shall preempt any conflicting provisions. Where the underlying articles of organization and smart contract are in conflict, the smart contract shall preempt any conflicting provisions of the articles of organization, except as it relates to section 11 of P.L. , c. (C. )(pending before the Legislature as this bill) and subsections a. and b. of section 13 of P.L. , c. (C. )(pending before the Legislature as this bill).

21. (New section) The Division of Revenue and Enterprise Services shall not issue a certificate of authority for a foreign decentralized autonomous organization.

22. (New section) a. Not later than December 31, 2022, the Division of Revenue and Enterprise Services shall develop and implement a filing system through which all required filings may be submitted. The division shall endeavor to use blockchain technology and include an application programming interface as components of the filing system, as well as robust security measures and other components determined by the division to be best practices or which are likely to increase the effective and efficient administration of the laws of this State. The division may create a blockchain for the purposes of this section or contract for the use of a privately created blockchain.

b. The division may:

(1) consult with all interested parties before developing the filing system specified in this section, including businesses, registered agents, attorneys, law enforcement and other interested persons; and

(2) if possible, partner with technology innovators and private companies to develop necessary components of the system.

c. The division shall promulgate such rules and regulations as the division determines are necessary to effectuate the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

d. As used in this section:

“Application programming interface” means a computer software intermediary which allows two distinct software applications to interact.

"Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature.

“Division” means the Division of Revenue and Enterprise Services in the New Jersey Department of the Treasury.

“Required filings” means all documents, reports, data and other information required by law to be filed with the division.

23. (New section) a. The articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens. The electronic message, command or transaction that transmits the certificate tokens to the data address to which a certificate token was issued shall be authorized at the time of issuance by one or more messages, commands or transactions signed with the network signatures of two officers designated in the bylaws or by the board of directors of the corporation.

b. Notwithstanding any law, rule, or regulation to the contrary, as used in chapter 7 of Title 14A of the New Jersey Statutes, any reference to share certificate, share, stock, or words of similar import shall be construed to include a certificate token.

c. Notwithstanding any law, rule, or regulation to the contrary, the information required by subsection a. of this section shall satisfy any other requirement of chapter 7 of Title 14A of the New Jersey Statutes to include information on a share certificate.

d. Notwithstanding any law, rule, or regulation to the contrary, as used in chapter 7 of Title 14A of the New Jersey Statutes, any reference to certificated shares or words of similar import shall be construed to include shares represented by certificate tokens, and any reference to the delivery or deposit of these shares to the corporation shall be construed to refer to any method of granting control of the tokens to the corporation.

e. Notwithstanding any law, rule, or regulation to the contrary, as used in chapter 7 of Title 14A of the New Jersey Statutes, any reference to a certificate being duly endorsed or words of similar import shall be construed to mean that the transaction authorizing transfer of control of the certificate token was signed by the lawful holder of the token with the network signature corresponding to the lawful holder's data address to which the certificate token was issued or last lawfully transferred.

f. As used in this section:

"Blockchain" means a digital ledger or database which is chronological, consensus based, decentralized and mathematically verified in nature;

"Certificate token" means a representation of shares that is stored in an electronic format which contains information pursuant to N.J.S.14A:7-11, and this information is:

(1) entered into a blockchain or other secure, auditable database;

(2) linked to or associated with the certificate token; and

(3) able to be transmitted electronically to the issuing corporation, the person to whom the certificate token was issued and any transferee.

"Network signature" means a string of alphanumeric characters that, when broadcast by a person to the data address's corresponding distributed or other electronic network or database, provides reasonable assurances to a recipient that the broadcasting person has knowledge or possession of the private key uniquely associated with the data address.

24. N.J.S.14A:7-11 is amended to read as follows:

14A:7-11. (1) The shares of a corporation shall be represented by certificates or, in accordance with subsection 14A:7-11(6), shall be uncertificated shares. Certificates shall be signed by, or in the name of the corporation by, the chairman or vice-chairman of the board, or the president or a vice-president, and may be countersigned by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. Any or all signatures upon a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon such certificate, shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of its issue.

(2) Every share certificate delivered after the effective date of this act by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, a full statement

(a) Of the designations, relative rights, preferences and limitations of the shares of each class and series authorized to be issued, so far as the same have been determined, and

(b) Of the authority of the board to divide the shares into classes or series and to determine and change the relative rights, preferences and limitations of any class or series, or shall set forth that the corporation will furnish to any shareholder, upon request and without charge, such a full statement.

(3) Each certificate representing shares shall state upon the face thereof

(a) That the corporation is organized under the laws of this State;

(b) The name of the person to whom issued; **[**and**]**

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents , and

(d) In the case of a certificate token pursuant to section 23 of P.L. , c. (C. ) (pending before the Legislature as this bill), the data address to whom which the token was issued; .

(4) No certificate shall be issued for any share until such share is fully paid.

(5) A card which is punched, magnetically coded or otherwise treated so as to facilitate machine or automatic processing, may be used as a share certificate if it otherwise complies with the provisions of this section.

(6) The board may provide that some or all of the shares of any class or series shall be represented by uncertificated shares. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates by subsections 14A:7-11(2) and 14A:7-11(3), and if required, 14A:7-12(2). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

(cf: P.L.1988, c.94, s.42)

25. (New section) a. Receipts from retail sales of energy and utility service to a virtual currency servicer for use or consumption directly and primarily in the creation of virtual currency, including mining, shall be exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. A virtual currency servicer may file an application for a sales and use tax exemption with the Director of the Division of Taxation in the Department of the Treasury. The director shall process the application within 20 business days of receipt thereof. An exemption for a virtual currency servicer shall commence upon notice of approval of its application. Upon approval of its application, the director shall provide prompt notice to a business.

c. For the purposes of this section:

“Virtual currency" means a digital asset that is:

(1) Used as a medium of exchange, unit of account or store of value; and

(2) Not recognized as legal tender by the United States government.

“Virtual currency servicer” means

(1) any person who, as its primary business, engages in virtual currency creation, including mining;

(2) any person who, as its primary business, engages in the provision of a distributed digital verification system; or

(3) any person licensed pursuant to P.L. , c. (C. ) (pending before the Legislature as Assembly Bill No.2891).

26. Section 2 of P.L.2011, c.149 (C.34:1B-243) is amended to read as follows:

2. As used in P.L.2011, c.149 (C.34:1B-242 et seq.):

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

"Aviation district" means all areas within the boundaries of the "Atlantic City International Airport," established pursuant to section 24 of P.L.1991, c.252 (C.27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport" and the Federal Aviation Administration William J. Hughes Technical Center.

"Business" means an applicant proposing to own or lease premises in a qualified business facility that is:

a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5);

a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5;

a partnership;

an S corporation;

a limited liability company; or

a non-profit corporation.

If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates.

A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for:

a. site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property;

b. obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. s.168 and s.179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property;

c. receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L.2004, c.120 (C.13:20-13); or

d. any of the foregoing.

In addition to the foregoing, in a Garden State Growth Zone, the following qualify as a capital investment: any development, redevelopment, and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair.

In addition to the foregoing, if a business acquires or leases a qualified business facility, the capital investment made or acquired by the seller or owner, as the case may be, if pertaining primarily to the premises of the qualified business facility, shall be considered a capital investment by the business and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described herein may include any capital investment made or acquired within 24 months prior to the date of application so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

"College or university" means a county college, an independent institution of higher education, a public research university, or a State college.

"Commitment period" means the period of time that is 1.5 times the eligibility period.

"County college" means an educational institution established by one or more counties, pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area and has been determined by the authority to be an area appropriate for development and in need of economic development incentive assistance.

"Disaster recovery project" means a project located on property that has been wholly or substantially damaged or destroyed as a result of a federally-declared disaster which, after utilizing all disaster funds available from federal, State, county, and local funding sources, demonstrates to the satisfaction of the authority that access to additional funding authorized pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), is necessary to complete the redevelopment project, and which is located within the qualified incentive area and has been determined by the authority to be in an area appropriate for development and in need of economic development incentive assistance.

“Virtual currency servicer” means the same as defined in section 25 of P.L. , c. (C. )(pending before the Legislature as this bill).

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, a SDA municipality, or a municipality in which a major rail station is located.

"Doctoral university" means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education's Basic Classification methodology on the effective date of P.L.2017, c.221.

"Eligibility period" means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant.

"Eligible position" or "full-time job" means a full-time position in a business in this State, which position the business has filled with a full-time employee, who shall have their primary office at the qualified business facility and spend at least 60 percent of their time at the qualified business facility. This requirement shall supersede any law, regulation, or incentive agreement that imposes a requirement that the employee be present at the qualified business facility for a specified percentage of time greater than 60 percent. This amendment shall not alter or terminate any waiver of the requirement that an employee spend time at the qualified business facility implemented by the authority due to COVID-19 public health emergency and state of emergency.

"Full-time employee" means a person:

a. who is employed by a business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment; or

b. who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; or

c. who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

d. who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal:

the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement;

full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent;

35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons.

For any project located in a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement.

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to project application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

"Garden State Create Zone" means the campus of a doctoral university, and the area within a three-mile radius of the outermost boundary of the campus of a doctoral university, according to a map appearing in the doctoral university's official catalog or other official publication on the effective date of P.L.2017, c.221.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the US Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); a municipality which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority; or an aviation district.

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L.2004, c.120 (C.13:20-13).

"Incentive agreement" means the contract between the business and the authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the program.

"Incentive effective date" means the date a business submits the documentation required pursuant to paragraph (1) of subsection b. of section 6 of P.L.2011, c.149 (C.34:1B-247) in a form satisfactory to the authority.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion.

"Major rail station" means a railroad station located within a qualified incentive area which provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Mega project" means:

a. a qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:

(1) having a capital investment in excess of $20,000,000, and at which more than 250 full-time employees of the business are created or retained; or

(2) at which more than 1,000 full-time employees of the business are created or retained;

b. a qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

(1) having a capital investment in excess of $20,000,000, and at which more than 250 full-time employees of the business are created or retained, or

(2) at which more than 1,000 full-time employees of the business are created or retained;

c. a qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of $50,000,000, and at which more than 250 full-time employees of the business are created or retained;

d. a project located in an area designated in need of redevelopment, pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) prior to the enactment of P.L.2014, c.63 (C.34:1B-251 et al.) within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties having a capital investment in excess of $20,000,000, and at which more than 150 full-time employees of the business are created or retained; or

e. a qualified business facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in R.S.24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.), either:

(1) having a capital investment in excess of $20,000,000, and at which more than 250 full-time employees of the business are created or retained, or

(2) at which more than 1,000 full-time employees of the business are created or retained.

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal distress.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Other eligible area" means the portions of the qualified incentive area that are not located within a distressed municipality, or the priority area.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Port district" means the portions of a qualified incentive area that are located within:

a. the "Port of New York District" of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or

b. a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to "The South Jersey Port Corporation Act," P.L.1968, c.60 (C.12:11A-1 et seq.).

"Priority area" means the portions of the qualified incentive area that are not located within a distressed municipality and which:

a. are designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition;

b. intersect with portions of: a deep poverty pocket, a port district, or federally-owned land approved for closure under a federal Commission on Base Realignment and Closure action;

c. are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or

d. contain: a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Program" means the "Grow New Jersey Assistance Program" established pursuant to section 3 of P.L.2011, c.149 (C.34:1B-244).

"Public research university" means a public research university as defined in section 3 of P.L.1994, c.48 (C.18A:3B-3).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location unless the building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, are used in connection with the operation of:

a. a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full-service supermarket or grocery store; or

b. a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219).

"Qualified incentive area" means:

a. an aviation district;

b. a port district;

c. a distressed municipality or urban transit hub municipality;

d. an area (1) designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as:

(a) Planning Area 1 (Metropolitan);

(b) Planning Area 2 (Suburban); or

(c) Planning Area 3 (Fringe Planning Area);

(2) located within a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 (C.13:17-21);

(3) located within any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L.1968, c.404 (C.13:17-4);

(4) located within a regional growth area, rural development area zoned for industrial use as of the effective date of P.L.2016, c.75, town, village, or a military and federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.);

(5) located within the planning area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3) or a highlands development credit receiving area or redevelopment area;

(6) located within a Garden State Growth Zone;

(7) located within land approved for closure under any federal Commission on Base Realignment and Closure action; or

(8) located only within the following portions of the areas designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive) if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive) is located within:

(a) a designated center under the State Development and Redevelopment Plan;

(b) a designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition as it pertains to Statewide planning areas;

(c) any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L.1992, c.79 (C.40A:12A-14);

(d) any area on which a structure exists or previously existed including any desired expansion of the footprint of the existing or previously existing structure provided the expansion otherwise complies with all applicable federal, State, county, and local permits and approvals;

(e) the planning area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3) or a highlands development credit receiving area or redevelopment area; or

(f) any area on which an existing tourism destination project is located.

"Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: which contains 50,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country, or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For the purposes of the certifications and annual reports required in the incentive agreement pursuant to subsection e. of section 4 of P.L.2011, c.149 (C.34:1B-245), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award. For a project located in a Garden State Growth Zone which qualified for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), retained full-time job shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone which qualified for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.).

"SDA district" means an SDA district as defined in section 3 of P.L.2000, c.72 (C.18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"State college" means a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

"Targeted industry" means any industry identified from time to time by the authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models. “Targeted industry” shall include the virtual currency industry and shall include a virtual currency servicer.

"Technology startup company" means a for profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high-technology or life science-related product, process, or service which the business intends to move to commercialization. “Technology startup company” shall include a company that is a virtual currency servicer, regardless of the number of years the business has been in operatio.

"Tourism destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business within an established Tourism District with a significant impact on the economic viability of that District.

"Transit oriented development" means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations.

"Urban transit hub" means an urban transit hub, as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), that is located within an eligible municipality, as defined in section 2 of P.L.2007, c.346 (C.34:1B-208) and also located within a qualified incentive area.

"Urban transit hub municipality" means a municipality: a. which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), or which has continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and b. in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

(cf: P.L2021, c.160, s.61)

27. Section 5 of P.L.2011, c.149 (C.34:1B-246) is amended to read as follows:

5. a. The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in subsections b. through f. of this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period. Notwithstanding any other provisions of P.L.2013, c.161 (C.52:27D-489p et al.), a business may assign its ability to apply for the tax credit under this subsection to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization or organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section. For any project located in a Garden State Growth Zone that qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or any project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

b. The base amount of the tax credit for each new or retained full-time job shall be as follows:

(1) (a) for a qualified business facility located within an urban transit hub municipality, located within a Garden State Growth Zone, or which is a mega project, $5,000 per year;

(b) for a qualified business facility located within a Garden State Create Zone and used by an eligible business in a targeted industry to conduct a collaborative research relationship with a doctoral university within the zone, $5,000 per year;

(2) for a qualified business facility located within a distressed municipality but not qualifying under paragraph (1) of this subsection, $4,000 per year;

(3) for a project in a priority area, $3,000 per year; and

(4) for a project in other eligible areas, $500 per year.

c. In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the authority from time to time in response to evolving economic or market conditions:

(1) for a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development, an increase of $1,500 per year;

(2) for a qualified business facility located in a qualified incubator facility, an increase of $500 per year;

(3) for a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of $500 per year;

(4) for a qualified business facility located within a transit oriented development, an increase of $2,000 per year;

(5) for a qualified business facility, other than a mega project, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L.2011, c.149 (C.34:1B-244), an increase of $1,000 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of $3,000 per year;

(6) for a business with new full-time jobs and retained full-time jobs at the project with an average salary in excess of the existing average salary for the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time positions at the project with an average salary in excess of the average salary for the Garden State Growth Zone, an increase of $250 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of $1,500 per year;

(7) for a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:

(a) if the number of new full-time jobs and retained full-time jobs is between 251 and 400, $500 per year;

(b) if the number of new full-time jobs and retained full-time jobs is between 401 and 600, $750 per year;

(c) if the number of new full-time jobs and retained full-time jobs is between 601 and 800, $1000 per year;

(d) if the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, $1,250 per year;

(e) if the number of new full-time jobs and retained full-time jobs is in excess of 1,000, $1,500 per year;

(8) for a business in a targeted industry, an increase of $500 per year, except in the case of a business in a targeted industry that is a virtual currency servicer, an increase of $5,000 per year;

(9) for a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of $250 per year;

(10) for a mega project or a project located within a Garden State Growth Zone at which the capital investment in industrial premises for industrial use by the business exceeds the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L.2011, c.149 (C.34:1B-244), an increase of $1,000 per year for each additional amount of investment that exceeds the minimum amount by 20 percent, with a maximum increase of $5,000 per year;

(11) for a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of $1,500 per year;

(12) for a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index greater than 465, an increase of $1,000 per year;

(13) for a project located within a half-mile of any light rail station constructed after the effective date of P.L.2013, c.161 (C.52:27D-489p et al.), an increase of $1,000 per year;

(14) for a marine terminal project in a municipality located outside the Garden State Growth Zone, but within the geographical boundaries of the South Jersey Port District, an increase of $1,500 per year;

(15) for a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6), and which is located within a quarter mile of at least one United States Highway and at least two New Jersey State Highways, an increase of $1,500 per year;

(16) for a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's electric supply service needs, an increase of $250 per year;

(17) for a qualified business facility that includes a vacant commercial building having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year, an increase of $1,000 per year; and

(18) for an eligible business in a targeted industry at a qualified business facility on the campus of a college or university other than a doctoral university, or at a qualified business facility within a three-mile radius of the outermost boundary of the campus of a college or university other than a doctoral university, which facility is used by the business to conduct a collaborative research relationship with the college or university, an increase of $1,000 per year. The boundary of the campus of a college or university shall be based upon a map appearing in the college's or university's official catalog or other official publication on the effective date of P.L.2017, c.221.

d. The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to subsection b. of this section and the various additional bonus amounts for which the business is eligible pursuant to subsection c. of this section, subject to the following limitations:

(1) for a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed $15,000 per year;

(2) for a qualified business facility located within an urban transit hub municipality or a Garden State Create Zone, the gross amount for each new or retained full-time job shall not exceed $12,000 per year;

(3) for a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed $11,000 per year;

(4) for a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed $10,500 per year;

(5) for a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed $6,000 per year; and

(6) for a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed $2,000 per year.

Notwithstanding anything to the contrary set forth herein and in the provisions of subsections a. through f. of this section, but subject to the provisions of paragraph (1) of subsection f. of this section, for a project located within a Garden State Growth Zone which qualifies for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), which creates 35 or more full-time jobs new to the municipality, the total tax credit shall be:

(a) for a project which creates 35 or more full-time jobs new to the municipality and makes a capital investment of at least $5,000,000, the total tax credit amount per full-time job shall be the greater of: (i) the total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to subsections a. through f. of this section; or (ii) the total capital investment of the project divided by the total number of full-time jobs at that project but not greater than $2,000,000 per year over the grant term of ten years;

(b) for a project which creates 70 or more full-time jobs new to the municipality and makes a capital investment of at least $10,000,000, the total tax credit amount per full-time job shall be the greater of: (i) the total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to subsections a. through f. of this section; or (ii) the total capital investment of the project divided by the total number of full-time jobs at that project but not greater than $3,000,000 per year over the grant term of ten years;

(c) for a project which creates 100 or more full-time jobs new to the municipality and makes a capital investment of at least $15,000,000, the total tax credit amount per full-time job shall be the greater of: (i) the total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to subsections a. through f. of this section; or (ii) the total capital investment of the project divided by the total number of full-time jobs at that project but not greater than $4,000,000 per year over the grant term of ten years;

(d) for a project which creates 150 or more full-time jobs new to the municipality and makes a capital investment of at least $20,000,000, the total tax credit amount per full-time job shall be the greater of: (i) the total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to subsections a. through f. of this section; or (ii) the total capital investment of the project divided by the total number of full-time jobs at that project but not greater than $5,000,000 per year over the grant term of ten years; or

(e) for a project which creates 250 or more full-time jobs new to the municipality and makes a capital investment of at least $30,000,000, the total tax credit amount per full-time job shall be the greater of: (i) the total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to subsections a. through f. of this section; or (ii) the total capital investment of the project divided by the total number of full-time jobs as defined herein at that project divided by the ten-year grant term.

e. After the determination by the authority of the gross amount of tax credits for which a business is eligible pursuant to subsection d. of this section, the final total tax credit amount shall be calculated as follows: (1) for each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and (2) for each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project which is the United States headquarters of an automobile manufacturer located within a priority area or in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a federally-declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job.

f. Notwithstanding the provisions of subsections a. through e. of this section, for each application approved by the authority's board, the amount of tax credits available to be applied by the business annually shall not exceed:

(1) $35,000,000 and provides a net benefit to the State as provided herein with respect to a qualified business facility in a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority;

(2) $30,000,000 and provides a net benefit to the State as provided herein with respect to a mega project or a qualified business facility in a Garden State Growth Zone;

(3) $10,000,000 and provides a net benefit to the State as provided herein with respect to a qualified business facility in an urban transit hub municipality or a Garden State Create Zone;

(4) $8,000,000 and provides a net benefit to the State as provided herein with respect to a qualified business facility in a distressed municipality;

(5) $4,000,000 and provides a net benefit to the State as provided herein with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business from the qualified business facility; and

(6) $2,500,000 and provides a net benefit to the State as provided herein with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business from the qualified business facility.

Under paragraphs (1) through (6) of this subsection, with the exception of a project located within a Garden State Growth Zone which qualifies for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of $4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable subsection or an amount determined by the authority necessary to complete the project, with such determination made by the authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm the amount necessary to complete the project.

(cf: P.L2017, c.221, s.2)

28. Section 1 of P.L.1996, c.2 (C.54:48-4.2) is amended to read as follows:

1. As used in **[**this act**]** P.L.1996, c.2 (C.54:48-4.2 et al.):

"Cardholder" means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.

"Card payment system" means a technical procedure by which tax obligations owed the State may be paid by credit card or debit card.

"Credit card" means any instrument or device linked to an established line of credit, whether known as a credit card, charge card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in satisfying outstanding financial obligations, obtaining money, goods, services or anything else of value on credit.

"Debit card" means any instrument or device, whether known as a debit card, automated teller machine card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value through the electronic authorization of a financial institution to debit the cardholder's account.

"Electronic funds transfer" means any transfer of funds or virtual currency, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

"Electronic funds transfer system" means a technical procedure by which tax obligations owed the State may be paid by an electronic transaction between the financial institution of the person or organization owing the obligation and the financial institution of the State.

"Issuer" means the business organization or financial institution that issues a credit card or debit card, or its duly authorized agent.

"Service charge" means a mandatory fee to be charged by the Division of Taxation in excess of the total obligation under **[**this act**]** P.L.1996, c.2 (C.54:48-4.2 et al.) owed by a person or organization to offset processing charges or discount fees for the use of a card payment system or an electronic funds transfer system.

"Virtual currency" means a digital asset that is:

(1) used as a medium of exchange, unit of account or store of value; and

(2) not recognized as legal tender by the United States government.

(cf: P.L.1996, c.2, s.1)

29. The Commissioner of Banking and Insurance shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations the commissioner deems to be necessary, to effectuate the purposes of this act.

30. This act shall take effect on the first day of the fourth month after enactment, except the Commissioner of Banking and Insurance may take such anticipatory action as may be necessary for the implementation of this act.

STATEMENT

This bill, the “Virtual Currency and Blockchain Regulation Act,” establishes a regulatory framework for virtual currency businesses to operate in New Jersey, creates provisions governing the use of blockchain with certain business entities, and creates certain incentives for virtual currency businesses to locate in the State.

**Provisions on open blockchain tokens**

This bill provides that certain open blockchain tokens are intangible personal property rather than securities. An open blockchain token is to be considered intangible personal property under the bill if it meets the following characteristics:

(1) the predominant purpose of the token is consumptive;

(2) the developer or seller did not market the token to the initial buyer as a financial investment; and

(3) at least one of the following subparagraphs is satisfied:

(a) the developer or seller reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(b) the token has a consumptive purpose that is available at or near the time of sale and can be used at or near the time of sale for a consumptive purpose;

(c) the initial buyer of the token is prohibited by the developer or seller of the token from reselling the token until the token is available to be used for a consumptive purpose; or

(d) the developer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the token as a financial investment.

The bill requires that, before making an open blockchain token available for sale, the developer or seller of a token, or the registered agent of the developer or seller, is to electronically file a notice of intent with the Department of Banking and Insurance and pay a filing fee of $1,000. The notice of intent is to contain the name of the person acting as a developer or seller, the contact information of the person, or the registered agent of the person and comprehensive details, to be determined by the Commissioner of Banking and Insurance, on the open blockchain token made available for sale. A form is to be made available by the department for this purpose, and is to include a secure electronic form conspicuously posted on the department’s Internet website. A developer, seller and the registered agent of these persons, if applicable, is to have a continuing duty to update the contact information provided on a notice of intent as long as the open blockchain token associated with the notice is actively being sold.

The bill makes a willful failure by a developer, seller or facilitator to comply with the duties imposed by the bill an unlawful practice under the Consumer Fraud Act. An unlawful practice under the Consumer Fraud Act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. In addition, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages and the awarding of treble damages and costs to the injured party.

**Provisions on digital assets as property**

This bill establishes digital assets as property and allows banks to provide custodial services for digital assets.

A digital asset is a representation of an economic, proprietary, or access right that is stored in a computer readable format, and includes digital consumer assets, digital securities, and virtual currency. Under the bill, all digital assets will be classified as property, with digital consumer assets classified as a general intangible property, digital securities classified as a security, and virtual currency classified as money. A digital asset will also be treated as a financial asset under the bill, if a written agreement is entered with the owner of the digital asset classifying the asset as such. If the digital asset is treated as a financial asset, then the digital asset will remain as intangible personal property.

Under the bill, a secured party or an agent, custodian, fiduciary or trustee of the party with a security interest in a digital asset will be able to perfect their security interest through control. A secured party holding a security interest in a digital asset through control will have priority over a secured party that has a security interest in the asset but does not have control. Perfection by control will create a possessory security interest in a digital asset and will not require physical possession.

Additionally, the bill will allow a bank to provide custodial services of digital assets upon providing 60 days written notice to the Commissioner of the Department of Banking and Insurance. A bank that elects serve as a qualified custodian must follow federal Securities and Exchange Commission rules regarding custodial services and must ensure the following:

(1) the implementation of all accounting, account statement, internal control, notice and other standards specified by applicable State or federal laws and regulations for custodial services;

(2) maintenance of information technology best practices relating to digital assets held in custody;

(3) full compliance with applicable federal anti-money laundering, customer identification and beneficial ownership requirements; and

(4) other actions necessary to carry out the aforementioned requirements, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

Apart from the requirements above, a bank providing custodial services will also be required to enter into an agreement with an independent public accountant to conduct an examination that conforms to federal regulations concerning custodial services, at the cost of the bank, pursuant to certain rules and requirements.

The bill also provides that digital assets held in custody are not depository liabilities or assets of the bank. A bank, or its subsidiary, that holds digital assets in custody will be able to register as an investment adviser, investment company or broker dealer as necessary. Banks holding digital assets in custody must maintain control over a digital asset, with the customer electing, pursuant to a written agreement with the bank, one of the following relationships for each digital asset held in custody:

(1) custody under a bailment as a nonfungible or fungible asset. Assets held under this bill will be strictly segregated from other assets; or

(2) custody under a bailment that allows the bank, based on the customer’s instructions, to undertake transactions with the digital asset.

A bank that holds a digital asset in custody under a bailment that allows the bank to undertake transactions with the digital asset will not be liable for any loss suffered with respect to any transactions made, except for liability consistent with fiduciary and trust powers as a custodian.

The bill provides that a bank and a customer must agree in writing with regard to the source code that the bank will use for each digital asset, and the treatment of each asset. Any ambiguity within the agreement will be resolved in favor of the customer. A bank will be required to provide clear, written notice to each customer, and require written acknowledgement, of the following:

(1) prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities;

(2) the heightened risk of loss from transactions with the digital asset, if the bank is given the instruction from the customer to undertake transactions with the digital asset;

(3) that some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset;

(4) that custody may not result in the digital assets of the customer being strictly segregated from other customer assets if the bank is allowed to undertake transactions with the asset; and

(5) that the bank is not liable for any losses suffered if the bank does transact with the asset, with exception for liability consistent with fiduciary and trust powers as a custodian.

A bank and a customer must agree in writing to a time period within which the bank must return a digital asset held in custody. If a customer elects to allow the bank to make transactions with the asset, then the bank and the customer may also agree in writing to the form in which the digital asset will be returned.

The bill provides that all ancillary or subsidiary proceeds relating to digital assets held in custody will accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who elects to custody under a bailment that treats a digital asset as either fungible or nonfungible may withdraw the digital asset in a form that permits the collection of ancillary or subsidiary proceeds.

Finally, the bill provides that a bank will be prohibited from authorizing rehypothecation of digital assets. The bank will not engage in any activity to use or exercise discretionary authority relating to a digital asset unless it has the customer’s instructions to do so. A bank will also be prohibited from taking any action which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

**Provisions on decentralized autonomous organizations**

This bill allows the formation of decentralized autonomous organizations (DAO) under the State’s limited liability company law.

A DAO is an organization controlled by its members with no central authority. Instead, the organization is governed by a set of smart contracts built on distributed ledger technology or blockchain. The smart contracts automate many of the decision-making processes typically reserved for upper-tier management in a traditional company.

The bill permits DAOs to incorporate as limited liability companies, and affords DAOs similar protections as are afforded to limited liability companies under current law.

The bill provides a DAO is a limited liability company whose articles of organization contain a statement that the company is a decentralized autonomous organization. The bill requires DAOs to maintain a presence in the State through a registered agent and to include in its name a designation such as “DAO”, “DAO LLC” or “LAO”. The bill permits limited liability companies in the State currently to convert to DAOs by amending their articles of organization.

Under the bill, a DAO may be member managed or algorithmically managed, as set forth in its articles of organization. If algorithmically managed, the underlying smart contract must be able to be updated, modified or otherwise upgraded.

The bill provides that the articles of organization or the smart contracts of the DAO will govern aspects or the organization such as relations among the members, rights and duties of each member, voting rights, transferability, distributions and amendments. In addition, unless provided for in the articles of organization or operating agreement, no member has any fiduciary duty to the DAO or any member other than the implied contractual covenant of good faith and fair dealing.

**Provisions on blockchain filing system**

This bill gives the Division of Revenue and Enterprise Services in the New Jersey Department of the Treasury the authority to develop filing system using blockchain through which all required filings may be submitted. The division is to try to use blockchain technology and include an application programming interface as components of the filing system, as well as robust security measures and other components determined by the division to be best practices or which are likely to increase the effective and efficient administration of the laws of this State. The division may create a blockchain or contract for the use of a privately created blockchain.

The division may consult with all interested parties, including businesses, registered agents, attorneys, law enforcement and other interested persons, before developing the filing system and if possible, partner with technology innovators and private companies to develop necessary components of the system. The division may also promulgate rules and regulations to effectuate the provisions of the bill.

**Exemption for virtual currency from money transmitter law**

This bill also exempts virtual currency from current law governing money transmitters. “Virtual currency” is added to the law to mean any type of digital representation that: (1) is used as a medium of exchange, unit of account or store of value; and (2) is not recognized as legal tender by the United States government.

**Authorization for business entity to issue stock as certificate token**

This bill authorizes a business entity, such as a corporation or limited liability company, to issue stock certificates in the form of electronic certificate tokens.

"Certificate token" is defined as an electronic representation of a share of stock which contains certain information required under existing law for stock certificates and which is entered into a blockchain or other secure, auditable database.

**Business incentives for virtual currency businesses**

The bill also provides certain incentives for virtual currency businesses to locate in New Jersey. The bill exempts receipts from retail sales of energy and utility service to a virtual currency servicer or registrant for use or consumption directly and primarily in the creation of virtual currency, including mining, from the tax imposed under New Jersey’s "Sales and Use Tax Act." The bill provides that a virtual currency servicer or registrant may file an application for a sales and use tax exemption with the Director of the Division of Taxation in the Department of the Treasury.

The “Grow New Jersey Assistance Act,” N.J.S.A.34:1B-242, provides certain business and insurance premiums tax credits for job creation and retention in New Jersey. For the purposes of the “Grow New Jersey Assistance Act,” the bill designates virtual currency servicers and registrants registered pursuant to this bill’s provisions to be in a “targeted industry” and a “technology startup company.” Therefore, in order for a virtual currency servicer to be eligible for that program, the minimum number of new or retained full-time jobs would be a minimum of 10 new or 25 retained full-time jobs, which is less than is required for certain other types of business. Virtual currency servicers and registrants would also be eligible for, in addition to the base amount of the tax credit, an additional $5,000 for each new or retained full-time job each year.

**Allowance for virtual currency in payment of State taxes**

Current law, N.J.S.A.54:48-4.3, allows the Director of the Division of Taxation to establish an electronic funds transfer system for payments of State taxes. The bill amends the definition of "electronic funds transfer" to include any transfer of virtual currency. This change would allow the director to accept virtual currency in the payment of State taxes.