

Report of the Joint Committee on Fiduciary Financial Institutions Oversight to the 2025 Kansas Legislature

CHAIRPERSON: Senator Jeff Longbine

VICE-CHAIRPERSON: Representative Nick Hoheisel

OTHER MEMBERS: Senators Michael Fagg, Ty Masterson, and Jeff Pittman; and Representatives Dan Osman, Stephen Owens, Laura Williams, and Rui Xu

CHARGE

Monitor and Make Recommendations on Fiduciary Financial Institutions in Kansas

Pursuant to KSA 46-4001, the Committee is directed to monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the State of Kansas and the fiduciary financial institutions pilot program, and to receive a report from the Office of the State Bank Commissioner.

January 2024

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Joint Committee on Fiduciary Financial Institutions Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Fiduciary Financial Institutions Oversight submits the following comments and recommendations:

- **Liquidation.** Explore updates to the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act as it relates to the voluntary or involuntary liquidation of a Kansas TEFFI;
- **Application fee.** Consider a change in application fee;
- **Operational changes.** Consider changes in daily statement and monthly trust statement requirements, call report cadence, and lending limits;
- **Digitalization.** Consider updates to the definitions of alternative assets and alternate asset custody accounts to reflect continued modernization and digitization of asset ownership;
- **Charities.** Reconsider the provisions of 2024 SB 204, which would revise definitions of charitable beneficiaries and qualified charities so as to no longer require nonprofit beneficiaries to be federally tax-exempt;
- **Safety and soundness examination.** Consider the Office of the State Bank Commissioner's authority to examine the financial aspects of TEFFIs for safety and soundness;
- **Industry consultation.** Reach out to other financial institutions to determine why the industry has yet to grow; and
- **Committee continuation.** Consider the longevity of the Committee itself and whether it remains necessary.

The Committee directs its report to the standing committees of the Kansas Legislature charged with the oversight of financial institutions (Senate Committee on Financial Institutions and Insurance and the House Committee on Financial Institutions and Pensions).

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Fiduciary Financial Institutions Oversight was established by the enactment of 2021 Senate Sub. for HB 2074,

Section 29, codified at KSA 46-4001. This nine-member committee is required to:

- Monitor, review, and make recommendations regarding fiduciary

financial institutions' operations in the state of Kansas;

- Monitor, review, and make recommendations regarding the FidFin Fiduciary Institution Pilot Program (pilot program); and
- Receive a report from the Office of the State Bank Commissioner (OSBC). [*Note:* The bill also required the OSBC to submit an initial report prior to December 31, 2021, that provided an update on the implementation of the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act and pilot program. The bill required this report to include recommendations from the OSBC for any legislation necessary to implement provisions of the TEFFI Act.]

The Legislative Coordinating Council authorized the Committee to meet for one day during the 2024 Interim.

COMMITTEE ACTIVITIES

The Committee met on November 21, 2024, to review law regarding fiduciary financial institutions, perform the oversight assigned to the Committee, and receive updates on fiduciary financial institutions' operations and activities in the state. Testimony was provided by representatives of the TEFFI recognized by the 2021 law. [*Note:* Beneficient Fiduciary Financial (BFF), LLC, is the TEFFI granted charter in Kansas and, as of 2024, is the only TEFFI in the country. The Beneficient Company Group, LP, is the parent company, and is often referred to as "Ben."]

As head of the regulatory authority authorized by the 2021 legislation, the State Bank Commissioner (Commissioner) testified before the Committee. A representative of the Kansas Department of Commerce (Department) also testified.

Overview of Technology-enabled Fiduciary Financial Institutions Act and Statutory Requirements

Staff from the Office of Revisor of Statutes provided a summary of the statutory requirements under the TEFFI Act (KSA 9-2301 *et seq.*) as it applies to both the TEFFI and the OSBC.

Statutes in the TEFFI Act specify requirements for TEFFIs on the following topics:

- Application and approval for a charter and applicable distributions (KSA 9-2302);
- Application and examination fees (KSA 9-2303);
- Capitalization (KSA 9-2305);
- Board of directors (KSA 9-2306);
- Report to the Commissioner (KSA 9-2307(a));
- Naming and advertising restrictions (KSA 9-2308);
- Maintaining office space (KSA 9-2309(a) and (d));
- Principal office and maintenance of records (KSA 9-2309(c));
- Fiduciary and required distributions (KSA 9-2311);
- Disclosure to customers (KSA 9-2311(h));
- Notification when engaging a party to provide certain services (KSA 9-2312); and
- Custodial services (KSA 9-2313).

The OSBC is subject to the following requirements:

- Notification of approval or disapproval of application (KSA 9-2302(g));
- Assessment of fees and examination expenses (KSA 9-2303);
- Examinations (KSA 9-2307(b));
- Adoption of rules and regulations (KSA 9-2322); and
- Annual report to the Joint Committee on Fiduciary Financial Institutions Oversight (KSA 46-4001(g)).

Updates on Fiduciary Financial Institutions' Operation in the State of Kansas

Beneficient Fiduciary Financial, LLC

The BFF Chief Executive Officer (CEO) and Chairman of the Board, the BFF President and Chief Fiduciary Officer, and the BFF Managing Director and Chief Operating Officer; and a representative from Crossroads Legal Solutions, provided an overview of recent Beneficient and BFF activities, an update on BFF operations, a report on economic growth zone (EGZ) milestones and achievements, and legislative requests.

[*Note:* BFF representatives submitted two reports for the Committee's reference and record: Beneficient Fiduciary Financial, LLC Management Report — an asset and distribution statutory allocation reporting of the Kansas Department of Commerce and Beneficient Heartland Foundation, Inc. activities; and Legislative Report for Kansas TEFFI Charitable Activity — including audited consolidated financial statements for the Kansas TEFFI Economic Growth Trust and the Beneficient Heartland Foundation, Inc. — for the Fiscal Year, ended March 31, 2024.]

Update from the Chief Executive Officer

BFF's CEO and Chairman of the Board presented information on the nature of the TEFFI, its board, and market factors that have slowed industry growth.

The CEO described the alternative assets with which the TEFFI works as illiquid assets, such as private equity and structured credit funds, and the TEFFI serves to provide liquidity to its clients. The CEO reported that the initial public offerings (IPO) market and the merger and acquisitions (M&A) market have shut down over the past few years, reducing their liquidity, but that major institutions expect the markets to reopen in coming months.

The CEO described various company announcements over the past year, including:

- A new primary capital financing product aimed at managers of alternative assets;
- The Machine Automated Pricing System to streamline pricing and improve capacity to process more transactions;
- The anticipated expansion of the company's balance sheet by \$5 billion in the next three to five years;
- Implemented transactions reclassifying certain company-preferred equity issuances to improve permanent equity; and
- A new director assigned to the Audit Committee.

The CEO explained the issues the company faced after its IPO, when the company that held 90 percent of its shares in a "lock up" agreement went bankrupt and voided the agreement. He stated the company is now broadly held and the stock is fully distributed. The CEO reported that BFF's first profitable quarter was the first quarter of 2024. He also stated two other companies have expressed interest in becoming TEFFIs. The CEO concluded his presentation by detailing the economic development projects, including a grocery store, in Hesston, Kansas, that are supported by BFF's Economic Growth Trust.

Update from the Chief Operating Officer

The Chief Operating Officer presented information on the Bank Secrecy Act, information

technology, and compliance examinations that the TEFFI has undergone in 2022 and 2024.

The Chief Operating Officer discussed regulatory issues the TEFFI faces as a non-traditional financial institution and suggested amending KSA 9-2304, which applies provisions of the Kansas Banking Code to TEFFIs, to exempt TEFFIs from the following:

- Daily statement and monthly trust statement requirements (KSA 9-1130(b)(4));
- A 30-day reporting cadence for call reports (KSA 9-1705); and
- Lending limits (KSA 9-1104).

Update from the Chief Fiduciary Officer

The President and Chief Fiduciary Officer explained that 2.5 percent of BFF revenues is directed to the Kansas TEFFI Economic Growth Trust and is then split between the Beneficient Heartland Foundation and the Kansas Department of Commerce.

The Chief Fiduciary Officer also discussed the following legislative proposals:

- Lowering the application fee to lower the barrier to entry to the TEFFI market;
- Update definitions of alternative assets and alternate asset custody accounts to reflect continued modernization and digitization of asset ownership; and
- Revise the definition of “charitable beneficiaries” and “qualified charities” under the TEFFI Act to include:
 - Charities, contributions to which are allowable as a deduction pursuant to Section 170 of the federal Internal Revenue Code; or
 - One or more Kansas nonprofit corporations regardless of their federal income tax treatment. [Note: This was proposed in 2024 SB 204.]

Discussion

In discussion with Committee members, conferees testified that most of the similar economic initiatives had paused over the past several years, related to the closing of the IPO and M&A markets. One conferee indicated at least two other states have worked on TEFFI legislation in the past, including Illinois and Delaware, and he predicted that states will reconsider such legislation in the coming months.

The Chief Fiduciary Officer responded to a question about the status of bill language and reported that BFF has been working with the Office of Revisor of Statutes to develop language, but the Revisor’s software had not yet been set up for the new biennium, so the bill drafts were not yet ready to be shared with the Committee.

Office of the State Bank Commissioner

The Commissioner provided a report on the regulatory activities conducted by the OSBC regarding the sole TEFFI chartered and existing in Kansas, BFF.

Update on Regulatory Activities

Charter; TEFFI Act. The Commissioner acknowledged his 2023 testimony and reiterated that the Legislature, not the OSBC nor the State Banking Board, granted the charter to BFF during the 2022 Legislative Session (enactment of SB 337, which allowed the charter to be retroactive to December 31, 2021). The Commissioner noted subsequent amendments to the TEFFI Act in the 2022 Session (HB 2489) and the Act’s codification within the Kansas Banking Code (Chapter 9, Article 23). He stated the OSBC has not received any additional applications or inquiries from potential TEFFI organizers.

The TEFFI Act established that each TEFFI pay an annual assessment of at least \$1 million to the OSBC, which then remits all moneys to the State Treasury. Three-quarters of each remittance is credited to the Bank Commissioner Fee Fund, and one quarter is credited to the TEFFI Development and Expansion Fund with the Department of Commerce.

Examination and oversight. The Commissioner noted the OSBC is the sole

regulator for TEFFIs, unlike other financial institutions and entities that have a federal regulatory counterpart.

The Commissioner indicated the OSBC had completed two examinations of BFF in the previous 12 months and began a third earlier that week. The first two examinations focused on the Information Technology systems and compliance with the Bank Secrecy Act and Anti-Money Laundering laws and were presented to BFF's senior management and Board of Directors. He noted that these examination reports are confidential, in accordance with KSA 9-1712(a).

The third pending examination will consist of a review of BFF's administrative and operational practices and procedures, as well as a review of selected FidFin transactions. This examination, the Commissioner continued, will evaluate potential areas of risks pertaining to BFF's business model and the State of Kansas.

Regulatory concerns: safety and soundness examination. The Commissioner discussed his ongoing concerns with some of the regulatory components contained in the TEFFI Act. He noted those concerns would exist for any entrant into the TEFFI marketplace, as the TEFFI legislation is not specific for just BFF, but rather legislation that will govern any future TEFFI, should there be interest from other entities.

The Commissioner stated it is still impossible to conduct a meaningful safety and soundness examination. He highlighted the standard CAMELS rating system (which takes its name from its elements of review of capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk) used for state-regulated banks that follows international industry standards and assigns ratings in compliance with a uniform ratings system. The Commissioner also noted examinations of regulated trust companies and trust departments assign ratings (*e.g.*, Management Operations, Internal Controls and Audits, Earnings, and Compliance and Asset Management), which are components of a uniform trust rating system. The Commissioner further stated the TEFFI Act specifically disallows an examination to consider earnings as a component and assigns any goodwill asset as a capital component, which departs from the Uniform

Financial Institutions Rating System, the Uniform Interagency Trust Rating System, and Generally Accepted Accounting Principles (GAAP). No standard exists to determine the financial safety and soundness of a TEFFI. The Commissioner suggested that the Legislature revisit this provision if a worthwhile safety and soundness examination is desired by policymakers.

Regulatory concerns: liquidation. The Commissioner stated that BFF is one of several subsidiaries of Beneficient. As a holding company, Beneficient actively maintains control of its subsidiaries. The OSBC monitors the financial condition of the holding company through its filings to the Securities and Exchange Commission and press reports. Recent filings and share prices have indicated significant stress on the company, which could extend to BFF. The Commissioner stated the TEFFI Act does not contain any provisions or directions addressing either the voluntary or involuntary liquidation of a Kansas TEFFI. He suggested the Legislature revisit this potential exposure.

Discussion

Committee members asked the Commissioner for potential reasons for the absence of new TEFFI applicants, and the Commissioner responded that, without any inquiries or communication from potential organizers, any suggestion would be speculative. The Commissioner responded to questions regarding safety and soundness examinations, other examinations, and the process the OSBC used to gain information and monitor TEFFIs.

Update on the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund and Distribution to the Economic Growth Zones and Promotion of Development, Growth, and Expansion

Kansas Department of Commerce

The Director of Legislative Affairs (Director) for the Department of Commerce (Department) addressed requirements in the TEFFI Act that established the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund, which is administered by the Department. The Act requires Fund expenditures to be used for

economic development projects in the EGZ in Kansas; promoting and facilitating the development and growth of trust banks, fidfin activities, and custodial services in Kansas; and location of trust bank office space in an EGZ.

SEED Program. The Director explained that, after receiving funding, the Department developed the Strategic Economic Expansion and Development (SEED) grant program, specifically designed to award grants that support the economic revitalization of Kansas communities with population less than 5,000 people through investments in quality-of-life initiatives. The total amount of available funding is dependent on the annual assessments paid by each chartered TEFFI. The Director reported the Department was then reviewing applications for the third round of SEED grants.

During the first round of awards, 109 applications were received, with a total of \$4.7 million requested. The first year's funding to the Department was \$2.7 million. With those funds, the Department awarded grants to 61 applicants in December 2022.

In the second round of awards, the Department received \$270,000 to disburse and received 68 applications, the Director reported. The Department awarded grants to 13 applicants in December 2023. For the third round of the SEED grant program, the Department has \$250,000 in available funding and received 48 applications.

The Director shared details and photos of several of the projects that received awards.

Discussion

The Committee and the Director discussed recurring applicants; the unique nature of the SEED grant program that focuses funding on community vibrancy, libraries, and senior centers in smaller communities; and use of the Fund for marketing and promotional purposes.

CONCLUSIONS AND RECOMMENDATIONS

Following the presentations and updates, the Committee agreed to the following comments and recommendations reflecting its discussion:

- **Liquidation.** Explore updates to the TEFFI Act as it relates to the voluntary or involuntary liquidation of a Kansas TEFFI;
- **Application fee.** Consider a change in application fee;
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- **Committee continuation.** Consider the longevity of the Committee itself and whether it remains necessary.

The Committee directs its report to the relevant standing committees of the Kansas Legislature for additional review during the 2025 Session.