

**PRELIMINARY
MINUTES**

JOINT COMMITTEE ON FIDUCIARY FINANCIAL INSTITUTIONS OVERSIGHT

December 1, 2022
Room 548-S—Statehouse

Members Present

Senator Jeff Longbine, Chairperson
Representative Jim Kelly, Vice-chairperson
Senator Michael Fagg
Senator Jeff Pittman
Representative Nick Hoheisel
Representative Dan Osman
Representative Stephen Owens
Representative Rui Xu

Members Absent

Senator Ty Masterson

Staff Present

Melissa Renick, Kansas Legislative Research Department
Edward Penner, Kansas Legislative Research Department
David Wiese, Office of Revisor of Statutes
Eileen Ma, Office of Revisor of Statutes
Carly Humes, Office of Revisor of Statutes
Suzanne Nelson, Committee Assistant

Conferees

David Herndon, State Bank Commissioner
Tim Kemp, Deputy Bank Commissioner
Brock Roehler, General Counsel, Office of the State Bank Commissioner
Jeff King, Crossroads Legal Solutions, Counsel for The Beneficient Company Group, LP /
Beneficient Fiduciary Financial, LLC (BFF)
Derek Fletcher, President and Chief Fiduciary Officer, BFF
Alan Deines, Managing Director/Co-Head, FidFin Institutions, BFF
Brad Heppner, Founder and Chief Executive Officer, BFF
Rachel Willis, Director of Legislative Affairs, Kansas Department of Commerce

THURSDAY, DECEMBER 1 ALL DAY SESSION

Welcome and Introductions; Approval of December 7, 2021, Minutes

Chairperson Longbine called the meeting to order at 10:05 a.m. and welcomed Joint Committee members, conferees, and attendees. It was noted Representative Stephen Owens is attending the meeting virtually via Webex.

The minutes from the December 7, 2021, meeting were presented for approval. ([Attachment 1](#)) Representative Kelly requested an addition to paragraph 5 of the minutes to include the language stated on page 10 of the Kansas Legislative Research Department's (KLRD) Report of the Joint Committee on Fiduciary Financial Institutions Oversight to the 2022 Kansas Legislature, regarding legislative intent, future actions of the State Bank Commissioner regarding determination of when the pilot program was over, and when other new TEFFI organizations could apply for a charter. The addition reads as follows:

Legislative intent. On the subject of legislative intent, the Joint Committee recommends, and clearly states, a permanent charter be issued no later than December 31, 2021, so that practical actions can be taken with the pilot program and other requirements. Addressing such actions would allow requirements and processes associated with the TEFFI Act, including those items that remain at the discretion of the Commissioner (e.g., promulgation of agency rules and regulations and the timing of the examination and conclusion of the pilot program), to move forward.

After discussion, *Representative Kelly moved, seconded by Representative Hoheisel, to approve the December 7, 2021, Joint Committee on Fiduciary Financial Institutions Oversight minutes, as amended with the suggested changes. The motion to approve the minutes, as amended, unanimously passed.*

Overview of Fiduciary Financial Institutions' Legislation and Law, 2022 Session

Chairperson Longbine called upon Melissa Renick, Assistant Director for Research, KLRD, who presented a memorandum summarizing and providing background information for legislation passed by the 2022 Legislature related to fiduciary financial institutions. Six bills were considered and three of these bills advanced to the Governor, who signed them. The presentation first outlined these bills::

- 2022 Changes to Law ([Attachment 2](#))
 - **SB 337** (Conversion to Full Fiduciary Financial Institution Charter). The bill amends provisions pertaining to the pilot program established within the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act to clarify and retroactively codify the intended date for the issuance of a full

charter to the Beneficient Company. The bill specifies on December 31, 2021, the conditional charter granted under this pilot program shall be converted to a full fiduciary financial institution charter.

The memorandum detailed background information on the bill, including its companion bill (HB 2554), bill introduction and committee hearings and action, Committee of the Whole action, effective date, and a relevant recommendation from the December 2021 Joint Committee on Fiduciary Financial Institutions Oversight (Joint Committee) report to the Legislature.

- **HB 2489** (TEFFI Act Amendments; Required Reporting of Elder Abuse). The bill makes several amendments to the TEFFI Act pertaining to an updated definition, fingerprinting requirement, existing application fee, governing documents, evaluation and examination, customer disclosure, and services and authorized activities. The bill also amends the definition of “financial institution” within a statute requiring the reporting of abuse, neglect, or exploitation of certain individuals to include fiduciary financial institutions.
- The memorandum detailed background information on the bill, including its companion bill (SB 334); bill introduction and committee hearings and action, Committee of the Whole action, effective date, and a relevant recommendation from the Joint Committee report.
- **HB 2547** (Captive Insurance Law - TEFFI Insurance Companies). The bill amends and enacts law supplemental to the Captive Insurance Act to allow a technology-enabled fiduciary financial institution (TEFFI) insurance company to operate as an authorized captive insurance company in Kansas.

The memorandum detailed background information on the bill, including its companion bill (SB 377), bill introduction and committee hearings and action, Committee of the Whole action, and effective date.

- Other legislation (introduced):
 - HCR 5034 (Environmental, Social and Governance [ESG] Standards). Ms. Renick noted this concurrent resolution would have, among other things, directed the Joint Committee the resolution’s sponsors, and the State Treasurer where appropriate, at the direction of the Kansas Legislature, “to work with concerned parties to study the topic of ESG standards and draft legislation that protects the State of Kansas and its citizens from the use of ESG standards.”

Assistant Director Renick stood for questions; there were none at this time.

Update on Fiduciary Financial Institutions’ Operation in the State of Kansas

Office of the State Bank Commissioner Report

Chairperson Longbine recognized David Herndon, State Bank Commissioner, who introduced Tim Kemp, Deputy Commissioner, and Brock Roehler, General Counsel.

Commissioner Herndon also stated Michelle Kelley, IT Examiner, and Aaron Emerson, Financial Examiner, were present to assist in answering questions.

Resolution of application delays. Commissioner Herndon first addressed the material delays experienced in Beneficial Fiduciary Financial's (BFF's) application submission. BFF could not provide the required audited financial statements, and the Office of the State Bank Commissioner (OSBC) could not obtain background checks conducted by the Federal Bureau of Investigation (FBI) because of the way the TEFPI Act is written. The Commissioner stated both of these issues had been previously reported to the Joint Committee. He reported audited financial statements for BFF for periods ending December 31, 2020, December 31, 2021, and March 31 2022, were delivered to OSBC on October 27, 2022, resolving the application delay. The issue of background checks with the FBI remains unresolved, so the OSBC has relied on alternative background checks. Since the TEFPI Act, as written, precludes OSBC from conducting a safety and soundness examination that meets standards, the Commissioner stated a Pass/Fail examination determination finding will be the alternative. ([Attachment 3](#))

State Banking Board actions; conclusion of the Pilot Program. Despite the actions by BFF to complete the application process, the number of fiduciary financial transactions that have been generated, and the due diligence conducted by OSBC, the Commissioner noted concerns the agency has previously expressed about its ability to conduct meaningful examinations continue. Commissioner Herndon requested consideration of the Joint Committee and the Legislature to allow OSBC to conduct the same type of examination the OSBC does for Kansas state-chartered banks and trust companies. The Commissioner mentioned two completed targeted examinations of BFF in 2022, with a third examination scheduled to commence December 19, 2022. As a result of the State Banking Board's recognition of the transactional authority granted to BFF by the Kansas Legislature, and the anticipated successful conclusion of the third examination, the OSBC considers the provisions of the pilot program will be complete and it can be concluded. If the pilot program is concluded, the Commissioner continued, then other TEFPI businesses would be permitted to apply for charters in Kansas.

Examinations and dialogue with BFF. Deputy Bank Commissioner Kemp addressed the OSBC's two completed examinations of BFF to determine compliance with industry standards and regulations in the areas of the Bank Secrecy Act and information technology. All examinations conducted by OSBC are confidential in nature between OSBC and the board of directors, so particular findings cannot be disclosed outside of the confidentiality restrictions. Deputy Commissioner Kemp reported he and Alan Deines, BFF's Managing Director and Co-Head for Fiduciary Financial Institutions, will meet monthly, in person, to discuss current issues of concern, including the scheduling of examinations. These meetings have improved dialogue between the parties, and are seen as beneficial to develop standards and expectations from the regulated entity and regulator going forward.

Proposed legislation. General Counsel Roehler discussed a proposed bill to amend two statutes in the TEFPI Act. As Commissioner Herndon mentioned, despite implementing all of the changes requested by the FBI in 2021 HB 2489, the FBI still refuses to permit the OSBC to submit and receive background checks.

The OSBC requested a bill that will add definitions to KSA 9-2301 to define "officer," "director," and "organizer." These individuals are subject to background checks under KSA 9-2302. Secondly, OSBC requested amendments to KSA 9-2302 to clarify the State Bank Commissioner has the authority to require fingerprinting. The OSBC customarily requests and reviews background checks on behalf of the State Banking Board. As a condition to receive background checks from the FBI and Kansas Bureau of Investigation (KBI), the OSBC is

required to agree to not accept private entity criminal history checks and to treat the background checks as confidential, not disclosing criminal history information for any other purpose. General Counsel Roehler proposed new language that complies with this request, provided the OSBC is able to receive background checks from the FBI and KBI.

Commissioner Herndon, Deputy Commissioner Kemp, and General Counsel Roehler answered questions from Vice-chairperson Kelly, Senator Pittman, and Representatives Xu and Osman. The Committee and OSBC representatives discussed safety and soundness provisions in the TEFFI Act and proposed inclusion of provisions defining capital, the status of financial statements and those needed in the next phase (post-application), and the FBI background check issues.

Beneficient Fiduciary Financial, LLC, Report

Chairperson Longbine moved to the report of the fiduciary financial institution's representatives, and recognized Jeff King, Crossroads Legal Solutions, Legal Counsel to BFF. Mr. King introduced Derek Fletcher, President and Chief Fiduciary Officer; Alan Deines, Managing Director and Co-Head FidFin Institutions; and Brad Heppner, Founder and Chief Executive Officer, to present testimony on behalf of BFF.

Mr. King, a former Kansas Senator, took a moment to address Vice-chairperson Kelly, who is retiring from his position at the end of this year. Mr. King commended him for the work he has done and for his service to the citizens of Independence, Montgomery County, and the whole state.

Goals and operational achievements. Mr. King then reported on developments over the past 20 months. 2021 SB 288 was introduced on March 10, 2021, establishing TEFFIs in Kansas [enacted via Senate Sub. for HB 2074]. On December 31, 2021, the OSBC authorized BFF to conduct business, and 2022 SB 337 converted BFF's conditional charter into a full fiduciary financial institution charter effective December 31, 2021. ([Attachment 4](#)) He noted when Beneficient's Mr. Heppner, Mr. Fletcher, and other officers appeared last year before the House and Senate committees, they presented their vision and laid out three goals. First, through the TEFFI legislation, they wanted to create a world-class technology platform for alternative asset liquidity, something that was unique not only to the United States, but possibly the world. Second, by the end of 2022, they wanted to have more than \$250 million invested in TEFFIs in Kansas; and third, to have \$10 million to \$15 million generated for rural economic development to give to the economic growth zones and directly to the Kansas Department of Commerce. Mr. King reported BFF has met and exceeded all three of these goals. For the period December 31, 2021, through September 30, 2022, approximately \$255 million has been generated in closed FidFin transactions. During the same period, a total of \$18,148,204 was generated for Economic Growth Zone contributions, \$2,918,811 given to the Kansas Department of Commerce, and \$15,229,393 went to the Economic Growth Trust and BFF Heartland Foundation for the Economic Growth Zones.

Technology platform. Mr. Fletcher appeared next before the Joint Committee and introduced three other BFF executives present for this meeting: Emily Bowersock Hill, Kansas Director and Audit Committee member; Keith Martens, Managing Director and Co-Head of FidFin Institutions in Hesston; and Greg Woodyard, who runs the BFF TEFFI accounting department. Mr. Fletcher reiterated the three goals/commitments BFF initially made and how pleased they were that BFF met and exceeded those goals. Mr. Fletcher spoke about the technology platform they have built, which he described as a key element of the TEFFI Act. The

platform is a robust, online transaction processing system, where a customer can engage with BFF online, transact business, select the kind of liquidity they want to receive, and submit and close the transaction through the online customer portal. Additionally, BFF's technology platform received an SOC 2, Type 1 report (Security, Availability, and Processing Integrity), which means the platform was built to conform with and meets very high industry standards. They also received an AT&T Netbond Certification, in which AT&T examiners and BFF auditors examined and audited the platform, resulting in the Netbond Certification, which appears on the website. Mr. Fletcher stated he believes by next June, they will achieve an SOC 2 Type 2 and an SOC 3 report. He noted when people go to the website, they cannot see these functions running behind the pages. This is similar to looking at any other financial website, unless the potential customers have the credentials to log in to see the working functions. It was extremely important to BFF to follow through and ensure their technology platform was, indeed, unique, cutting-edge technology, to give customers the utmost in not only ease of use, but also the highest standards of security and privacy. Mr. Fletcher indicated, to the best of his knowledge, upon receiving all three of those reports, BFF would be the only company in the industry with those levels of credentials.

Economic Growth Zone funding. Mr. Fletcher also discussed the Kansas TEFFI Economic Growth Zone funding, the Economic Growth Trust's purpose, and its fund management. He concluded his presentation by explaining facets of the BFF Heartland Foundation, a Kansas nonprofit corporation and its governance. Mr. Fletcher also referenced BFF's Management Report dated December 1, 2022, which is a combined statement of financial position for the Kansas TEFFI Economic Growth Trust and Subsidiary and the Beneficent Heartland Foundation, Inc. and Subsidiary ([Attachment 5](#)) for the nine-month period ended September 30, 2022. He also referenced the Legislative Report on Kansas TEFFI Charitable Activity dated December 1, 2022, ([Attachment 6](#)) for more in-depth reporting results.

TEFFI Pilot Program milestones; proposed legislation. Mr. Deines noted he lives in Hays and his work includes traveling across the state with the goal of spreading the word about Kansas TEFFIs. He spoke about BFF's delivery of audited financial statements and stated BFF intends to deliver, this week, consolidated audited financial statements for periods ending June 30 and September 30, 2022; OSBC's IT examinations; and examinations under requirements for the Bank Secrecy Act, anti-money laundering, and Office of Foreign Asset Control for three successive periods also concluded with successful results. He noted the OSBC also conducted three compliance examinations with two more scheduled in December 2022 and January 2023. Mr. Deines noted BFF does not have any proposed legislative changes to the TEFFI Act; however, they do recommend a small modification to the definition of "charitable beneficiaries" under KSA 9-2301(b)(4) and KSA 79-32,283 to include one of more charitable organizations designated as beneficiaries of a fidfin trust which are either 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.

Grocery store initiative; Go Public opportunity. Mr. Heppner explained the progress of the current Grocery Store Initiative: the Foundation Task Force is assembled and has weekly planning sessions, the site for the new store has been identified and announced, and a Memorandum of Understanding has been signed with the grocery store operator. Mr. Heppner also discussed Beneficent's go-public opportunity with Avalon Acquisition Inc., a publicly listed company. He stressed the importance of going public, in that it fuels the balance sheet, generates more funds, and enables Beneficent to keep growing. The company entered into a business combination agreement announced on September 21, 2022. Beneficent is finalizing the S-4 registration statement required under the Securities Act of 1933 to be filed with the

Securities and Exchange Commission and, upon final closing of the business combination, Beneficient will become a publicly traded company.

Industry interest. Mr. Heppner also referenced a letter ([Attachment 7](#)) received from Jeffrey Miller, Managing Partner of Convergency Partners (Convergency), an advisory firm in Boston, Massachusetts. He stated Convergency has consulted with some of the most distinguished and prestigious financial institutions including Black Rock, Citi, Mercer, Morgan Stanley, UBS, Fidelity, and Goldman Sachs. Convergency sees the development of the TEFFI Act as an opportunity for these industry-leading institutions to deliver needed financial services to a growing population of alternative asset investors. Mr. Miller also expressed his confidence once the pilot concludes and the OSBC expresses its willingness to accept applications from additional financial institutions, a variety of industry participants will be eager to explore and establish operations in Kansas and operate under the TEFFI Act.

Chairperson Longbine opened the floor for questions to the BFF conferees. Mr. Fletcher answered questions from Representatives Xu and Kelly. Mr. Heppner answered questions from Senators Fagg and Pittman. The discussion included the differences between charitable and nonprofit partners in the possible amendatory language BFF presented, the activities of the BFF Board members (credit committee), the role of capital and risks, and status of the captive insurance company.

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

Chairperson Longbine recognized Rachel Willis, Director of Legislative Affairs, Kansas Department of Commerce (KDOC), who reviewed the provisions of the TEFFI Act as it pertains to KDOC. The Act established the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund, which is administered by KDOC. All expenditures from the fund must be for economic development projects in the Economic Growth Zones in the state (population less than 5,000 and located in the original 78 economic development zones) also for growth and development of trust banks, fidfin activities, and custodial services in Kansas or to locate a trust bank's office space in an economic growth zone. After receiving funding, the KDOC developed an application for a grant program called Strategic Economic Expansion and Development (SEED). The request for application was released on August 29, 2022. Applications were accepted through Friday, September 30. An informational webinar was held on Monday, August 29. Ms. Willis listed the requirements for the SEED grants including only one application per county will be awarded; projects must be completed within 12 months; and applicants must be county or municipal governments, economic development organizations, local chambers of commerce, a library system or 501(c)(3) or 501(c)(6) non-profit organization ([Attachment 8](#)). Ms Willis stated 109 applications were received with a total funding request of \$4,723,396. KDOC has completed the eligibility review and is close to completing the merit reviews, which look at project description and scope, budget, and timelines, as well as any pictures or optional materials that were provided. There were no questions for this conferee.

The Chairperson noted the Committee meeting was significantly ahead of schedule. Members indicated they wanted to continue the meeting with their discussion and report recommendations.

Committee Discussion with Conferees; Committee Discussion and Direction for the Committee Report to the 2023 Legislature

Chairperson Longbine opened the floor to continue the discussion and recommendations for the Joint Committee's report to the Legislature. He told members a report will be sent to both Chambers and the Committee could offer its recommendations for future legislation.

Amendments to the TEFFI Act, related provisions addressing charitable organizations. Chairperson Longbine noted Commissioner Herndon had indicated in his testimony that the OSBC would like to have legislation that would help to define "officers and directors" and further address issues with background checks and fingerprinting. Committee members indicated they would approve of that recommendation. General Counsel Roehler, OSBC, and Eileen Ma, Assistant Revisor, Office of Revisor of Statutes, indicated they had already been working on draft language for such legislation. Chairperson Longbine noted another suggestion for legislation from Mr. Deines' testimony, regarding BFF's recommendation for a small modification to the definition of "charitable beneficiaries" (KSA 9-2301(b)(4) and KSA 79-32,283). Senator Pittman stated a concern regarding the definitions for nonprofits and the context for the current definition. Representative Xu asked how this change in definition might impact the federal code and requested information regarding the kinds of tax-exempt organizations included in the current definition and the effect of the change to the definition going forward. Chairperson Longbine called for a vote on the recommendation. The "ayes" had the majority, with Senator Pittman and Representative Xu requesting to be recorded as "nay" votes.

Discussion. Chairperson Longbine recognized Representative Kelly, who highlighted his concern regarding the TEFFI Act. The Act, he stated, does not give the OSBC enough authority to review and conduct a thorough examination on the safety and soundness of an organization. For this reason, he did not believe the OSBC would be able to provide the confidence to TEFFI customers at the same level as to bank and trust company customers. He recommended the House and Senate committees look at the TEFFI policies and examination procedures, especially surrounding safety and soundness, with the thought in mind of drafting legislation to bring TEFFIs to the same level of investment security and safety as Kansas consumers are accustomed to with banks and trust companies. Representative Kelly told the Committee because he is not coming back next year, he would offer a recommendation, rather than an amendment. He offered the the following recommendation for the Joint Committee Report: "for the Senate and House Financial Institutions Committees to review and consider in the 2023 session, any needed revisions to the regulatory review section of the current legislation in committee, and if determined there are some, then from the committees make the necessary amendments to bring TEFFI examinations up to the same caliber as those our Kansas banks and trust companies will have, and have had for decades."

He thanked the members and staff for their service and friendship over his 12 years in the Legislature, citing what a privilege and honor it has been to serve with them on the committees, to provide a safe and sound banking environment for the customers of Kansas.

Chairperson Longbine asked for any additional recommendations or comments. Representative Owens and Senator Faag both added comments on the recommendations previously made, and on the interaction, cooperation, and progress made thus far among the legislators, OSBC, and BFF. Senator Fagg related he had gone to Hesston to see the store and further noted the project's success and impact similar projects will have in rural Kansas communities.

Progress report. The Committee and Assistant Director Renick, KLRD, further discussed the report and transmission to the appropriate standing committees on financial institutions, including an update on examinations and findings, as well as completion of the application process, commencement of fidfin transactions, and the conclusion of the pilot program.

Chairperson Longbine thanked Committee members, conferees, and staff for their contributions to the discussions.

Adjourn

The meeting adjourned at 12:04 p.m.

Prepared by Suzanne Nelson

Edited by Melissa Renick

Approved by the Committee on:

(Date)

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