



Chairman Jeff Longbine
Senate Committee on Financial Institutions
and Insurance
Kansas State Capitol
300 SW 10th Ave.
Topeka, KS 66612

RE: Testimony in Support of SB 204

Chairman Longbine and members of the Committee:

Thank you for allowing me the opportunity to present written testimony in support of SB 204.

As this committee will recall, technology enabled fiduciary financial institutions (“TEFFIs”) are specialized trust companies providing alternative asset investors with financing options, trust administration and custodial services, all delivered in a fiduciary capacity.

The TEFFI Act requires a TEFFI to structure its financings to provide funding (referred to as “economic growth contributions”) for economic growth zones in Kansas, which are communities in designated counties with populations of 5,000 or less. The intent and purpose of economic growth contributions is to spur job and income growth, main street revitalization, education facility improvements, healthcare and senior facility improvements, etc. in rural communities.

To date, Beneficient Fiduciary Financial, LLC (Kansas’ first TEFFI) has facilitated economic growth contributions in excess of \$18 million – approximately \$15 million being allocated to charitable organizations benefitting BFF’s designated economic growth zone and approximately \$3 million being allocated to the Kansas Department of Commerce.

On December 22, 2022, the Department of Commerce announced it had awarded approximately \$2.7 million to 61 Kansas communities for quality-of-life projects. The Beneficient Heartland Foundation and the Kansas TEFFI Economic Growth Trust have utilized the funding they have received for the purpose of constructing a grocery store in Hesston, Kansas (Kansas’s first designated economic growth zone).

It was originally anticipated that a charitable organization formed and funded by a TEFFI would constitute a public charity under the Internal Revenue Code (organizations that derive at least 1/3 of their funding from the general public) since TEFFI customers were the source of the funding. However, BFF’s tax advisors have concluded that while funding is provided by TEFFI customers, since funding is required by the TEFFI Act and the TEFFI’s transactional agreements, the TEFFI will be deemed to be the donor under federal tax law rather than the customer.

The consequence of this deemed donor status is that any §501(c)(3) organization formed and funded by a TEFFI will constitute a private foundation under federal tax law. Likewise, it is very possible that if the TEFFI were to make contributions to an existing public charity (a community

foundation, for example), such contributions could convert that public charity into a private foundation – a very unfavorable result.

Private foundations are subject to draconian rules under the Internal Revenue Code which severely limit the activities of the charity. These rules can subject the donor and the charity to excise tax penalties and can also result in the loss of the charity's federal tax exemption. This is true even if the associated transactions are structured to wholly benefit the charity.

The TEFFI Act requires economic growth contributions to be made to charitable organizations which are exempt from tax pursuant to §501(c)(3). This language was likely included not to restrict participation but because (i) 501(c)(3) status is the most common form of tax-exempt organization and (ii) because the full impact of limiting participation to §501(c)(3) organizations was unknown. A year of experience has revealed that the 501(c)(3) requirement is in fact limiting and arbitrarily excludes worthy charitable organizations which choose exemption under another section of the Internal Revenue Code or choose not to seek a federal tax exemption at all.

SB 204 remedies this issue by expanding the definition of “qualified charities” to include not only §501(c)(3) organizations but any Kansas non-profit corporation regardless of its federal tax status. While the expansion of this definition will enable a variety of charitable organizations to participate in the economic growth initiative, it is not without proper oversight and reporting requirements.

First, any organization that is not a 501(c)(3) organization must be organized under Kansas law with reporting requirements to the Kansas Secretary of State. Second, in order to participate in the economic growth initiative, the charity must be organized pursuant to a charter promulgated by the Kansas Department of Commerce. Third, the charity must commit to utilize the entire amount of the qualified charitable distributions, excluding reasonable administrative expenses, exclusively for the benefit of charitable causes located in one or more economic growth zones or postsecondary educational institutions. Fourth, the charity must provide an annual report to the Kansas Department of Commerce detailing its use of economic growth contributions.

SB 204 makes significant contributions to the economic growth zone program created under the TEFFI Act by expanding the categories of worthy charitable participants while maintaining appropriate financial reporting and regulatory oversight. The beneficiaries of SB 204 are the Kansas economic growth zones and I fully support its passage. Thank you again for your time and for permitting me to testify in favor of SB 204.

Sincerely,



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However, BFF recommends a small modification to the definition of "charitable beneficiaries" under KSA §9-2301(b)(4) and KSA §79-32,283 to include one or more charitable organizations designated as beneficiaries of a fidfin trust which are either:

- (i) charities, contributions to which are allowable as a deduction pursuant to section 170 of the federal internal revenue code or (ii) one or more a Kansas nonprofit corporations regardless of their federal income tax treatment.

