



700 S. W. Jackson
Suite 300
Topeka, KS 66603-3796

Office of the State
Bank Commissioner

Phone: (785) 380-3939
Fax: (785) 371-1229
www.osbckansas.org

David L. Herndon, Bank Commissioner

Laura Kelly, Governor

Testimony to the Senate Financial Institutions & Insurance Committee
SB 288
March 29, 2021

Chairman Longbine and Members of the Committee, thank you for the opportunity to appear as a neutral conferee on SB 288.

Early this session, Representative Owens and the proponents of this legislation met with me and my staff about their proposal. We continue to meet to resolve any issues between us, including several conversations last week. We appreciate their time in explaining their business concept and we will continue to work to resolve our concerns.

We are a neutral on this bill, as our office does not decide policy: you do. We believe we can regulate this new entity called a technology-enabled trust bank (TETB). However, we will say to the legislature—and go on record—saying that we have concerns. Notably, we are concerned about the following:

1. The business model used by the TETB is unique and novel for the state of Kansas. Therefore, we cannot make conclusions as to the likely success of this entity. As you will hear from the proponents, this entity will be exclusive to the Kansas market.
2. The entity's lending practice relies on "alternative assets" such as venture capital funds, private equity, and private real estate funds, which are generally considered volatile. Because the OSBC is not accustomed to examining these types of assets, there is no historical data that demonstrates the expected cash flow levels for these types of assets.
3. The bill does not allow the OSBC to review the profitability of the TETB during examination (see Section 7(c)). It is our position that an entity cannot be successful without generating profit, and that profitability is a necessary component of any examination. Furthermore, the bill creates additional exceptions to our typical examination process for financial institutions. The standard formulas and rules for financial metrics, capital requirements, asset quality, concentration risk, usury rate, unusually high compensation, and conflicts of interest are modified, and an exception to GAAP is included. All these items significantly impact the ability of the OSBC to conduct a proper safety and soundness examination.

4. This entity is not FDIC insured. If the entity fails, will any other entities step in to take over the operation? Does the OSBC have any authority to close it or resolve its issues, like we do for failed banks? The first TETB will be a pilot program before other TETBs are allowed in the state. To us, this approach indicates an experimental concept, which raises concern for any financial regulator where conservative prudent measures are generally followed.

I am happy to answer any questions. I appreciate the committee's consideration of my comments.

David L. Herndon
State Bank Commissioner