

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 5, 2021

March 5, 2021

TURNAROUND WEEK

This week was devoted to debating a wide range of measures before the March 5 “turnaround” of bills to the other chamber. The week started with almost 50 bills on the Senate debate calendar and more than 100 on the House debate calendar. Not all measures were debated, meaning those bills are dead for the 2021 Legislature unless referred to an exempt committee by leadership. This week demonstrated how emergency situations can prompt swift legislative action. The 40-member Kansas Senate finished their debate agenda by Wednesday. The 125-member House of Representatives finished on Thursday.

One of the striking differences about the 2021 turnaround week is relatively few lobbyists milling around the statehouse compared with a normal session. Depending on the day, there were more than 250 individuals watching the session virtually (including legislative staff, legislative offices, lobbyists, governmental agencies, and others). Normally, most of those interested would have been at the Statehouse at least part of the day. With the House gallery filled with legislators, it is more convenient to watch the floor debate virtually rather than straining to listen outside the chamber. Even though the Senate gallery is open to the public, it was relatively vacant with only a handful of lobbyists watching at any given time. Open spaces in the underground parking lot and relatively deserted hallways are the norm this week.

Last week, the House and Senate Committees completed their work on state agency budgets, except for school finance. This week, the Department of Revenue released the February revenue numbers, which again exceeded the revenue estimates. Receipts were almost \$20 million more than the estimate and \$7.6 million higher than last February, which was pre-pandemic.

On Monday, the House rejected House Bill 2296, giving the Secretary of Transportation authority to negotiate with the Kansas Turnpike Authority to charge tolls to pay for road projects. The genesis of the bill was a proposal to expand a portion of Highway 69 in Overland Park and help finance the project with toll lanes. The House approved HB 2264, allowing college athletes to capitalize on their popularity and be paid for endorsements, appearances, and autograph sessions.

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ATTORNEYS AT LAW

Before the Senate adjourned on Wednesday, they approved sports gaming and rejected an amendment to expand Medicaid 12-23.

On Wednesday afternoon, the House debated a bill lowering the minimum age for receiving a concealed carry permit from 21 to 18. Several anti-gun amendments were rejected. On Thursday, the House passed the proposal 85-38.

On Thursday, former House member Ron Ryckman Sr., R-Meade, was selected to replace the late Bud Estes. The newly selected senator is the father of House Speaker Ron Ryckman, Jr.

HB 2429 ADDRESSES FEBRUARY'S EXTREME COLD WEATHER

After two weeks of extreme cold weather in February, legislators started hearing chilling stories about very high natural gas bills for cities operating as their own electric utility. The City of Lyons reported a \$3.3 million bill for six days of extreme cold. In Winfield, where the average monthly residential bill is usually \$133, February's residential bills jumped to more than \$1,700 in some cases, and some businesses saw a jump to more than \$4,000. The Kansas League of Municipalities has reported that more than 100 Kansas communities are worried about their economic survival.

On Wednesday, House Bill 2429 was introduced. The bill provides \$100 million in low-interest loans to cities facing high utility bills from the extreme cold. The legislation would provide funding from the idle investment fund controlled by the Kansas State Treasurer. The relief legislation is limited to utility billings caused by the February extreme weather event. If federal aid becomes available, cities borrowing from the State Treasurer are required to pay back loans as a priority. The interest charged would be 2.0 percent below the Pooled Money Investment Board (PMIB) market rate, with a minimum interest rate of 0.25 percent. The term of the loan could not exceed ten years. To address this issue decisively, the legislative process was accelerated. Early Wednesday morning, the House Financial Institutions and Rural Development Committee heard testimony on the newly introduced bill. The House committee inserted the contents of House Bill 2429 into Senate Bill 88, which originally dealt with easement boundaries, and then passed the bill to the House floor. The House took emergency action and approved Senate Bill 88, as amended, 124-0. In the afternoon, the Senate passed the bill 37-1. The governor has signed the measure.

KEMA DEBATE HEATS UP

On Monday afternoon, the Kansas Senate debated their version of the Kansas Emergency Management Act (KEMA), modifying procedures for the declaration and extension of a state of disaster emergency. Republican legislators were critical of Gov. Kelly's COVID emergency orders shutting down nonessential businesses and activities. The concerned Senators seek to limit the governor's authority. The bill passed the Senate 27-12. Gov. Kelly responded that the Senate bill jeopardizes the state's ability to respond quickly to emergencies and disasters. The governor argued that Legislature's role in an emergency should be oversight, not inserting itself into the decision-making process.

The House KEMA bill was finished early this week by the House Judiciary Committee. On Wednesday, it was debated on the House floor. During the floor debate, five amendments were rejected, and the bill passed 81-40. The initial House and Senate Conference Committee on KEMA met Thursday morning. Because there were numerous differences between the House and Senate versions, the legislative staff needed 75 minutes to review and explain the two versions. The conference committee is meeting again today to start the process of resolving the differences. The Legislature is working to pass the measure before the current emergency orders expire at the end of March.

KANSAS DEPARTMENT OF LABOR UPDATE

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During Gov. Kelly's Wednesday press conference, she was asked about an update on the Kansas Department of Labor (KDOL). She noted at the beginning of the pandemic, Kansas had 20 people answering calls. Now, there are 400 people answering calls to KDOL, but even with this dramatic phone bank increase, the KDOL has not been able to fully manage the call volume. KDOL is adding 500 new surge staff members with 75 being deployed next Monday. The new staff will be added on a rolling basis until 500 staffers are answering calls. KDOL is also extending their call hours. KDOL representatives will be available beginning this Saturday 8 AM – 5 PM, Sundays 1 PM – 5 PM, and new weekday hours from 8 AM – 9 PM starting Monday. A major server upgrade is scheduled for March 12.

Legislatively, this week the House passed its version of the Employment Security Act revisions (see Sub. For HB 2196 below) on a vote of 87 to 36.

WHAT'S NEXT

Next Wednesday, the Legislature returns and begins to work toward this legislative session's April 9 First Adjournment deadline. Non-exempt committees have a little more than two weeks to complete their work. March 26 is the last day for them to meet. March 31 is the last day for non-exempt bills to pass in the other chamber.

BILL INTRODUCTIONS

COURTS, LAWS, AND REGULATIONS

HB 2126 – Would, among other things, amend the COVID-19 Response and Reopening for Business Liability Protection Act by replacing the definition of “adult care facility” with the following definition of covered facility: an adult care home, as defined elsewhere in statute, except that covered facility would include a center approved by the Centers for Medicare and Medicaid Services as a program for all-inclusive care for the elderly (PACE) that provides services only to PACE participants; a community mental health center and a crisis intervention center, as defined elsewhere in statute; and a community provider, a community developmental disability organization, and an institution, as defined in the Developmental Disabilities Reform Act. Further, the bill would replace affirmative defense available in certain circumstances for an adult care facility in a civil action for damages, administrative fines, or penalties for a COVID-19 claim with immunity from liability for a covered facility in a civil action for damages in a COVID-19 claim, if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair. The Committee recommended the bill be passed as amended.

Sub. For HB 2196 – As recommended by the Committee of the Whole, would create the Unemployment Compensation Modernization and Improvement Council; require the Kansas Department of Labor to modernize its information technology (IT) infrastructure; make temporary changes to the membership of the Employment Security Review Board; make changes to Employment Security Rates tables; require the Secretary of Labor to provide tax notifications and certain Employment Security Fund Data Reporting; and provide for certain employer account protections. The substitute bill passed on final action as amended; Yea: 87; Nay: 36.

HB 2248 – Would update statutes related to the distribution of state financial assistance to local health departments. Referred to the House Committee on Social Services Budget, Rep. Will Carpenter, Chair. The Committee recommended the bill be passed.

HB 2361 – Would create a law requiring the Kansas Supreme Court to adopt rules for establishment and operation of specialty court programs within the State. The bill would allow the chief judge of a judicial district to establish a specialty court program in accordance with the rules adopted by the Court. “Specialty Court” means a district court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to address, underlying factors that may be contributing to a person's involvement in the judicial system,

FOULSTON

ATTORNEYS AT LAW

including, but not limited to, mental illness or drug, alcohol, or other addictions. Procedures may include treatment, mandatory periodic testing for prohibited drugs or other substances, community supervision, and appropriate sanctions and incentives. Referred to the House Committee on Corrections and Juvenile Justice, Rep. J. Russell Jennings, Chair. The Committee recommended the bill be passed.

HB 2340 – Would amend the Kansas Cigarette and Tobacco Products Act; the Kansas Indoor Clean Air Act; the laws concerning student health; and criminal statutes related to the use and possession of cigarettes, electronic cigarettes, consumable material, and tobacco products by persons under the age of 21, and would change references to the legal age to use or possess such products throughout the above Acts from 18 years of age (or a minor) to 21 years of age. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair. The Committee recommended the bill be passed.

HB 2405 – As amended, would authorize the Kansas Development Finance Authority (KDFA) to issue bonds, in one or more series, in an amount not to exceed \$1 billion, plus all amounts required to pay the costs of issuance. Proceeds from the bonds must be applied to the unfunded actuarial pension liability (UAL) of the Kansas Public Employees Retirement Systems (KPERS). The interest rate of those bonds would not exceed 3.5%. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair. The Committee recommended the bill be passed as amended.

HB 2426 – Would, among other things, authorize municipalities to issue bonds and warrants in excess of current revenue in the case of declared emergencies. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

Sub. for SB 84 – Would amend the Kansas Expanded Lottery Act concerning the conducting of sports wagering and operations by lottery gaming facilities. Referred to the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair. The Committee recommended the substitute bill be passed.

SB 106 – As amended, would enact the Revised Uniform Law on Notarial Acts (RULONA) and repeal the Uniform Law on Notarial Acts (ULONA), as well as other current laws regarding notaries. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair. The bill passed on final action as amended; Yea: 39; Nay: 0.

SB 261 – As amended by the Senate Committee of the Whole, would establish the Asbestos Remediation and require the Secretary of Health and Environment to remit all moneys received from the particular sources to the State Treasurer. The bill passed on final action as amended; Yea: 38; Nay: 1.

Sub. for SB 273 – As amended by the Senate Committee of the Whole, would create and amend law related to public health disaster emergencies. The bill passed on final action as amended; Yea: 27; Nay: 12. The bill has now been referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2137 – As amended by the House Committee of the Whole, would make similar changes to alcohol laws as SB 254, reported on Feb. 19, 2021. The bill passed on final action as amended; Yea: 122; Nay: 2. The bill has now been referred to the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair.

HB 2391 – As amended by the House Committee of the Whole, would, among other things, amend existing law relating to business filings with the Secretary of State to file necessary reports biennially; under current law businesses are required to file necessary reports annually. This bill passed on final action as amended; Yea: 121; Nay: 3. The bill has now been referred to the Senate Committee on Transparency and Ethics, Sen. Elaine Bowers, Chair.

Sub. For HB 2066 – As amended by the House Committee of the Whole, would shorten the period of time in which regulatory bodies are required to issue occupational credentials to military service members or military spouses seeking to establish residency in Kansas and provide for expedited credentialing of non-military prospective

FOULSTON

ATTORNEYS AT LAW

residents. The substitute bill passed on final action as amended; Yea: 103; Nay: 21.

HB 2416 – Would create and amend law regarding the Kansas Emergency Management Act (KEMA). The bill would create a new section in KEMA regarding the governor's issuance of executive orders during a state of disaster emergency declared under KEMA. The bill would, among other things, require the governor to make specific application to the Legislative Coordinating Council (LCC) for approval to issue an Executive Order (EO) that is in conformity with the *Kansas Constitution*, the *Kansas Bill of Rights*, and Kansas statutes. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair. The bill passed on final action as amended; Yea: 80; Nay: 40.

HB 2424 – Would amend the definition of race in the Kansas Act Against Discrimination to include hair textures and styles historically associated with race. The bill has been referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 90 – As amended by the Senate Committee of the Whole, would allow vertical renovations of certain buildings for residential purposes to be a permitted use of bond proceeds and amend definitions under the Kansas Rural Housing Incentive District Act. The bill passed on final action as amended; Yea: 33; Nay: 6.

SB 124 – As amended by the Senate Committee of the Whole, would supplement, amend, and reauthorize the Sales Tax and Revenue (STAR) Bond program. The bill passed on final action as amended; Yea: 24; Nay: 11.

SB 127 – As amended by the Senate Committee of the Whole, would amend laws related to driver's licenses. The bill passed on final action as amended; Yea 39; Nay: 0.

SB 283 – As amended by the Senate Committee on Judiciary, would amend the COVID-19 Response and Reopening for Business Liability Protection Act to extend the expiration date of the statute governing COVID-19 claim immunity for persons or agents of persons conducting business in the state by one year, until Mar. 31, 2022. The bill would be in effect upon publication in the *Kansas Register*. The Committee of the Whole passed the bill on emergency final action as amended; Yea 31; Nay: 8.

Sub. for SB 84 – As amended by the Senate Committee of the Whole, would amend the Kansas Expanded Lottery Act (KELA) concerning conducting of sports wagering operations by lottery gaming facilities. The Committee passed the substitute bill on emergency final action as amended; Yea: 26; Nay: 12.

HB 2058 – As amended by the House Committee of the Whole, would amend law related to the recognition and issuance of concealed carry licenses. The bill would also create two license classes: a provisional license that could be issued to persons who are at least 18 years of age and meet the requirements in continuing law for issuance of a license; and a standard license for persons who are over 21 years of age and meet the requirements in continuing law for issuance. Persons over 21 years of age could also carry a concealed firearm without a license pursuant to continuing law. The Committee passed the bill on final action as amended; Yea: 85; Nay: 38.

HEALTHCARE

HB 2280 – Would revise rules applicable to the State Board of Pharmacy relating to investigations, inspections, and audits as well as registration and permitting requirements. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. The Committee recommended the bill be passed as amended. The bill passed the final House action; Yea: 116; Nay: 8.

HB 2281 – As amended, would establish 988 as the suicide prevention and mental health crisis hotline in Kansas, and would provide for the Kansas Department for Aging and Disability Services to provide oversight and support to hotline centers. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. The Committee recommended the bill be passed as amended.

FOULSTON

ATTORNEYS AT LAW

HB 2279 – As amended, would enact the Physical Therapy Licensure Compact and amend the Physical Therapy Practice Act. The Compact would provide interstate practice authority for physical therapists in compact states. The Compact would provide for the creation of a Physical Therapy Compact Commission, with each member state represented by one delegate, and would outline the voting and meeting requirements. We originally reported on this in our Feb. 12 issue. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. The Committee recommended the bill be passed as amended.

HB 2373 – As amended, would require the Kansas Department for Aging and Disability Services (KDADS) to establish and implement a mobile crisis services program for individuals with intellectual or developmental disability. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. The Committee recommended the bill be passed as amended.

SB 185 – As amended by the Senate Committee of the Whole, would authorize the Kansas Commission for the Deaf and Hard of Hearing to adopt rules and regulations, establish a sign language interpreter registration process, and provide guidelines for communication access services. The Committee passed the bill on emergency final action; Yea: 24; Nay: 15.

Sub. for SB 238 – Would amend multiple laws relating to healthcare and, among other things, authorize issuance of telemedicine waivers for out-of-state healthcare providers. We originally reported on this in our Feb. 19 issue. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hillerbrand, Chair. The Committee recommended the substitute bill be passed as amended.

Sub. for SB 238 – As amended by the Senate Committee on Public Health and Welfare, would establish certification and funding processes for certified community behavioral health clinics (CCBHCs) and prescribe the powers, duties, and functions of the Kansas Department for Aging and Disability Services (KDADS) and the Kansas Department of Health and Environment (KDHE) with regard to CCHBCs. The Senate Committee of the Whole passed the substitute bill on emergency final action as amended; Yea: 38; Nay: 1.

UTILITIES

HB 2381 – As amended, would establish the State Energy Plan Task Force and provide for the Task Force's membership, requirements, duties, and organizations. Referred to the House Committee on Energy, Utilities, and Telecommunications, Rep. Joe Seiwert, Chair. The Committee recommended the bill be passed as amended.

HB 2022 – Would amend K.S.A 55-150 to include an exclusive listing of parties that could be considered responsible for plugging abandoned wells, as well as grant authority to the Corporation Commission to adopt regulations to establish a program to reimburse non-responsible parties for plugging abandoned wells. The bill would also amend existing law concerning funds used by the KCC to plug abandoned wells and would transfer all monies in and liabilities of the Well Plugging Assurance Fund to the Abandoned Oil and Gas Well Fund and abolish the Well Plugging Assurance Fund. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair. The bill passed on emergency action; Yea: 123, Nay: 0. Referred to the Senate Committee on Ways and Means, Sen. Rick Billinger, Chair. The Senate Committee Report was adopted by the Committee of the Whole. The bill passed as amended on Final Action; Yea: 39; Nay 0.

TAXATION

SB 46 – As amended, would, beginning in tax year 2021, exempt amounts received by retired individuals under all retirement plans from the Kansas income tax to the extent such income is included in federal adjusted gross income. We originally reported on this in our Jan. 29 issue. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair. The Committee recommended the bill be passed as amended.

FOULSTON

ATTORNEYS AT LAW

SB 72 – Would amend law related to the qualifications of county and district appraisers and members of the State Board of Tax Appeals. We originally reported on this in our Jan. 29 issue. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair. The Committee recommended the bill be passed.

HB 2313 – Would extend a vehicle property tax exemption for up to two motor vehicles to all current members in good standing of the Kansas Army National Guard, Kansas Air National Guard, or U.S. military reserve forces stationed in Kansas, beginning in tax year 2022. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair. The Committee recommended the bill be passed and placed in Consent Calendar.

SB 50 – As amended, would mandate the collection and remittance of sales and compensating use tax by most marketplace facilitators beginning July 1, 2021. The bill would define “marketplace facilitators” to include entities that contract with sellers to facilitate the sale of products or lodgings through a physical or electronic marketplace operated, owned, or otherwise controlled by the entity and either directly or indirectly collects the payment from the purchaser and transmits all or part of the payment to the seller. The definition would exclude platforms that exclusively provide advertising services, principally provides payment processing, or is a certain commodity futures trading organization. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair. The Committee recommended the bill be passed as amended.

SB 98 – As amended, would amend law related to judicial review of property tax disputes and membership of the State Board of Tax Appeals (BOTA). Under current law, at the election of a taxpayer, any summary decision, or full and complete opinion of BOTA issued after June 30, 2014, may be appealed by filing a petition for review in district court. Any appeal to the district court must be a trial de novo that includes an evidentiary hearing where issues of law and fact are determined anew. The bill would provide, with regard to any BOTA decision or opinion properly submitted to the district court relating to the determination of valuation of residential or commercial and industrial real property or the classification of property for assessment purposes, county appraisers would have the duty to initiate the production of evidence to demonstrate, by a preponderance of evidence, the validity and correctness of such determination. This was originally reported on in our Feb. 5 issue. Referred to the Senate Committee on Assessment and Taxation, Sen. Cary Tyson, Chair. The Committee recommended the bill be passed as amended.

HB 2045 – As amended by the House Committee of the Whole, would revise certain tax credits pertaining to angel investors and home renovations for disabled family members. The bill passed on final action as amended; Yea: 112; Nay: 11. The bill has now been introduced to the Senate.

HB 2428 – Would increase tax rates on cigarettes and tobacco products and would establish a cessation fund intended to assist users in quitting cigarettes and tobacco products. Also, the bill proposes to adjust sales tax on food and food ingredients. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

TRANSPORTATION

SB 167 – Would expand the definition of “authorized emergency vehicle” in the Uniform Act Regulating Traffic on Highways to include a vehicle operated by an authorized person for an electric or natural gas public utility. The bill would use definitions of “authorized person” and “public utility” in continuing public utility law. We originally reported on this in our Feb. 12 issue. Referred to the Senate Committee on Transportation, Sen. Mike Peterson, Chair. The Committee recommended the bill be passed. The bill passed on final Senate action; Yea: 39; Nay: 0.

HB 2245 – As recommended by the House Committee on Transportation, would permit the Department of Revenue to collect emergency contact information for registration purposes and permit law enforcement to use the information in the case of an emergency. The House Committee of the Whole recommended this bill be passed.

HB 2379 – As amended by the House Committee of the Whole, would define “peer-to-peer vehicle sharing” and prescribe insurance, liability, recordkeeping, and consumer protection requirements for such programs. The House Committee of the Whole recommended this bill be passed.

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ATTORNEYS AT LAW

SB 100 – As amended by the Senate Committee on Transportation, would create and amend law related to driver's licenses suspended for failure to comply with a traffic citation, meaning failing to appear in court in response to a traffic citation and pay in full any fine and court costs imposed or otherwise comply with a traffic citation. This was withdrawn from the Senate Committee on Transportation and referred to the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair.

EDUCATION

SB 235 – Would require all unified school districts in the State to provide a full-time, in-person attendance option for all students enrolled in kindergarten through grade 12 beginning on March 26, 2021, for school year 2020-2021, and every school year thereafter. The bill would be in effect upon publication in the Kansas Register. We originally reported on this in our Feb. 19 issue. Referred to the Senate Committee on Education, Sen. Molly Baumgardner, Chair. The Committee recommended the bill be passed.

Sub. for HB 2119 – As further amended by the House Committee on K-12 Education Budget, would, among other things, make appropriations for the Department of Education for fiscal years 2021-2023, require in-person instruction for all students, and allow for up to 240 hours of remote learning per school year. The Committee recommended the bill be passed.

VOTING AND ELECTION

HB 2332 – As amended, would require any individual who solicits by mail a registered voter to file an application for an advance voting ballot. Such mailing must, among other things, include the statement: "Disclosure: This is not a government mailing. It is from a private individual or organization." Referred to the House Committee on Elections, Rep. Blake Carpenter, Chair. The bill passed on final action as amended; Yea: 86; Nay: 38.

Kansas Legislative Insights is a publication developed by the Governmental Relations & Public Policy Law practice group of Foulston Siefkin LLP. It is designed to inform business executives, human resources and governmental relations professionals, and general counsel about current developments occurring in current Kansas legislation. Published regularly during the Kansas legislative session, it focuses on issues involving healthcare, insurance, public finance, taxation, financial institutions, business & economic development, energy, real estate & construction, environmental, agribusiness, employment, and workers compensation. Bill summaries are by necessity brief, however, for additional information on any issue before the Kansas Legislature, contact Foulston Siefkin's Governmental Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com. Learn more about the authors below:

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ATTORNEYS AT LAW

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PRACTICE AREAS

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