



## National Conference of State Legislatures Office of State-Federal Relations

Federal Court Rules Department of Interior Violated Administrative Procedures Act and Senate Committee Approves Autonomous Vehicle Legislation

On Oct. 4, the U.S. District Court for the Northern District of California ruled that the Department of Interior (DOI) misused Section 705 of the Administrative Procedures Act (APA) when it froze certain provisions of the [Bureau of Land Management's \(BLM\) venting and flaring rule](#). Also on Oct. 4, the Senate Commerce Committee unanimously approved the [American Vision for Safer Transportation Through Advancement of Revolutionary Technologies \(AV START\) Act](#).

### **Bureau of Land Management's Methane Venting and Flaring Rule**

Finalized in Nov. 2016, BLM's "[Waste Prevention, Production Subject to Royalties and Resource Conservation](#)" rule is aimed at reducing "waste of natural gas from venting, flaring, and leaks" during oil and natural gas production through onshore federal and Indian leases, and modernizes more than 30-year-old oil and gas production rules.

On March 28, 2017, the president issued his "[Promoting Energy Independence and Economic Growth](#)" executive order directing DOI to review, and potentially suspend, revise or rescind the rule. On June 15, BLM [announced](#) it would postpone portions of the rule directing drillers to limit venting and flaring from wells on federal and tribal lands that were scheduled to go into effect Jan. 17, 2018. Immediately following that action, the legality of the administration's actions was challenged by various states, which noted that Section 705 of the APA, allows agencies to delay the "effective date" of regulations currently facing legal challenges when "justice so requires," which does not apply to this rule, as it took effect in Jan. 2017.

The court's decision resulted in the rule going into immediate effect and also sets precedent for legal challenges surrounding various other rule delays, or postponements, by an administration. Additionally, the court wrote that even when Section 705 is appropriately applied, the decision to postpone a rule must be based on an analysis of the impacts of delaying a rule – both opponents and proponents must be considered.

### **Senate Commerce Committee Approves Autonomous Vehicles Legislation**

The Senate Commerce Committee unanimously approved the [AV START](#) Act. For a broad view of the bill, see NCSL's previous [Info Alert](#). The committee adopted two dozen amendments by voice vote including one significantly altering the pre-emption provision that had been included in the committee's introduced text. While the bill's original language mirrored the house pre-

emption—(for more information on the House bill, read [NCSL's previous Info Alert](#))—an amendment, offered by Committee Ranking Member Senator Bill Nelson (D-FL) seeks to continue the existing regulatory structure of state and federal roles in place for conventional vehicles. Currently, states are pre-empted from enacting or enforcing a law that seeks to regulate the design, construction or performance of a motor vehicle where a federal motor vehicle safety standard (FMVSS) already exists. However, as no FMVSS are yet in place for autonomous vehicles, this amendment would similarly pre-empt states from regulating the design, construction and performance of an autonomous vehicle for items required by the bill's safety evaluation report (SER) which include:

- System safety
- Data recording
- Cybersecurity
- Human-machine interface
- Crashworthiness
- Documentation of capabilities
- Post-crash behavior
- Account for applicable laws
- Automation function

For any further questions or concerns regarding BLM's venting and flaring rule and the Courts ruling, or Senate actions on AV legislation, please contact NCSL staff [Ben Husch](#) (202-624-7779) and [Kristen Hildreth](#) (202-624-3597).