HOUSE GREEN LIGHTS AUTONOMOUS VEHICLE LEGISLATION

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Regulatory & Policy Alert

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A major milestone on the road to establishing a regulatory framework for highly automated vehicles ("HAVs") was reached earlier this week with the passage of the first significant legislation on the subject by the House of Representatives. The SELF DRIVE Act (short for "Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution"), which advanced out of the House Energy and Commerce Committee on a unanimous vote and received similar "voice" approval in the full House, highlights the substantial bipartisan interest in the potential of HAVs to revolutionize safety and mobility on the nation's roadways. As described in greater detail below, the SELF DRIVE Act includes a number of provisions sought by HAV stakeholders to facilitate vehicle testing and development and would direct the National Highway Traffic Safety Administration ("NHTSA") to intensify its regulatory efforts in this area. The K&L Gates CarTech team and the authors of this alert are available to answer specific questions regarding this legislation and to assist clients on vehicle technology issues more generally.

The SELF DRIVE Act reflects and responds to a number of issues raised by the Federal Automated Vehicles Policy ("FAVP") released by NHTSA late last year. That document, which is currently under review by the Trump administration, identified a wide range of regulatory considerations informing the development and commercialization of HAV technology. It also introduced a voluntary safety assessment process for HAV systems. In many ways, the SELF DRIVE Act can be viewed as building on the foundation provided by the FAVP, particularly with respect to issues such as clarifying federal and state regulatory responsibilities for HAVs and expanding pathways for research and development.

Of course, the House is just one part of the equation when it comes to seeing a regulatory framework for HAVs enacted into law. Senators John Thune (R-SD), Bill Nelson (D-FL), and Gary Peters (D-MI) — all members of the Senate Committee on Commerce, Science & Transportation — have been working on companion legislation that may align with the SELF DRIVE Act in some respects and diverge in others. One area of potential variation is the extent to which the forthcoming Senate bill will address commercial vehicles, which fall outside of the House Energy and Commerce Committee's jurisdiction and thus were not addressed by the SELF DRIVE Act. The Senate Commerce Committee will convene a hearing on that issue next week. There is also speculation that next week could also see further details emerge from Transportation Secretary Elaine Chao on the Trump administration's perspective on HAVs. These developments in the Senate and the administration will inform the prospects for the policies reflected in the SELF DRIVE Act and the implications for HAV stakeholders.

Key provisions of the SELF DRIVE Act are as follows:

- **Federal Preemption**: The bill would bar state and local regulation of HAV "design, construction, or performance" unless consistent with federal standards. State and local governments would retain authority over matters relating to vehicle registration, licensing, driving education and training, insurance,

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law enforcement, crash investigation, safety and emissions inspections, and congestion management — unless the exercise of that authority constitutes an "unreasonable restriction" on HAV design, construction, or performance. The bill would not preempt liability claims at common law. The House Energy and Commerce Committee's report on the legislation notes that these provisions would "maintain[] the current roles and responsibilities for States and localities" with respect to vehicle regulation. Explicit federal preemption in this area was highly sought after by industry stakeholders concerned about the potential burden of varying vehicle design requirements across multiple state and local jurisdictions.

- **NHTSA Rulemaking**: The bill would instruct NHTSA to formalize its safety assessment process for HAVs by issuing regulations "requiring the submission of safety assessment certifications regarding how safety is being addressed" by HAV developers. In addition, it would require the agency to develop a plan for further rulemaking "as necessary to accommodate the development and deployment of highly automated vehicles and to ensure the safety and security of highly automated vehicles and motor vehicles and others that will share the roads with highly automated motor vehicles."
- **Privacy and Cybersecurity**: HAV manufacturers would be required to develop detailed plans to address the privacy and cybersecurity issues raised by HAVs. With respect to privacy, the bill would require a Federal Trade Commission ("FTC") study on the protection of vehicle owner or occupant data in the vehicle ecosystem and empower the FTC to enforce the terms of the privacy plans developed by HAV manufacturers.
- **Expanded Exemption Authority**: In the FAVP, NHTSA observed that "the current production volume limit of NHTSA's existing exemption authority make it difficult to generate sufficient data for analysis (by manufacturers, government, and other researchers) that could enhance safety." The SELF DRIVE Act would respond to this concern by authorizing an additional category of statutory exemptions to facilitate the development or field evaluation of HAVs. The total number of exemptions issued to a given manufacturer for all purposes (including HAV testing and development as well as the purposes authorized under current law) would be limited to 100,000 in any 12-month period (and even then, only at the conclusion of a four-year phase-in period) and a duration of four years. Under the House bill, HAV exemptions would not be available to commercial motor vehicles with a gross vehicle weight of 10,001 pounds or more.
- **Expanded Testing Authority:** The bill would expand an exception created by the Fixing America's Surface Transportation ("FAST") Act of 2016 that permits the testing and evaluation of vehicles that do not meet current regulatory standards, provided that such vehicles are not offered for sale to the public. Under the SELF DRIVE Act, manufacturers of motor vehicle equipment would be eligible to take advantage of this exception in addition to integrated vehicle manufacturers, subject in either case to certain compliance requirements.
- **Purchaser Disclosure**: The SELF DRIVE Act mandates research "to determine the most effective method and terminology for informing consumers…about the capabilities and limitations" of HAVs. NHTSA would be required to undertake rulemaking based upon the results of this research.
- **HAV Advisory Council**: The bill would establish a committee to advise NHTSA on a wide range of issues pertaining to HAVs. The council, capped at 30 members, would be comprised of business

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representatives, academic and independent researchers, state and local authorities, safety and consumer advocates, engineers, labor organizations, and environmental experts, among others.

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