



AT ISSUE STATE EDITION



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The previous state *At Issue* gave an overview of timely matters, like Georgia’s deep water inland port and access to quality healthcare. Timeliness is again a theme, as this issue reviews the four constitutional amendments that Georgia voters will consider when they go to the polls this November. Also timely is the State’s reaction to the gas shortage that affected Georgia drivers this past September. The General Assembly is committed to lessening the burden that Georgia drivers face, fighting to keep gas prices low and our highways safe and efficient.

Georgia has also always been dedicated to innovation and progress. In this vein, *At Issue* updates readers on the latest in automated car legislation – what was once thought of as science fiction is quickly a growing reality.

If you have other issues you would like us to cover in future editions of *At Issue*, feel free to call or email me.

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Rules

Emergency Rulemaking in Georgia

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Introduction

State agencies are granted the authority to adopt rules if certain public hearing and notice requirements are met. Specifically, under O.C.G.A. § 50-13-4(a), prior to an agency adopting a rule, other than interpretive rules or general statements of policy, the agency must: (1) give at least 30 days’ notice of its intention to adopt the rule; and (2) provide a reasonable opportunity so all interested persons may submit their views, data, or arguments.

In addition to regular rulemaking, O.C.G.A. § 50-13-4(b) grants state agencies emergency rulemaking authority, if an agency finds that an “imminent peril to the public health, safety, or welfare” exists. In such a case, an agency may adopt a rule without the required notice or public hearing, so long as the agency states in writing its reasons for that finding. Emergency rules are effective for not longer than 120 days, unless pursuant under an executive order declaring a state of emergency or disaster due to a public health emergency; in which case, the emergency rule is effective for the duration of the emergency or disaster, and no more than 120 days thereafter.

Georgia Department of Agriculture Responds to Gas Shortage

Georgia does not have any crude oil production or known petroleum reserves, leaving the state entirely dependent on outside sources for its gasoline and petroleum supply. One of the most critical pipelines carrying gasoline to Georgia is the Colonial Pipeline. The Colonial Pipeline is one of the largest gasoline sources between the Gulf Coast and the Southeastern United States, providing 1.3 million barrels per day of refined gasoline and other petroleum products along the eastern seaboard. Built in 1963, the pipeline has been estimated to supply the East Coast of the United States with 40 percent of its gasoline supply. On the morning of September 9, 2016, during a routine monthly check in Shelby County, Alabama, a leak was discovered in the pipeline, ultimately spilling hundreds of thousands of gallons of gasoline. As a result, the pipeline was shut down for 12 days for repairs, leading to gasoline shortages in several Southeastern states, including Georgia, where drivers scrambled to their usual gas stations only to find dry pumps or increased prices.

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The price of gasoline in Georgia rose an average of 28 cents in Georgia during the twelve day shutdown. Six states across the Southeast, including Georgia, declared states of emergency because of the gasoline shortages and price spikes. On September 13, 2016, Governor Nathan Deal issued an executive order declaring a state of emergency, lifting federal restrictions to allow trucks to stay on the road longer in order to shuttle more fuel into Georgia. Another executive order, issued on September 19, 2016, reiterated current state law that prohibits gasoline price gouging during a state of emergency. During this state of emergency, the Georgia Department of Agriculture issued an emergency rule to address the pipeline leak and gasoline supply disruptions throughout the state. On September 21, 2016, Emergency Rule 40-2-1-.01 was adopted by the Georgia Department of Agriculture allowing regulated parties to supply gasoline meeting Class D-4 volatility specifications until November 1, 2016. Before the emergency rule was adopted, Georgia only permitted gasoline meeting Class C-3 volatility specifications; however, as the current gasoline supply disruptions threatened the public welfare, it was necessary to adopt an emergency rule facilitating the replacement of gasoline supplies in Georgia.

Georgia Board of Pharmacy Schedules Designer Opiate

Synthetic opiate use is a growing trend in our nation and has been linked to deaths in several states. While synthetic opiates can produce the same euphoric sensations as conventional opiates such as heroin or prescription painkillers, they come with dangerous and sometimes fatal side effects. These drugs are extremely powerful—more potent than the drug Fentanyl—and yet are easily obtainable to users via the internet or street sales. Moreover, each synthetic opiate has a different chemical structure and cannot be scheduled using a root chemical formula like other synthetic drugs. The Georgia Board of Pharmacy has utilized its emergency rulemaking authority to schedule synthetic compounds to remove the product off the streets. This is an effort to protect the health and welfare of Georgians that has been utilized before, notably with synthetic marijuana and bath salts. As an illustration of this synthetic opiate phenomenon, consider the rise in use of U-47700, an opioid analgesic that was originally developed as a research chemical in the 1970s by Upjohn, a pharmaceutical manufacturing firm. U-47700 is now considered a “new” designer drug that has been linked to multiple recent deaths. Georgia’s Board of Pharmacy has in turn adopted Emergency Rule 480-34.01, which classifies the compound as a Schedule I Controlled Substance. The emergency rule gives the Georgia Drugs and Narcotics Agency (GDNA) the authority to seize and take possession of this drug, even though, notably, it does not criminalize the drug. This is because the Georgia Constitution provides that any changes to our criminal code must be made by the legislature, which in the case of scheduling controlled substances, is done through the annual “drug update bill.”

During the interim, the GBI works very closely with GDNA and legislators to suggest new drugs to be scheduled by the Board of Pharmacy and ultimately outlawed by Georgia legislators the following session. While the emergency rulemaking procedures allow for the seizure of the drugs for the health and welfare of Georgians, the annual drug update bill allows the scheduling of these drugs to go through the normal legislative process with opportunity for public comment. In rare cases, a compound that is being abused may also have a legitimate use. Thus far, U-47700 is the only synthetic opiate that has been identified by our state crime lab, although the Drug Enforcement Agency is aware that other compounds are being seen in states around Georgia. Additional emergency scheduling for any new synthetic opiates will occur after these compounds are identified in drug samples received by the crime lab. - *EH & KM*

2016 General Election

Proposed Constitutional Amendments—2016 General Election

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1. Constitutional Amendment for the Opportunity School District

The passage of SR 287 (2015) places a constitutional amendment on the November 2016 ballot for consideration by Georgia voters. The proposed amendment establishes the “Opportunity School District” which would allow the state to assume, supervise, manage, and operate failing public elementary and secondary schools.

Ballot Language:

“Shall the Constitution of Georgia be amended to allow the state to intervene in chronically failing public schools in order to improve student performance?”

Enabling Legislation:

SB 133 – Opportunity School District

This bill establishes the Opportunity School District (OSD) which allows the state to assume, supervise, manage, and operate failing public elementary and secondary schools with state-wide jurisdiction under the control of the Governor’s Office of Student Achievement.

Under the bill, the Governor appoints an OSD Superintendent, subject to Senate confirmation, and establishes the position's qualifications and salary. The OSD Superintendent must develop operational procedures for the OSD, report annually to the General Assembly, and make that report publically available. The OSD selects up to 20 schools in any single academic year, not to exceed a total portfolio of 100 schools, based upon an analysis of performance over the previous three-year period, taking into consideration various factors. The selection process includes a public hearing allowing for community and parent involvement. However, the final selection will be at the sole discretion of the OSD Superintendent. This Act becomes effective only upon the passage of a constitutional amendment in the November 2016 general election, expressly allowing the General Assembly to authorize the establishment of an Opportunity School District. If the proposed amendment does not pass, the Act will stand repealed on January 1, 2017.

2. Constitutional Amendment for the Safe Harbor for Sexually Exploited Children Fund

The passage of SR 7 (2015) places a constitutional amendment on the 2016 ballot for consideration by Georgia voters. The proposed amendment permits the General Assembly to provide for additional penalties or fees in cases in which a person is found guilty of keeping a place of prostitution, pimping, pandering, pandering by compulsion, solicitation of sodomy, masturbation for hire, trafficking of persons for sexual servitude, or sexual exploitation of children. The proposed amendment would also permit the General Assembly to impose assessments on adult entertainment establishments.

The proposed amendment provides that amounts appropriated for such purpose will not lapse as required by the Georgia Constitution, are not subject to the state constitutional rule that all state appropriations must be for a specific sum, and need not be paid into the general fund of the state treasury, as otherwise required by the Georgia Constitution. The proposed amendment also provides that it is not subject to the constitutional requirement that bills for raising revenue or appropriating money must originate in the House of Representatives or the provision which limits the General Assembly's ability to increase the maximum marginal rate of state income tax. The proposed amendment further provides that the General Assembly may provide for the allocation of the additional assessments and penalties to the Safe Harbor for Sexually Exploited Children Fund for the purpose of providing care and rehabilitative and social services to certain Georgia citizens found to have been sexually exploited, as defined in statute.

Ballot Language:

"Shall the Constitution of Georgia be amended to allow additional penalties for criminal cases in which a person is adjudged guilty of keeping a place of prostitution, pimping, pandering, pandering by compulsion, solicitation of sodomy, masturbation for hire, trafficking of persons for sexual servitude, or sexual exploitation of children and to allow assessments on adult entertainment establishments to fund the Safe Harbor for Sexually Exploited Children Fund to pay for care and rehabilitative and social services for individuals in this state who have been or may be sexually exploited?"

Enabling Legislation:

SB 8 – Safe Harbor/Rachel's Law Act

SB 8 extends the statute of limitations for actions defined as "childhood sexual abuse"; tolls the statute of limitations for a minor's civil cause of action for childhood sexual abuse until a minor reaches the age of 18; and amends the tolling limitations for tort actions while a defendant's criminal prosecution is pending. SB 8 also imposes a \$5,000 annual tax or a 1 percent of the gross revenue for the company, whichever is greater, on adult entertainment establishments and creates the Safe Harbor for Sexually Exploited Children Fund and Commission to oversee the collection and use of this tax.

3. Constitutional Amendment Regarding Judicial Qualifications Commission

Current Law

Article VI, Section VII of the Georgia Constitution currently provides that the power to discipline, remove, and cause involuntary retirement of judges is vested in the Judicial Qualifications Commission. The same provision establishes the membership of the Commission as follows: (a) two judges of any court of record, selected by the Supreme Court; (b) three members of the State Bar of Georgia who have been active for at least 10 years and who have been elected by the State Bar's Board of Governors; and (c) two citizens appointed by the Governor, neither of whom may be members of the State Bar.

Proposed Amendment

The passage of HR 1113 (2016) places on the November 2016 ballot an amendment to repeal these provisions and abolish the current Judicial Qualifications Commission. In its place, the proposed amendment grants authority to the General Assembly to provide by general law for the creation, composition, manner of appointment, and governance of a Judicial Qualifications Commission. The proposed amendment grants the General Assembly the authority to vest the Commission with the power to discipline, remove, and cause involuntary retirement of judges (the same powers it currently exercises). The proposed amendment makes all appointments to the Commission subject to Senate confirmation.

The proposed amendment requires the procedures of the Commission to comport with due process and provides that such procedures and advisory opinions issued by the Commission will be subject to review by the Supreme Court. The proposed amendment also provides that the General Assembly, by general law, may provide that findings and records of the Commission will be open to the public.

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Ballot Language:

“Shall the Constitution of Georgia be amended so as to abolish the existing Judicial Qualifications Commission; require the General Assembly to create and provide by general law for the composition, manner of appointment, and governance of a new Judicial Qualifications Commission, with such commission having the power to discipline, remove, and cause involuntary retirement of judges; require the Judicial Qualifications Commission to have procedures that provide for due process of law and review by the Supreme Court of its advisory opinions; and allow the Judicial Qualifications Commission to be open to the public in some manner?”

Enabling Legislation:

HB 808 – Creation of New Judicial Qualifications Commission

The bill creates a new Judicial Qualifications Commission (JQC) and vests the JQC with the power to discipline, remove, and cause involuntary retirement of judges.

Composition, Selection, and Confirmation

The bill establishes the membership of the JQC as follows, with members to serve three-year terms beginning in 2020 (after a period of interim terms beginning on January 1, 2017):

- Two judges of any court of record, selected by the Supreme Court;
- One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and who is a registered voter in Georgia, to be appointed by the President of the Senate from a list of at least ten nominees from the State Bar board of governors (but if a nominee is not selected from that list, the board is to submit another slate of at least ten nominees);
- One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and who is a registered voter in Georgia, to be appointed by the Speaker of the House from a list of at least ten nominees from the State Bar board of governors (but if a nominee is not selected from that list, the board is to submit another slate of at least ten nominees);
- Two citizen members (not members of State Bar) who are registered voters in Georgia, one each to be appointed by the President of the Senate and the Speaker of the House; and
- One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and who is a registered voter in Georgia, to be appointed by the Governor to serve as chairperson of the JQC.

All members of the JQC will be subject to Senate confirmation. The bill limits members of the JQC to serving no more than two consecutive terms (unless a member is appointed as a member of the JQC for the interim term beginning on January 1, 2017, in which case such member may serve up to three consecutive terms). Nominees must be submitted to the Senate no later than the third Monday in January, and if an individual's name is not submitted as of that date, he or she is not eligible for appointment. Members appointed to the JQC will serve until the Senate confirms such nominee.

Governance; Removal

The bill provides that the JQC may adopt procedures for its own governance which are not otherwise provided by the Georgia Constitution, provided that such procedures cannot allow an individual member to initiate an investigation without presenting such proposal to the other members of the JQC at a JQC meeting. The bill provides that members of the JQC may be subject to removal by an affirmative vote of six members of the JQC, with the member who is subject to removal disqualified from such vote.

Investigations and Proceedings; Confidentiality

All papers and proceedings of the JQC, including any investigation undertaken by the JQC, would be confidential, and no person would be permitted to disclose information obtained from the JQC proceedings or any papers filed with or by the JQC, except as set forth in this bill. No such papers would be subject to disclosure under the Open Records Act.

Under the bill, information submitted to the JQC or its staff and all testimony given in any proceeding before the JQC are absolutely privileged; and no civil action predicated on such information or testimony may be instituted against any complainant, witness, or his or her counsel. Once the JQC concludes that a letter of caution is appropriate, it is to issue the letter to the judge in lieu of any further proceedings on the complaint. The issuance of the letter is confidential. If the JQC determines that disciplinary proceedings should be instituted, a notice and a statement of charges filed by the JQC, along with the answer and all pleadings, would remain confidential. The bill requires that at least four members of the JQC must concur in any recommendation to issue a public reprimand against or to censure, suspend, retire, or remove any judge. The bill also requires that a majority of the members of the Supreme Court must vote to concur in any order of public reprimand, censure, suspension, retirement, or removal. The Supreme Court may approve the JQC's recommendation, remand the case for further proceedings, or reject the recommendation. The bill provides that a member of the JQC who is a judge is disqualified from acting in a case in which he or she is a respondent.

Upon issuance of a public reprimand, censure, suspension, retirement, or removal by the Supreme Court, any notice and any statement of charges filed by the JQC, along with the answer and all other pleadings, including the JQC's recommendation(s), and the record filed in support of such recommendation(s), would no longer be confidential.

4. Constitutional Amendment Dedicating Excise Taxes on Fireworks to Trauma Care, Fire Services, and Local Public Safety Purposes

SR 558 (2016) places on the November 2016 ballot an amendment to the Georgia Constitution dedicating excise taxes imposed on the sale of fireworks or consumer fireworks to trauma care, fire services, and local public safety purposes.

Ballot Language:

“Shall the Constitution of Georgia be amended so as to provide that the proceeds of excise taxes on the sale of fireworks or consumer fireworks be dedicated to the funding of trauma care, firefighter equipping and training, and local public safety purposes?”

Enabling Legislation:

SB350 - Dedicating Proceeds of Excise Tax on Consumer Fireworks to Trauma Care, Fire Service, and Public Safety

This bill dedicates the proceeds of excise taxes imposed on the sale of consumer fireworks to trauma care, fire services, and local government public safety purposes as follows:

- 55 percent of revenues are to be dedicated to the Georgia Trauma Care Network Commission;
- 40 percent of revenues are to be dedicated to the Georgia Firefighter Standards and Training Council to improve equipping and training firefighters and to improve the rating of Georgia fire departments by the Insurance Services Office; and
- 5 percent of revenues are to be provided to local governments to be used for the operation of 9-1-1 systems. - AA

Science and Technology

Keep Your Scanners Peeled, KITT

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For those who think self-driving cars are the stuff of Hollywood magic, think again. In fact, the truth is that the innovation of existing technology – more so than the wholesale invention of new, cutting edge science – makes self-driving cars possible, and more reality than science fiction. For example, autonomous car models use a combination of tools such as radar, various cameras, gyroscopes, accelerometers, GPS, and LIDAR; some of which have been in mass use for generations. However, it is the innovative arrangement of these advanced technological tools, along with complex control systems, which makes self-driving vehicles possible. The Federal Government is hoping to assist the states in keeping up with changing times.

In mid-September of this year, the National Highway Traffic Safety Administration (NHTSA), which released its first set of autonomous vehicle guidelines back in 2013, released its most recent and comprehensive set of guidelines to date. Inclusive of these guidelines is the NHTSA's Vehicle Performance Guidance for Automated Vehicles, which outlines a 15 point “Safety Assessment” as a reference for manufacturers and developers on the safe design, development, testing, and consumer use of automated vehicles. There is also the NHTSA's Model State Policy, which is model legislation focusing on the creation of a uniform national framework for the testing and the use of certain automated vehicles. To their credit, some states have been more proactive than others. Beginning in 2011, Nevada pioneered self-driving vehicle legislation by enacting Assembly Bill 511, which authorized the operation of autonomous vehicles in that state and adopted rules for license endorsement, car operations, insurance, safety standards, and testing. Nevada concurrently passed Senate Bill 140, which prohibited the use of cell phones for any persons in a legally operating autonomous vehicle.

The self-driving regulations put into place by Assembly Bill 511 and Senate Bill 140 took effect on February 15, 2012, and the first Autonomous Vehicle Testing License was granted to Google in May of 2012. On August 8, 2016, the Nevada Department of Motor Vehicles made a policy decision to remove the formal driving demonstration requirement prior to issuing an autonomous vehicle test license. The state officially granted its first autonomous vehicle-related license to quadriplegic and former race car driver, Sam Schmidt, in late September of this year. Aside from Nevada, eight other states (Arizona, California, Florida, Louisiana, Michigan, North Dakota, Tennessee, and Utah) and the District of Columbia have enacted autonomous vehicle legislation. Figure 1 (above) displays a map of all of the states which have implemented policies dealing with autonomous vehicles, either by legislative means or executive order.

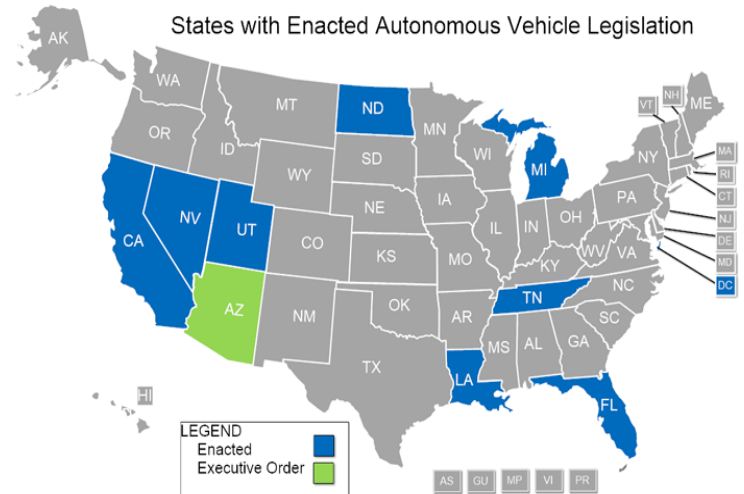


Figure 1: States with Enacted Autonomous Vehicle Legislation
Source: NCSL

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The capability for self-driving cars corresponds with their capacity for autonomy, with autonomous vehicles being classified by their level of automation. From Figure 2 (below), it can be seen that the levels are divided into two sections: levels 0 through 2 describe vehicle automation scenarios where the human driver is in control of the driving environment, while levels 3 through 5 describe instances where an automated driving configuration is actively monitoring the driving environment. Currently, most autonomous vehicles being tested and sold on the market by manufacturers, such as Tesla and BMW, fall between levels 2 and 3. Level 2 describes a driving situation in which at least two controls can be automated in unison, such as adaptive cruise control in combination with lane keeping. For vehicles which fall under level 3, the system takes control of both acceleration/deceleration and steering, while being able to recognize the environment and its limits. The driver is not required to monitor the drive, but must be able to take control of driving operations if needed.

SAE level	Name	Narrative Definition	Execution of Steering and Acceleration/Deceleration	Monitoring of Driving Environment	Fallback Performance of Dynamic Driving Task	System Capability (Driving Modes)
Human driver monitors the driving environment						
0	No Automation	the full-time performance by the <i>human driver</i> of all aspects of the <i>dynamic driving task</i> , even when enhanced by warning or intervention systems	Human driver	Human driver	Human driver	n/a
1	Driver Assistance	the <i>driving mode</i> -specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the <i>human driver</i> perform all remaining aspects of the <i>dynamic driving task</i>	Human driver and system	Human driver	Human driver	Some driving modes
2	Partial Automation	the <i>driving mode</i> -specific execution by one or more driver assistance systems of both steering and acceleration/deceleration using information about the driving environment and with the expectation that the <i>human driver</i> perform all remaining aspects of the <i>dynamic driving task</i>	System	Human driver	Human driver	Some driving modes
Automated driving system ("system") monitors the driving environment						
3	Conditional Automation	the <i>driving mode</i> -specific performance by an <i>automated driving system</i> of all aspects of the <i>dynamic driving task</i> with the expectation that the <i>human driver</i> will respond appropriately to a <i>request to intervene</i>	System	System	Human driver	Some driving modes
4	High Automation	the <i>driving mode</i> -specific performance by an automated driving system of all aspects of the <i>dynamic driving task</i> , even if a <i>human driver</i> does not respond appropriately to a <i>request to intervene</i>	System	System	System	Some driving modes
5	Full Automation	the full-time performance by an <i>automated driving system</i> of all aspects of the <i>dynamic driving task</i> under all roadway and environmental conditions that can be managed by a <i>human driver</i>	System	System	System	All driving modes

Figure 2: Society of Automotive Engineers' Levels of Vehicle Automation
Source: SAE International and J3016

Figure 3 displays the projected year of vehicle market availability for automated car manufacturers. It should be noted that while manufacturers are anticipating making self-driving cars available to the mass market, they will only be able to be sold in states which have enacted legislation regarding autonomous vehicles.

Company	Forecasted Year for Availability	Company	Forecasted Year for Availability
Audi	2017	GM	2020 or sooner
Baidu	2021 (mass production)	Google	2018
BMW	2021	Nissan	2020
Daimler	2025	Tesla	2018
Ford	2020	Uber's Fleet	2030 (completely driverless)
Jaguar/Land-Rover	2024	Volkswagen	2019

Figure 3: Market Forecasts for Autonomous Vehicle Availability

Uber customers in Pittsburgh already have the ability to select an autonomous vehicle when using the ride-sharing service. Although Pennsylvania has not passed any state legislation regarding autonomous vehicles, all testing and use of self-driving cars are in compliance with existing state law regarding operating a vehicle with a licensed human driver and in accordance to traffic laws. This means that during research and application of the self-driving vehicle in Pittsburgh, an engineer or driver must be behind the wheel. To also make their state more appealing for autonomous vehicle research, the Iowa Department of Transportation has contracted a mapping company, HERE, to create detailed, real-time maps of the road environment on Iowa's Interstate 380. Self-driving cars are becoming a reality for an increasing amount of people and markets; Georgia is one of the many states currently dealing with this reality. Just as the nation absorbed the locomotive, telephone, and Internet, self-driving cars will soon become another step of technological progress that becomes enveloped in society. It will be interesting to monitor how state and federal regulation will usher in this technology. - AW

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