State-to-State Teamwork

Compacts as a tool of the game

As state governments increasingly face similar policy problems that rarely end at a state’s borders, the search for effective policy responses often does.

One weapon in the states’ arsenal is the interstate compact—an historic cooperative tool allowing states to work together to solve their mutual policy dilemmas while reinforcing the role of the states in tackling regional and national issues.

As states struggle with emerging policy issues such as prescription drug pricing, increased energy production and distribution, refined and updated tax systems and the refurbishment of aging infrastructure, the interstate compact may well prove to be the answer to these and other policy questions.

The Nature of Interstate Compacts

Compacts are simply formal agreements between two or more states that bind to the compacts’ provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the principles of contract law and are protected by the constitution’s prohibition against laws that impair the obligations of contracts.

That means that compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. In short, compacts between states are somewhat like treaties between nations. Compacts have the force and effect of statutory law and take precedence over conflicting state laws, regardless of when those laws are enacted.

Unlike treaties, however, compacts are not dependent solely upon the good will of the parties. Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Moreover, Congress and the courts can compel compliance with the terms of interstate compacts. That’s why compacts are considered one of the most effective means of ensuring interstate cooperation.

History of Interstate Compacts

Compacts were seldom used until the 20th century. Between 1783 and 1920, states approved just 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II.

The purpose of compacts ranges from implementing common laws to exchanging information about similar problems. They apply to everything from conservation and
resource management to civil defense, emergency management, law enforce-
ment, transportation, and taxes. Other compact subjects include education, 
energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies.
The first and most famous of these is the New York-New Jersey Port 
Authority, which arose from a 1921 compact between the two states. But 
other agreements are simply intended to establish uniform regulations with-
out creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are 
designed for regional or national participation, whereas the compacts of 
old were usually bi-state agreements.

Recent efforts include the Emergency Management Assistance Compact, 
the Interstate Compact on Industrialized/Modular Buildings, Interstate 
Insurance Receivership Compact, and several low-level radioactive waste 
compacts, which were mandated by Congress.

Other examples of compact activity include the revision of existing interstate agree-
ments; updating agreements that maintain relevance, but which require a moderniza-
tion of their structures. Recent examples include the Interstate Compact for Adult 
Offender Supervision, the Interstate Compact for Juveniles, and the Interstate 
Compact for the Placement of Children.

Creating Interstate Compacts

Compacts are essentially contracts between states. To be enforceable, they must sat-
ify the customary requirements for valid contracts, including the notions of offer 
and acceptance.

An offer is made when one state, usually by statute, adopts the terms of a compact 
requiring approval by one or more other states to become effective. Other states 
accept the offer by adopting identical compact language. Once the required number 
of states has adopted the pact, the “contract” among them is valid and becomes effect-
tive as provided. The only other potential requirement is congressional consent.

Congressional Consent

Article I, Section 10 of the U.S. Constitution provides in part that “no state shall, 
without the consent of Congress, enter into any agreement or compact with anoth-
er state.” Historically, this clause generally meant all compacts must receive con-
gressional consent.

However, the purpose of this provision was not to inhibit the states’ ability to act in 
concert with each other. In fact, by the time the Constitution was drafted, the states 
were already accustomed to resolving disputes and addressing problems through 
interstate compacts and agreements. The purpose of the compact clause was to pro-
tect the pre-eminence of the new national government by preventing the states from 
fringing upon federal authority or altering the federal balance of power by compact.

Accordingly, the Supreme Court in 1893 in Virginia v. Tennessee, indicated that not all 
compacts require Congressional approval. Today, it is well established that only those 
compacts that affect a power delegated to the federal government or alter the polit-
ical balance within the federal system, require the consent of Congress.

For example, a river basin agreement between two or more states that might affect 
the water rights of non-party states would surely require congressional approval. 
Determining whether a compact affects federal powers is more difficult. Generally, 
any compact that touches on an area of mutual state-federal concern, or threatens to
interfere with the doctrine of federal preemption, may be said to require congres-
sional consent, such as the Driver License Compact.

By example, it is almost easier to identify agreements that do not require congres-
sional consent. Included among these are compacts concerning matters in which state
authority is clearly pre-eminent. Education is one such area.

Compacts designed to facilitate interstate communication or promote cooperative
studies do not usually require congressional consent, but those that impose more
substantive obligations often do.

Fortunately, the consent requirement is not particularly burdensome. Though usually
satisfied by means of a congressional resolution granting the states the authority to
create a compact, the Constitution specifies neither the means nor the timing of the
required consent. Over the years, the Supreme Court has held that congressional
consent may be expressed or implied and may be obtained either before or after a
compact is enacted.

Congressional consent may also be conditional, limited, or temporary, and is always
subject to modification or repeal, even if this right is not expressly reserved when
the consent is initially given. Thus, whether a compact requires consent or not, and
regardless of the form that consent may take, no compact is immune from future
invalidation by an Act of Congress. Therefore, express congressional consent is
sometimes considered desirable; even if it isn’t strictly required at the time the com-
pact is created.

Delegation of State Authority to a
Joint Administrative Agency

One of the axioms of modern government is the ability of a state legislature to de-
egate to an administrative body the power to make rules and decide particular cases.
Upheld in 1951 by the U.S. Supreme Court in West Virginia v. Dyer, this delegation of
authority extends to the creation of interstate commissions through the vehicle of an
interstate compact.

Examples include the Interstate Compact for Adult Offender Supervision, the New
York-New Jersey Port Authority and the Interstate Pest Control Compact—each cre-
ates and maintains an interstate commission capable of providing administrative over-
sight to its member states on compact related issues.

Modern compacts are a reinvigoration of our federalist system in which states may
only be able to preserve their sovereign authority over interstate problems to the
extent that they share their sovereignty and work together cooperatively through
interstate compacts.

Amending and Enforcing Compacts

Once established, compacts can only be amended or terminated in accordance
with the instruments themselves or by mutual consent of the members by adopt-
ing identical substantive language. In other words, amending compacts requires the
same process that is used to create them unless the compacts themselves specify
other mechanisms.

A violation of compact terms, like a breach of contract, is subject to judicial reme-
dy. Since compacts are agreements between states, the U.S. Supreme Court is the usual
forum for the resolution of disputes between member states. However, compacts
can, and frequently do, include provisions to resolve disputes through arbitration or
other means.
Other Compact Components

Typical compact language might include any or all of the following: a statement of purpose; a list of goals and objectives; a description of functions, powers and duties; substantive regulations; provisions for an administrative structure or an independent agency; financial participation requirements, such as dues; enforcement and construction guidelines; and other provisions governing entry into force, amendments, severability, withdrawal and termination.

Timeframe Enacting Compacts

Compacts are not always complicated, but they may take time, especially if their subject matter is controversial. A study of 65 interstate compacts, conducted in the early 1960s, indicated that the average amount of time required to launch a new compact was almost 5 years. But that study was admittedly skewed by the unusually long time required for the approval of several compacts that dealt with controversial natural resource issues. In fact, the average time required to enact 19 compacts covering river management and water rights was almost 9 years.

More recently, however, interstate compacts have enjoyed great rapidity in their adoption. The Interstate Compact for Adult Offender Supervision was adopted by 35 states in just 30 months. Other recent compacts, including the new Interstate Insurance Product Regulation Compact are enjoying fast success, gaining quick adoptions over a period of 2–3 years.

In recent years, there have been some remarkable success stories. For example, in December 1989, a committee of the Midwestern Legislative Conference approved draft language for the Midwestern Higher Education Compact and began circulating it to lawmakers in the 12 Midwestern states that were eligible to participate. Just 13 months later, the compact became effective.

Avoiding Federal Interface

Finally, interstate compacts provide states the opportunity to cooperatively address policy issues in the face of an increasingly active federal government. With the federal dynamic constantly shifting between all levels of government, interstate compacts are an attractive alternative to ensure state agreement on complex policy issues, establish state authority over areas reserved for states and allow states to speak strongly with one unified voice. Without the compact, federal activism in traditional state policy areas is an increasing possibility.
What makes an interstate compact?

Understanding the content and concepts of this important tool

Like any other formal contract, interstate compacts traditionally follow certain formats and, for the most part, contain similar elements—although the order and emphasis of components may vary by compact. Some interstate compacts may be composed of just a few paragraphs, such as with the Arizona-California Boundary Compact that simply provides basic geographic references to establish the states’ border. Others are much larger, such as the Multistate Tax Compact that details governance of a national commission and the proper division of income tax receipts. Regardless of size or topic, the modern interstate compact is typically composed of the following considerations and components:

1. General Considerations
   A compact is a contract and as such, it presents similar problems and solutions as do contracts, wills, deeds, mortgages, statutes and constitutional provisions. When drafting, the general rules of legal instrument development should be borne in mind. Harmony must be struck between the terms and actual language of the compact, and the legal and administrative structure and characteristics of the prospective party jurisdictions. A compact is superior in force and effect to both prior and subsequent statutory law. Conflicting statutes in different states, therefore, present no obstacles.

2. Style and Format
   For the most part, drafting style and format can be left up to the individual jurisdictions involved. The requirements for drafting in Kentucky may be different than the requirements in Montana. However, the context of the agreement should remain the same. Compacts generally use “articles”, rather than “sections” in order to differentiate between citations and numbered provisions. In any given instance, an article may be as long or short as needed to communicate its full purpose.

   Purpose provisions contain legislative findings and declarations of policy. Descriptions of purpose may be used by courts and administrative bodies to construe the actual purposes of the law. This section would provide to compact drafters the opportunity to address the various reasons and rationale behind the compacts purpose and mission.
Administrative Structure

a. Administration by existing agencies: Many compacts are administered within a state by an existing agency; there is not a wholesale need for the development of new bureaucratic structures each time a new or revised compact is adopted.

b. Compact Administrators and Associations: Compacts that require a great degree of interstate communication and cooperation usually opt for the Compact Administrators structure, in which an individual is responsible for coordinating a state’s participation in the agreement. This relationship may expand into a larger multi-state association of like administrators for purposes of communication, rulemaking, training, etc. While a compact administrator certainly would be a necessity in the development of an Interoperability Compact, a larger association may not be needed, but could rather be folded into existing law enforcement or communications associations, re: committee, etc.

c. Establishment of Intergovernmental Agencies by Compact: The establishment of an Interstate Commission to govern the agreement and activities between states is fairly common for those compacts that require a great deal of coordination, rulemaking and interstate communications. The Commission could also serve as a clearinghouse of information to practitioners and the public and could even go so far as to approve certain systems and act on behalf of the member states for purchasing and procurement purposes.

d. Finance: Interstate Compacts are principally concerned, as far as financing goes, with the provision of funds and the auditing of funds. The majority of Interstate Compacts do not require a state-by-state assessment, i.e. water rights or boundary compacts. However, larger national compacts do require state funding in the form of annual dues to maintain operations and capacities. Some compacts refer to this as a “voluntary” contribution, e.g., $1,000 for the Interstate Compact on Juveniles. Others, such as the Interstate Education Compact may assess states (per compacts structure, language and bylaws) a larger amount, such as $72,000 per year. Each compact is different based on the needs of the compacts multistate agency.

e. Personnel: Like Finance, personnel issues are dependent upon the nature and scope of the compact. Many compacts have no third party personnel aside from state officials acting on behalf of the compact. Still other national compacts maintain extensive staffs of policy and issue professionals. The drafters and the specific needs of a compact determine the nature of the personnel need.
No two compacts are alike. While many may address similar issues, such as state borders or regional economic development, each is unique and was drafted for a specific purpose. However, while recognizing the differences between interstate compacts, most agreements contain some, if not a majority, of the aforementioned components. Listed below are specific compact examples that may be helpful in better understanding each article or section. For a complete listing of interstate compacts, visit the National Center for Interstate Compacts Web site at: www.csg.org.keyword: interstate compacts.

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Online Services

CSG’s National Center for Interstate Compacts web site offers state officials a variety of services and tools to better understand and utilize interstate compacts. The information clearinghouse is a comprehensive source of reference and advisory information on compact issues including general interstate cooperation materials, tracking and updates on state and federal activities, and an online database of interstate compacts.

- **Online Library**: containing more than forty original and shared works on interstate compacts, the library is the one-stop-shop for general and specific interstate compact information as well as relevant news and links.

- **Interstate Compacts Database**: containing more than 1,500 entries spanning 200+ interstate compacts, the online compacts database provides accurate state-by-state information on compact membership, including statutory citations and links, state and national contact information and links to other member states.

- **Interstate Compact Projects**: CSG continues to directly oversee the revision of existing compacts, such as the Interstate Compact for Juveniles and Interstate Compact for the Placement of Children. In addition, CSG assists in the administration of mature agreements, notably the Emergency Management Assistance Compact, the Interstate Compact for Adult Offender Supervision and the Midwest Interstate Passenger Rail Compact.

- **State & Federal Legislative Tracking**: updated weekly, the web site tracks the movement of more than 100 bills at the state and federal levels that directly enact or repeal interstate compacts or otherwise impact an existing agreement.

- **Electronic Products**: in addition to the online library, new informational products are available online, including the quarterly newsletter “Connections”, the Interstate Compacts tool-kit, compact fact sheet and educational brochures.
10 Frequently Asked Questions

What is an interstate compact?
Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters.

Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states.

The very nature of an interstate compact makes it an ideal tool to meet the demand for cooperative state action: developing and enforcing stringent standards, while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

General purposes for creating an interstate compact include:
- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact’s member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

How prevalent are interstate compacts?
More than 200 interstate compacts exist today. On average, a state belongs to 25 interstate compacts.

There are 22 compacts that are national in scope, several with 35 or more member states and independent administrative commissions. More than 30 compacts are regional in scope, with 8 or more member states.
What types of interstate compacts exist?

Although there are many types of interstate compacts, they can generally be divided into three camps:

a. **Border Compacts**: agreements between two or more states that establish or alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress’s approval. Examples include the Virginia-Tennessee Boundary Agreement of 1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.

b. **Advisory Compacts**: agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings. Such compacts do not result in any change in the state's boundaries nor do they create ongoing administrative agencies with regulatory authority.

c. **Regulatory Compacts**: broadest and largest category of interstate compacts may be called “regulatory” or “administrative” compacts. Such compacts are a development of the 20th century and embrace wide-ranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact. Many regulatory compacts require congressional consent to be effective because they regulate areas that impact one of congress’s enumerated powers, such as interstate commerce, navigable streams, and extradition.

What are the advantages of an interstate compact?

The emergence of broad public policy issues that ignore state boundaries and the principles of federalism have presented new governing challenges to both state and federal authorities. Complex regional and national problems have shown little respect for the dual lines of federalism or the geographical boundaries of states. Thus, interstate compacts have reemerged not only as devices for adjusting interstate relations but also for governing the nation.

Interstate compacts provide an effective solution in addressing suprastate problems. Compacts enable the states—in their sovereign capacity—to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

What are the disadvantages of an interstate compact?

Interstate compacts may often require a great deal of time to both develop and implement. While recent interstate compact efforts have met with success in a matter of a few years, some interstate compacts have required decades to reach critical mass.

Further, the ceding of traditional state sovereignty, particularly as required by several modern administrative compacts may be perceived as a disadvantage. The very purpose
of an interstate compact is to provide for the collective allocation of governing author-
ity between and among party states, which does not allow much room for individual-
ism. The requirement of substantive “sameness” prevents party states from passing dis-
similar enactments.

As the balance of power continues to realign in our federalist system, states may
only be able to preserve their sovereign authority over interstate problems to the
extent that they share their sovereignty and work together cooperatively through
interstate compacts.

How is an interstate compact created?

Compacts are essentially contracts between or among states. To be enforceable, they
must satisfy the customary requirements for valid contracts, including the notions of offer
and acceptance. An offer is made when one state, usually by statute, adopts the terms of
a compact requiring approval by one or more other states to become effective. Other
states accept the offer by adopting identical compact language. Once the required num-
ber of states has adopted the pact, the “contract” among them is valid and becomes effec-
tive as provided. The only other potential requirement is congressional consent.

What might the compact development process look like?

The development of any interstate compact should be a state driven and state champi-
oned solution to a policy issue. Outlined below are key steps to the development process
of a regulatory compact, as experienced by CSG. These should be viewed as examples and
can be, based on the issue area, customized as needed.

- **Advisory Group:** Composed of state officials and other critical stakeholders, an
  Advisory Group examines the realm of the problem, suggests possible solutions and
  makes recommendations as to the structure of the interstate compact. Typically, an
  Advisory Group is composed of approximately 20 individuals, each representative of
  various groups and states. An Advisory Group would likely meet one or two times
  over a period of two to three months, with their work culminating in a set of recom-
  mendations as to what the final compact product should look like.

- **Drafting Team:** While an Advisory Group enjoyed thinking about the issue from a
  macro-level, a Drafting Team pulls the thoughts, ideas and suggestions of the Advisory
  Group into a draft compact. The Drafting Team, composed of 5 to 8 compact and
  issue experts, will craft the recommendations, as well as their own thoughts and
  expertise, into a draft compact that will be circulated to state officials for comment.
  The document will also be open for comments from a wide swath of stakeholders
  and the public. Following these comment periods, the compact will be revised as
  needed and released finally back to an Advisory Group for final review to ensure it
  meets the original spirit of the group’s recommendations. A Drafting Team would
  meet three to four times over a period of 10–14 months, with significant staff work
  and support between sessions.

- **Education:** Once completed, the interstate compact would be available to states for
  legislative approval. During this phase of the initiative, state-by-state technical assis-
tance and on-site education are keys to rapid success. A majority of state legislators
  have limited knowledge about interstate compacts and with such a major issue being
  addressed, leg work on the ground in each state is crucial. Previous interstate com-
  pact efforts have convened end-of-the-year legislative briefings for state officials to
  educate them on the solutions provided by the interstate compact. Education occurs
  before and during state legislative sessions.

- **Enactment:** A majority of interstate compacts did not become active right away.
  Rather, interstate compacts typically activate when triggered by a pre-set number of
  states joining the compact. For instance, the Interstate Compact for Adult Offender
  Supervision (Adult Compact) required 35 state enactments before it could become
  active. This number was chosen for two reasons. A membership of 35 ensures that a
  majority of states are in favor of the agreement and that a new compact would not
create two conflicting systems. Moreover, a sense of urgency for states was created because the first 35 jurisdictions to join would meet soon thereafter and fashion the operating rules of the compact. Most interstate compacts take up to 7 years to reach critical mass. However the most recent effort managed by CSG, the Adult Compact, reached critical mass in just 30 months from its first date of introduction in 2000.

**Transition** Following enactment by the required minimum number of states, the new compact becomes operational and, dependent upon the administrative structure placed in the compact, goes through standard start-up activities such as state notification, planning for the first commission or state-to-state meetings and, if authorized by the compact, hiring of staff to oversee the agreement and its requirements. A critical component of the transition will be the development of rules, regulations, forms, standards, etc. by which the compact will need to operate. Typically transition activities run for between 12 and 18 months before the compact body is independently running.

**What does a modern interstate compact look like, structurally?**

When developing the interstate compact mechanism, one needs to look at it as a human body—the compact itself is the skeleton, the rules, regulations and forms are the muscles and the bylaws are the skin. The compact should contain the minimum basics upon which it needs to operate, in terms of the agreement between states and the operation of a governing body. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states, subject to the legislative and delegated authority.

**Will my states constitution permit the creation and/or joining of a compact?**

Compact language is usually drafted with state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations in mind. The validity of the state authority to enter into compacts and potentially delegate authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court in West Virginia v. Sims, 341 U.S. 22 (1951).

**How much does it cost to develop and operate an interstate compact?**

No two compacts are alike and therefore the issues addressed by one compact require different development considerations than do others. Some compacts have enjoyed massive federal support, such as the Adult Compact which received more than $1.2 million from the National Institute of Corrections. However, a more recent compact revision of the Interstate Compact for the Placement of Children will have resulted in a final compact in 10 months for approximately $100,000 (not counting education and transition costs). Cost depends largely upon the desired timelines, the level of external stakeholder involvement and the level of education desired within each state.
Developing the Right Structure for Success

Compact Governance

Modern compacts need strong governance and administration to successfully address state regulatory issues.

The interstate compact tool is an ideal mechanism for addressing many of today’s multistate policy issues. Long a tool reserved for simple interstate agreements, the modern interstate compact is taking on regulatory issues at the regional and national levels and facilitating the development of the states’ collective voice on established and emerging issues.

The usefulness of interstate compacts is demonstrated recently with the development of two agreements. The Interstate Insurance Product Regulation Compact allows for national, uniform approval of new insurance products among member states, rather than having to obtain licensing in each state individually. Another is the Interstate Compact for Adult Offender Supervision, which regulates the movement of adult parolees and probationers across state lines into jurisdictions other than where they were sentenced.

While the compact language itself is crucial to the success of the contract, modern regulatory compacts often expand upon the basic agreement with additional governing and administrative structures. Traditional interstate compacts offer few details as to the issues of governance and administration. This is not surprising given the spirit and reciprocal nature in which they were intended to operate. However, as the administrative nature of state government has evolved over the last half-century, it has become necessary to develop structures and organizational procedures that transcend one state’s internal operation and apply uniformly to all member jurisdictions of interstate agreements. As more issues are addressed via regional and national regulatory compacts it becomes apparent that an officially sanctioned governing body is necessary to ensure accountability, training, compliance, enforcement, rulemaking, information gathering and sharing and overall staffing in order to make the agreement a success.

When developing the overall interstate regulatory mechanism, one may look at it as a human body—the compact itself is the skeleton, the rules are the muscles and the bylaws are the skin. The compact should contain the minimum basics upon which the compact needs to operate, both in terms of the agreement between states and the operation of a governing body. The compact does not need to address every conceivable eventuality, nor should it. Its purpose is to provide the framework upon which to build. The rules are the actuators of the compact, containing the details of state interaction, how transfers will occur, what standards and practices will be followed, forms used, timelines established, etc. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life of the compact without the need to go back each time for legislative approval from the member states, subject to the legislatively delegated authority. Finally, the bylaws of the governing body detail how business will be conducted in a timely and orderly manner without unraveling.

Outlined within are key factors when considering the structure of a compact and its long-term administration and operation.


**Governing Body**

As a new regulatory compact is developed or an existing one revised, it will need to establish an unambiguous third party organization that will serve as its governing body. The body may enjoy full-time staff support and be governed by representatives of the member jurisdictions. The governing body should be clearly detailed in the compact language with specific details provided on:

- Governing body creation and name;
- Governing body membership;
- Ex-officio membership on the governing body;
- Allocation of votes (i.e. one vote per member jurisdiction);
- Voting majority;
- Meeting frequency of the governing body (i.e. to establish minimum);
- Leadership and governing body structure (i.e. executive committee, leadership positions, etc.);
- Other voting and business procedures;
- Records maintenance and public access;
- Public notice requirements for meetings and governing board action;
- Conditions under which a meeting of the governing body may be closed; and
- Data gathering and sharing requirements (i.e. information sharing system).

The agreement should also go on to describe the specific powers and duties of the governing body:

- Conduct dispute resolution;
- Promulgate rules;
- Oversee, supervise and coordinate operational issues between states;
- Enforce compliance with compact and rule provisions;
- Establish and maintain offices;
- Purchase and maintain insurance;
- Borrow, accept, hire or contract for personnel services;
- Establish and appoint committees;
- Hire staff;
- Elect and appoint officers and employees;
- Accept donations of money, equipment, etc.; lease, purchase, etc.; sell, convey, mortgage, etc.; make expenditures; in order to facilitate the work of the governing body;
- Establish a budget;
- Collect dues;
- Sue and be sued;
- Adopt bylaws and a seal;
- Report annually to member states and other specific groups;
- Coordinate training and education;
- Establish uniform standards for collecting and exchanging data; and
- Perform other functions as may be necessary to execute the provision of the compact and its rules.

The compact should further specify the organization and operation of the established governing body, with specific reference to:

- Leadership
- Officers
- Committees
- Staff
- Indemnity

Finally, drafters may consider the development of an advisory body in each state to promote the compacts' interests and provide oversight and advocacy on compact issues. Referred to as a “State Council” in other compacts, this body may be granted a range of powers and authority including oversight, advocacy, and policy and procedural development for the state.
Bylaws

The governing body must develop and maintain bylaws under which its business will be organized and conducted. At a minimum, the bylaws of the governing body will address:

- Requirement to adopt bylaws;
- Establish a fiscal year;
- Establish an executive committee and other committees as appropriate;
- Conduct of meetings;
- Establish titles and responsibilities of officers and staff;
- Establish provisions for conducting business;
- Provide transition rules; and
- Establish standards and procedures for compliance and technical assistance and training.

Committees

The governing body will need to establish committees in order to conduct business. While an executive committee will be specified in the compact and the bylaws, other committees will be allowed for and may be further specified in the bylaws. Membership and appointment to committees will be addressed in the bylaws. At a minimum, the governing body should consider the following committees:

a. Compliance, responsible for monitoring the compliance by member states with the terms of the compact and the rules, and for developing appropriate enforcement procedures for the governing body’s consideration.

b. Information Technology / Information Sharing, responsible for identifying and developing appropriate information technology resources to facilitate the transfer of issue information and the administration of compact activities.

c. Finance, responsible for monitoring the governing body’s budget and financial practices, including the collection and expenditure of revenues and for developing recommendations for the membership’s consideration.

d. Rules, responsible for administering the rulemaking procedures and for developing proposed rules for the governing body’s consideration.

e. Training, responsible for developing educational resources and training materials for use in the member states to help ensure awareness of, and compliance with, the terms of the compact and the rules.

Additionally, the governing body may need other, policy specific committees in order to adequately conduct business, such as an Intergovernmental Affairs Committee to coordinate efforts with federal and local agencies as well as other interstate agreements.
Rules and Rulemaking

In addition to the compact language the governing body will need to develop and maintain a detailed set of rules to govern the activities of the compact. If the compact language is the skeleton, the rules are the muscles—while they rely on the compact for authority, they are the true actuators of compact activity. The compact language will, at a minimum, set forth the rulemaking procedures and requirements. These will include:

- Authority to promulgate rules;
- Establish administrative procedures by which rules will be adopted, noticed and maintained;
- Noticing requirements;
- Publishing requirements;
- Public hearing requirements;
- Minority report / opinion requirements;
- Provide for Judicial Review, if requested within a specific time;
- Establish process for formal rule rejection by member states;
- Authorize transition rules; and
- Provide for the development and adoption of emergency rules.

Finance

Drafters need to consider two different aspects of financing: state payment for in-state compact activities and financing of the governing body, its staff and activities. Specific issues to be addressed include:

- Authorization to pay expenses;
- Authorization to levy a state assessment;
- Provision to not incur obligations beyond reasonable financial abilities to pay;
- Provision to not pledge the credit of the member states;
- Accounting requirements; and
- State assessment formula (if needed).

While these considerations are not required for every interstate agreement, as the compact tool is used more often to address increasingly regulatory issues, structures and considerations like those outlined here should be considered to ensure long-term success of the multi-state compact.
National Center for Interstate Compacts

The National Center for Interstate Compacts helps bolster the position of the states in our federalist system and provides assistance to an underserved population: the administrators, commissioners and agencies of the more than 200 interstate compacts currently active among the states.

A New Initiative

Despite their legal and structural differences, states share many common problems in a world in which economic and political issues are often discussed in global terms. These complex problems arise in many contexts, including homeland security, environmental concerns, an aging infrastructure, pioneering technology and an ever-evolving citizenry.

As we become more integrated socially, culturally and economically, the volume of these issues will only increase and interstate compacts may well prove to be an apt mechanism for developing state-based solutions to supra-state problems.

The last two decades have seen a resurgence in the development of new interstate compacts and the revision of existing, though outdated compacts. As a tool reserved exclusively for the states, interstate compacts can provide states the means to address problems with state led solutions, avoiding federal intervention and preemption.

More than 200 interstate compacts are currently in effect between and among states, each housed independently within a member-state agency most closely associated with the policy identity of the compact. While it seems every sector of state government has an established membership and support association (for example, state budget officers, emergency managers, transportation officials, legislators), the interstate compact community has gone largely unnoticed and underserved.

To that end, The Council of State Governments’s new National Center for Interstate Compacts combines policy research with best practices, and functions as a membership association, serving the unique needs of compact administrators, compact commissions and the state agencies in which interstate compacts reside. The center promotes the use of interstate compacts as an ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards, and to provide an adaptive structure for states that can evolve to meet new and changing demands over time.

A distinctly American invention, interstate compacts promote multistate problem solving in the face of complex public policy and federal intervention.
**Survey Findings**

In February 2004, CSG conducted a 50-state survey of interstate compacts. This in-depth survey sought detailed information on compact administrators’ interstate compact experiences, the experiences of their state in regards to compacts and their assessment of current needs in the compact field. With a 51 percent response rate (n=444, s=226), the surveys results are sound. When combined with CSG’s observations and compact experience, the results reinforce the specific need for a national center and help outline the specific duties and role such a center would play in assisting states.

Summary survey findings include:

- 78 percent said they could use additional resources and assistance in their compact work;
- 73 percent of respondents stated that they wanted more networking opportunities with their compact colleagues;
- 71 percent of respondents said they needed legal assistance in interpreting compact requirements;
- 65 percent of respondents stated that they desired common tools for use in the compact process;
- 61 percent of survey respondents said they needed a national information clearinghouse on compacts;
- 61 percent said they wanted more ways to build coalitions and partnerships to promote compacts;
- 53 percent said they encountered obstacles to enforcement and compliance within their compact;
- 52 percent said they needed assistance monitoring and evaluating the impacts of federal activities on compacts;
- 52 percent said they wanted non-technical explanations of compact requirements;
- 47 percent said they needed support in determining the costs associated with their compact;
- 46 percent of respondents stated that they thought the need existed to make changes to their compact;
- 42 percent of survey respondents claimed they had encountered difficulties in educating legislators and other state officials about compacts;
- 40 percent stated they had encountered obstacles in the drafting of compact language;
- 35 percent said they had difficulty in determining their funding needs and potential revenue sources; and
- 31 percent thought the need existed for the development of new compacts.
Mission

The National Center for Interstate Compacts is designed to be an information clearinghouse, a provider of training and technical assistance, and a primary facilitator in assisting states in the review, revision and creation of new interstate compacts as solutions to multi-state problems or alternatives to federal preemption.

The national center is research-based and member-driven with significant services provided to and participation sought from the interstate compact community. The national center combines policy research with best practices in order to serve the needs of compact administrators, compact commissions and the state agencies in which interstate compacts reside.

The goals of the National Center for Interstate Compacts are:

- **Education and Information**: educate stakeholder groups, compact staffs, state and local officials on the background, history, legality, structure, mechanics and use of interstate compacts and promote their use to solve multi-state and cross-jurisdictional problems.
- **Technical Assistance and Training**: provide technical assistance to states in determining the need for new interstate compacts, and to examine and, where appropriate, revise existing interstate agreements.
- **Administration and Resources**: assist states in streamlining administrative structures and procedures, promote the use of technology in compact activities, assist states in gaining federal support for their compact efforts, and create standards for compact operations and rules and regulation development and publishing.

Services

CSG is uniquely positioned to offer a full-range of services to states that are in need of not only information and expertise, but also guidance and technical assistance in dealing with interstate compacts and other interstate agreements. Since 1933, CSG has been at the forefront of promoting multi-state problem solving and championing the role of the states in determining their respective futures. CSG has played an integral role in the development of numerous interstate compacts, tracking the progress of more than 200 active interstate compacts, researching innovative problem solving solutions for the states and bringing the states together to build consensus on national issues.

Most recently CSG has been involved in the development and implementation of the Interstate Compact for Adult Offender Supervision, the Interstate Compact for Juveniles and the Interstate Compact for the Placement of Children. CSG also houses the Emergency Management Assistance Compact through its affiliate, the National Emergency Management Association, as well as the new Interstate Commission for Adult Offender Supervision.

The National Center for Interstate Compacts offers a range of services to states, compact administrators and compact commis-

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"Modern compacts are a reinvigoration of our federalist system in which states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts."
Based on CSG’s extensive interstate compact experience, coupled with the results of the national survey, activities are tailored for information gathering and dissemination, technical and legal assistance, training, and compact revision and creation. Specific services and activities of the National Center include:

- **Information Sharing**: comprehensive and consistent source of reference and advisory information on compact issues with an online library/repository containing the language, bylaws, rules and assorted documents for every compact currently in existence as well as a variety of general interstate cooperation materials.

- **Federal and State Activity Updates**: updates on compact activities from around the country, including the impacts of federal and state activities on current compacts, compact law and administration.

- **Education and Outreach**: educational outreach on a state, regional and national basis for compact administrators and their staffs, other state officials and stakeholder groups, and other levels of government; where applicable, encourage membership in regional and national compacts.

- **Technical Assistance**: technical assistance, both remote and on-site, to states, compact commissions and other identified parties as related to compact reviews and evaluations, compact implementation, compact amendment and revision and drafting new compacts as policy responses to emerging trends and/or federal intervention.

- **Training**: training curriculum for compact administrators, their staffs and key stakeholder groups, i.e. judges on compact issues; conduct an annual training institute; convene an annual compact technology conference to share information and practices relative to the administration of compacts and the implementation of technology tools.

- **Standardization**: assist states to streamline and standardize the compact administration process, i.e. forms, timelines, procedures, etc.; assist states in defining budgetary needs for compact operations and in gaining federal support for compact efforts and activities; develop interstate compact standards relating to compact structure and language, rules and regulations, commission administrative authority, and compliance and enforcement.