

State Solutions

Interstate compacts remain powerful tools for cooperative states' actions

BY JOHN J. MOUNTJOY

Interstate compacts are powerful, durable and adaptive tools for promoting and ensuring cooperative action among the states. As one of the oldest mechanisms available for states to work together, their use predates the founding of the nation. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure and solution for collaborative and dynamic action among the states. The very nature of an interstate compact makes it an ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards and provide an adaptive structure for states that can evolve to meet new and changing demands over time. A distinctly American invention, interstate compacts promote multi-state problem solving in the face of complex public policy and Federal intervention.

Interstate compacts: General purposes

Interstate compacts are contracts between states that carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Compacts are not a solution per se, but rather, they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard or to cooperate in a critical policy area. The law and use of interstate compacts is not particularly complex. Like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states. Generally speaking, interstate compacts:

- Establish a formal, legal relationship



Interstate compacts provide workable cooperative agreements among states.

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.

Interstate compacts: History

Historically, compacts have been enacted for a variety of reasons, though they were seldom used until the 20th century. Between 1783 and 1920, states approved 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, according to The Council of State Governments (CSG), which maintains a clearinghouse of interstate compacts. Their purposes range from implementing common laws to exchanging information about common problems. They apply to a range of subject areas from conservation and resource management to civil defense, education, emergency management, energy law

Compacts by the numbers

- 13 Interstate compacts with 25 or more members
- 14 Fewest compact memberships by a state (HA & WI)
- 42 Most compact memberships by a state (NH & VA)
- 27 Average compact memberships by a state
- 36 Compacts developed prior to 1920
- 150 Compacts developed since 1920
- 200+ Interstate compacts in operation

Source: CSG's *Interstate Compact Clearinghouse*.

enforcement, probation and parole, transportation, and taxes.

Most interstate compacts cover rudimentary functions, such as regulating boundaries and water rights, and have less than 15 signatories. For example, the Waterfront Commission Compact between New Jersey and New York regulates the practices in handling waterfront cargo in the Port of New York. Illinois and Missouri cooperatively plan the development of St. Louis through the Bi-State Development Agency Compact.

Some compacts authorize the establishment of multistate regulatory bodies. The first and perhaps most famous of these is the New York Port Authority, which arose from a 1921 compact between New Jersey and New York. Other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, most are designed for regional or national participation. Examples include the Emergency Management Assistance Compact (adopted in 45 states and two territories; designed to enable cooperative emergency response efforts, such as 9/11), the Interstate Compact for the Supervision of Adult Offenders (adopted in 30 states since January 2000; designed to update and replace a similar 1937 compact), and

the Interstate Compact for Education (adopted in 46 states; designed to serve as an information center, forum and advocate for the states on education issues).

The case for compacts

Some may question the need for interstate compacts to address multistate policy issues. Why not leave such regulation to the feds?

"Interstate compacts help us maintain state control," said Gary McConnell, director of the Georgia Emergency Management Agency. McConnell has served as Director of GEMA for the last 10 years and has played an instrumental role in developing and promoting EMAC among the states. "We can go to the federal government for all kinds of help when natural disasters strike, but the states [cooperating under an interstate compact] can provide specific resources quicker, which are likely to be problem specific," McConnell said. "It's less bureaucratic, and it's far cheaper. It's easier for us under EMAC to obtain resources from surrounding states than it is to use federal assistance, which we'd end up having to pay more for anyway. I suspect this is the case with many other interstate compacts as well."

Compacts over the years

Article I, Section 10, Clause 3 of the U.S. Constitution laid the legal foundation for interstate compacts: "No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or

Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay." Compacts actually preceded the Constitution, having been used in colonial times to resolve boundary disputes between colonies.

Prior to the 1920s, interstate compacts were typically bi-state agreements, addressing boundary disputes and territorial claims. In fact, only 36 interstate compacts were formed between 1783 and 1920. It is only in this century that interstate compacts have risen to such prominence and power among the states.

States regularly developed and entered into interstate compacts until the late 1970s. Then, in the early 1980s, the use of interstate compacts and the formation of new compacts came to an utter standstill.

Recently, states have revived interstate compacts as a mechanism for solving issues that cross state lines. Since the early 1990s, states have initiated or updated several high-profile interstate compacts. Examples include the EMAC, the Interstate Compact on Juveniles, the Interstate Compact for Adult Offender Supervision, the Interstate Compact on Industrialized/Modular Buildings and the Interstate Insurance Receivership Compact.

Compacts on the New Frontier

As public policy issues become more complex and affect more states in our boundary-less world, new interstate compacts could prove to be the answer to sev-

Compact case law

In our federalist society, certain powers are delegated to each level of government. As such, interstate compacts are a tool reserved to the states and approved by Congress. The U.S. Supreme Court — the most widely used enforcement tool for interstate compacts — has affirmed this fact on the rare occasions that compacts have been legally challenged.

West Virginia, ex. rel. Dyer vs. Sims, 341 U.S. 22 (1951). The Court specifically referred to the state legislature's

adoption of and delegation of power to an interstate compact agency made up of its' sister states as "one of the axioms of modern government" and as "a conventional grant of legislative power."

Cuyler vs. Adams, 449 U.S. 433 (1981) and *U.S. Steel Corporation vs. Multistate Tax Commission*, 434 U.S. 452 (1978). The Court reinforced the role of interstate compacts in the relationships between states, as a tool to be used by the states and approved by Congress.



Parole compacts allow states to track and administer parolees.

eral multi-state, regional and national policy problems. From policing drugs to supplying energy or controlling sprawl, compacts can set the framework for cooperative solutions to cross-state challenges. "Issues within the states are becoming more complex and crossing state boundaries. As a result, solutions are becoming multi-state as well. Compacts are the only tool that is truly adequate for addressing these multi-state issues," said Bill Voit, Senior Project Director at CSG's headquarters office. CSG has been tracking interstate compacts for more than 40 years, maintains an information clearinghouse on compact information and recently assisted in the updates of the Interstate Compact for Adult Offender Supervision and the Interstate Compact on Juveniles. CSG also helps administer the Emergency Management Assistance Compact.

"States are re-realizing that they have the power to address their own problems better than the Federal government. Interstate compacts provide states the perfect vehicle to address regional and national issues that are affecting their jurisdictions. Not only do we see the development of new compacts, but we are seeing the re-examination of existing compacts...revising them to keep pace with our changing world," says Rick Masters, CSG's Special Counsel for Interstate Compacts.

Existing interstate compacts are ripe for amendment and revision. When states drafted compacts in the 1930s, 1940s and 1950s, they could not have anticipated some of the changes that have occurred since then. Technology and the Internet now make the sharing of information

essentially seamless and immediate, yet some interstate compacts are hampered by outdated administrative policies. The growth of transportation and the shrinking of travel time globally have made several mechanisms within existing compacts unable to cope with increased loads.

Developed in 1937, the Interstate Compact for the Supervision of Parolees and Probationers is one such example. Designed to regulate the movement of parolees and probationers across state lines. Adopted by all 50 states, the compact has, according to a national advisory and drafting group convened by the National Institute of Corrections and CSG in 1998, become an inadequate mechanism to track a growing offender population with various problems, including frequent violations of compact rules, an inability to enforce compliance, new rules creation process difficulties, and slow, often unreliable exchange of case information

When first developed, the compact

could not have anticipated these problems, the rapid growth in the number of offenders or the ease with which they now are able to travel. What was needed, states agreed, was a new compact that would provide states the authority, accountability and resources to adequately track and ensure supervision of these parolees and probationers when they leave the corrections system and re-enter private life.

The new Interstate Compact for Adult Offender Supervision was developed to provide these solutions. Its mission is to ensure enforcement, accountability, resource provision, information sharing and state-to-state cooperation. Currently, the compact has been introduced in 46 states and enacted in 30.

Just as technology can smooth the operation of interstate compacts, alternative dispute resolution techniques can increase their self-sufficiency. Enforcement tools within interstate compacts need to utilize more of the mediation and arbitration services that have proven successful throughout state government. By developing additional self-contained enforcement mechanisms, compact members would not need to rely solely on the crowded docket of the U.S. Supreme Court.

Interstate compacts could provide an answer for states seeking to address new problems and create new methods of interstate cooperation. In the absence of an interstate compact, states could face federal preemption in certain policy areas. ★

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Internet resources

CSG's Interstate Compact Directory <http://ssl.csg.org/compactlaws/comlistlinks.html>

The Council of State Governments maintains links to all interstate compacts known to be in existence in 1998 and to its comprehensive guide to compacts, *Interstate Compacts & Agencies, 1998*.

Interstate Compact for Adult Supervision. www.csg.org/clip/policy/isc.htm. An interactive, up-to-the-

minute source on the adult compact, including fiscal notes, state-by-state status, FAQ on the compact, case studies and downloadable compact language.

Emergency Management Assistance Compact www.nemaweb.org/emac/index.cfm

The site is your one-stop source for news and information for the Emergency Management Assistance Compact.