

SYMPOSIUM: Interstate Cooperation



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National Center for Interstate Compacts: A New Initiative

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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.

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.¹

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two decades have seen a resurgence in the development of new interstate compacts and the revision of existing, though outdated compacts.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 state problems with state solutions, avoiding federal intervention and preemption.

More than 200 interstate compacts are currently in effect between and among the several 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, e.g. state budget officers, emergency managers, transportation officials, legislators, etc., the interstate compact community has gone largely unnoticed and underserved.

To that end, The Council of State Governments' (CSG) 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.

Interstate Compacts: Brief History

Interstate compacts are powerful, durable, and adaptive tools for promoting and ensuring cooperative action among the states and avoiding federal intervention and preemption. They are also among the oldest mechanisms available for states to work together as their use predates the founding of the nation. Unlike federally imposed mandates interstate compacts provide state-developed solutions to complex public policy problems.

Interstate compacts are contracts between states that carry the force and effect of statutory law and that allow states to perform a certain action, observe a certain standard or to cooperate in a critical policy area. Generally speaking, interstate compacts:

- 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 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.²

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. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. They apply to a range of subject areas from conservation and resource management to civil defense, education, emergency management, energy, law enforcement, probation and parole, transportation, and taxes.³

While the theory and purpose behind interstate compacts has changed little over the last 228 years, modern compacts differ

greatly, tackling broader public policy issues and forging state partnerships for problem solving and cooperation. What also differs is the way in which compacts are structured. Unlike federal actions that generally impose unilateral and rigid mandates, compacts afford states the opportunity to develop dynamic, self-regulatory systems, of which the member states can maintain control through a coordinated legislative and administrative process. Compacts also enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time. In short, through the compact device, states acting jointly can not only control the solution to a problem but can also shape the future response as the problems to be addressed change.

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.⁴

Interstate Compact 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 (p=444, s=226), the survey results are sound and when combined with CSG's observations and compact experience, reinforce the specific needs for a National Center and help outline the specific duties and role such a center would play in assisting states to better understand and utilize the interstate compact device.

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.

National Center for Interstate 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 and functions as a membership association, serving 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.
- **Legal Support and Assistance:** to provide legal interpretations of compact law, requirements, rules and the effects of other laws or impending state/federal action; to provide general legal assistance with compact issues.
- **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.

National Center for Interstate Compacts: Services

The Council of State Governments 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. Throughout its 70-year history, CSG has been

at the forefront of promoting multi-state problem solving and advocating 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 over 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 commissions. Based on CSG's extensive interstate compact experience, coupled with the results of the national survey, the national center's services and 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.
- **Legal Assistance:** legal (and where applicable non-technical) interpretations of compact law, requirements, rules and the affects of other laws and impending state or federal action; general legal assistance with compact issues, including dispute resolution to states, when requested, in interstate compact conflicts, mediation/arbitration between states, administrators, or between the states and federal government; assist states in defining legal authority in compact matters and resolving reciprocity issues.
- **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.

National Center for Interstate Compacts: Future

While the National Center is actively involved with revisions to the Interstate Compact for Juveniles and the Interstate Compact on the Placement of Children, several other prospects for assistance to states on interstate issues currently exist. With federalism use and states scrambling to tackle a range of issues, such as prescription drug pricing, and anti-terror cooperation, the opportunity exists for the National Center to not only help states revise existing agreements, but also craft new contracts of cooperation to address emerging issues that belong under state control. Emerging areas ripe for interstate cooperation include:

■ *Criminal Justice Information Sharing*

While several intrastate information sharing systems have been developed and/or are under development, the fundamental question of true interstate national criminal justice information sharing has yet to be answered. While efforts such as the Global Justice Information Sharing Initiative, sponsored by the U.S. Department of Justice, seeks to establish standards and mutual understanding of the information sharing process, no true interstate mechanism whether on a regional or national level currently exists to allow multi-jurisdictional access to criminal justice information. An interstate compact could be a useful tool in helping facilitate state standards and establishing the framework for interstate cooperation in this area.

■ *Emergency Medical Assistance*

Prior to the 9/11 terror attacks, states had made great headway in adopting interstate agreements such as the Emergency Management Assistance Compact to cope quickly with natural and other disasters. Since 9/11 and the 2001 anthrax attack, states have realized the need for more than just the sharing of equipment and resources for physical clean-up, they see the dramatic need for interstate cooperation for medical assistance. Currently states have no mechanism in place to facilitate non-federal interstate emergency medical assistance in the event of an NBC attack. While several governors are examining mutual aide agreements, regional compacts and perhaps an overarching national interstate compact would help states be better prepared for this eventuality by sharing personnel, lab capacity and medical expertise.

■ *Elder Guardianship*

A July 2004 GAO report, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People (GAO-04-655)*, indicated that an emerging area of concern for states is the need to

protect incapacitated elderly adults. The report highlighted specific breakdowns in collaboration between states and federal programs that jeopardized the safety of seniors, specifically in the areas of state court operation, accountability and consistency, state jurisdictional fluctuations, a lack of systematic information sharing between and among varying agencies and levels of government and a lack of adequate tracking of elder guardianship statistics. These problems, similar to issues already encountered in the juvenile justice and adult corrections fields, may be effectively addressed via an interstate compact.

■ *Bioterrorism Preparedness*

Regional cooperation for bioterrorism preparedness is on the minds of many state officials. Health care surge capacity, multi-state training and prearranged payment provisions, chain-of-command issues and identified roles for key players are critical to an effective response. While other agreements may tackle broader cooperation issues, specific agreements might be crafted to promote independent regional responses based on that region's unique need.

While the National Center for Interstate Compacts seeks to directly assist states with the revision and creation of interstate compacts in addition to a range of training, education and technical assistance services, limitations will exist. The creation of new interstate agreements must be a state motivated solution with state officials and stakeholder experts supporting and driving the compact process. As the integral players to crafting state solutions, states must ultimately be in a position to support the enactment and implementation of the mechanism.

In large part, the National Center and its capacities for assisting states are reactive, but reactive to the trends of public policy in that interstate compacts are an ideal and often the only effective response for addressing the current and emerging cooperative policy needs of our states.

Endnotes

¹Michael L. Buenger, Richard L. Masters, "The Interstate Compact for Adult Offender Supervision: Using Old Tools to Solve New Problems," *The Roger Williams University Law Review*, 1, 9 (Fall 2003).

²Michael H. McCabe, *Interstate Compacts: Background and History*, (The Council of State Governments, 1997).

³William K. Voit, *Interstate Compacts and Agencies, 1998*, (The Council of State Governments, 2000).

⁴Michael L. Buenger.

Bio

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Trends in Interstate Relations Continued from page 7

Summary and Conclusions

Court legalization of same sex marriages in Massachusetts and same sex civil unions in Vermont will continue to result in controversies in states lacking a defense of marriage act relative to enacting such an act. It will also raise questions whether courts in sister states possess authority to dissolve a Massachusetts same sex marriage or a Vermont same sex civil union.

Interstate cooperation generally continues to be excellent as additional states enact interstate compacts and enter into interstate administrative agreements on a wide variety of subjects. Compacts and enactment of harmonious regulatory laws have been promoted as a means to discourage Congress from exercising its powers of preemption removing regulatory authority completely or partially in specified fields from states. Nevertheless, disparate state regulatory statutes, increasing globalization of the domestic economy, international trade treaties, lobbying by interest groups, and technological developments will result in Congress enacting preemption statutes in addition to the 499 enacted since 1789.

Endnotes

¹*Massachusetts Laws of 1913*, chap. 360, §2, and *Massachusetts General Laws*, chap. 207, §11.

²Joseph F. Zimmerman, *Interstate Cooperation: Compacts and Administrative Agreements*, (Westport, CT.: Praeger Publishers, 2002) and Ann O'M. Bowman, "Trends and Issues in Interstate Cooperation," *The Book of the States, 2004* (Lexington, KY: The Council of State Governments, 2004), 34-40.

Bio

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