

SYMPOSIUM: Interstate Cooperation



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Interstate Compacts: Obstacles and Support

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The Council of State Governments' survey of compact administrators revealed that they can face obstacles when compacts are being developed, enacted, implemented and administered. Obstacles range from educating legislators and other state officials about compacts to dealing with enforcement and compliance of a compact's terms. Compact administrators also expressed the need for assistance in finding networking opportunities, interpreting the legal aspects of compact requirements and several other areas.

Interstate compacts are important instruments for interstate cooperation. Because of this importance, The Council of State Governments (CSG) surveyed compact administrators in early 2004. Compact administrators are an under-recognized population of state officials and as such, CSG wanted to learn more about them and the services they might need.

Individual compacts and their compact administrators, who handle day-to-day operations, were identified using CSG's Interstate Compacts & Agencies 2003 directory. Out of an initial sample size of 479 administrators representing 47 different compacts, 226 surveys were returned for a response rate of 51 percent. All states and the District of Columbia were represented in these responses.

The vast majority (97.3 percent) of the administrators in our sample are full-time employees of their compacts. Most of them (75.7 percent) have at least one additional employee who works with them on compact administration.

Most of the compact administrators in this study (76.6 percent) have not been involved with any other compact. That is, their current involvement in their respective compacts is the only compact-related experience they have.

Stages of the Interstate Compact Process

Interstate compacts can be viewed as a four-stage process. That is, all compacts go through the stages of:

- development;
- enactment;
- implementation; and
- administration.

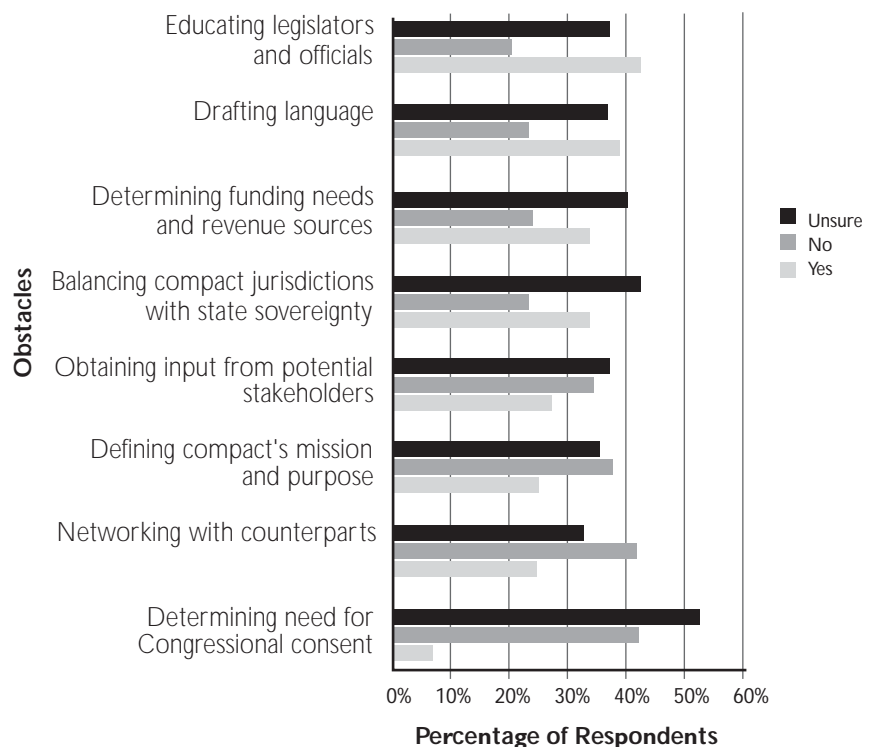
Compact Development

The first stage is compact development. During this stage, compact propo-

nents identify stakeholders, analyze the needs of the states involved, determine the purpose of the compact and decide on the components of the compact. The compact's language is drafted in this phase, and proponents must determine if Congressional consent is needed.

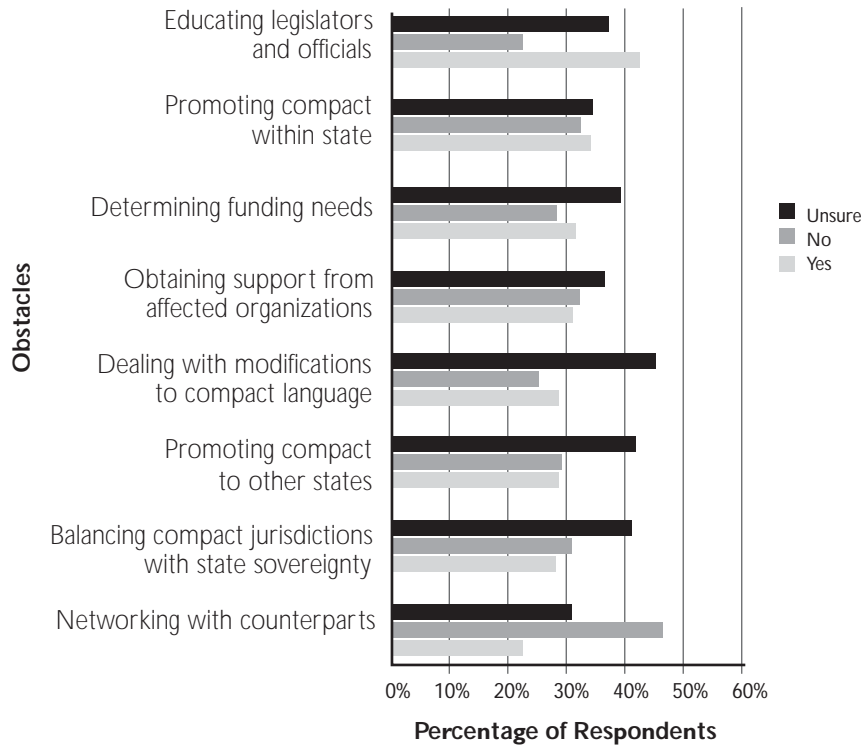
To get a sense of the difficulty that administrators face in compact develop-

Figure 1 Obstacles to Compact Development



Source: The Council of State Governments' survey, February 2004.

Figure 2 Obstacles to Compact Enactment



Source: The Council of State Governments' survey, February 2004.

ment, respondents were asked about the obstacles encountered during this stage. These are illustrated in Figure 1.

- The most common obstacle cited was educating legislators and other state officials about compacts; 42.2 percent of respondents thought this was an impediment in their compact's development phase.
- Another obstacle cited by 39.5 percent of respondents was the difficulty in drafting the language of the compact.
- Other common obstacles were determining funding needs and revenue sources as well as balancing the compact's jurisdiction with member state sovereignty, identified respectively by 35.3 percent and 33.8 percent of the respondents.

On the other hand, more than 40 percent of respondents believed that determining the need for Congressional consent

and networking with counterparts in other states were not major obstacles to the development of their compacts. More than a third of administrators did not believe that defining the compact's mission and obtaining inputs from organizations that might be affected by the compact were obstacles to compact development.

Rather large percentages of the answers were "unsure." This uncertainty is probably because the current compact administrators were not involved in the first stage of the interstate compacts process. While respondents have been involved with interstate compacts for an average of nine years, many of the compacts in the survey were enacted in the 1950s, 1970s and 1980s. Therefore, the answers to the questions related to this first phase are likely based on respondents' historical knowledge, rather than firsthand experience.

Compact Enactment

The second stage of the interstate compacts process is compact enactment. An interstate compact is essentially a contract between states and must satisfy the requirements for valid contracts, including offer and acceptance. When one state, typically by statute, adopts the terms of a compact requiring approval by one or more states in order to take effect, this is considered an offer. When other states adopt identical compact language, this is considered acceptance. When the required number of states adopts the compact, the contract is deemed valid. During the compact enactment stage, proponents take steps to make sure the compact becomes law in their respective states so that the contract is validated.

Respondents were asked about obstacles faced during this phase. These are highlighted in Figure 2.

- As with compact development, more than 40 percent of respondents thought educating state legislators and other state officials about compacts was an obstacle.
- More than a third felt that promoting the compact within their respective states for enactment was problematic.
- And almost a third of respondents felt that determining funding needs (31.5 percent) and obtaining support from organizations that might be affected by the compact were obstacles during this phase of the interstate compacts process.

Once again, a large percentage of responses was "unsure." As with the compact development phase, it is likely that many of the respondents were not directly involved in the compact enactment phase and thus are uncertain what obstacles were faced during this phase.

Compact Implementation

The third stage of the interstate compacts process is compact implementation. After the compact becomes law, proponents must establish the structures and procedures to administer the compact. This phase involves a great deal of logistical work.

Administrators were asked about obstacles to compact implementation (refer to Figure 3). Unlike the other two stages of the interstate compacts process, there was only one obstacle in the third stage that was cited by more than 30 percent of the respondents.

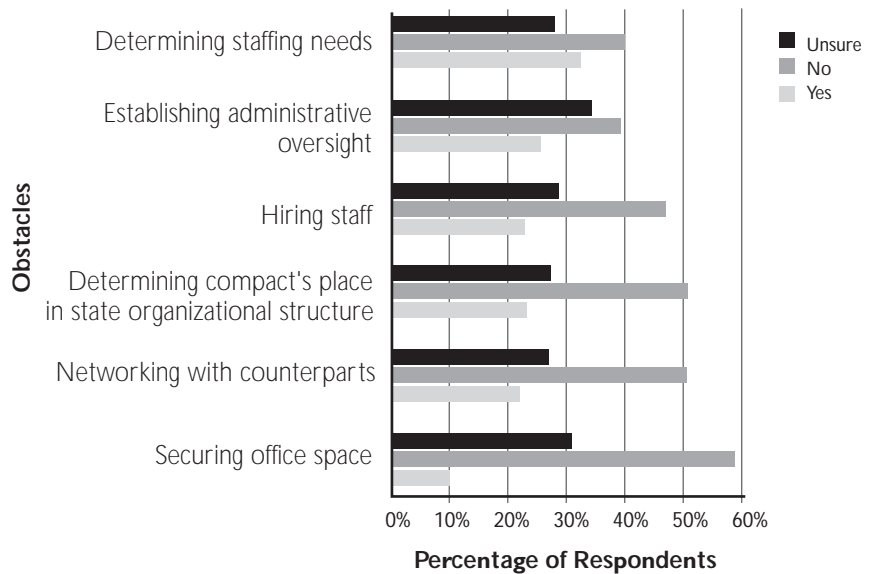
- Almost a third of respondents felt that determining staffing needs was problematic.

Several factors were believed not to be obstacles to this stage. For instance, almost 60 percent of respondents thought securing office space was not an obstacle to compact implementation, and a little more than half believed that networking with counterparts in other states and determining how the compact fits into their respective states' organizational structure were not obstacles. Hiring staff was not an obstacle for 47 percent of the administrators, and about 40 percent of them did not find determining staffing needs and establishing an administrative oversight body to be major obstacles.

Compact Administration

In the final stage of the interstate compact process, compact administration, compact administrators oversee the daily

Figure 3 Obstacles to Compact Implementation



Source: The Council of State Governments' survey, February 2004.

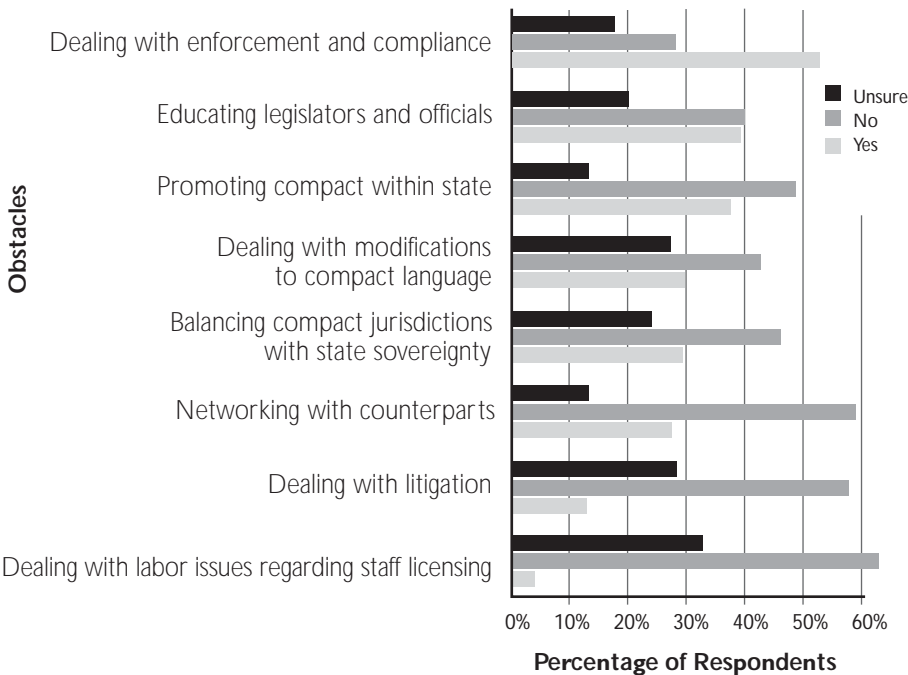
operations of the compact and execute the compact provisions. Obstacles to this stage are highlighted in Figure 4.

- More than half (52.3 percent) of administrators believed that dealing with enforcement and compliance of the compact's terms are obstacles in this stage.

operations of the compact and execute the compact provisions. Obstacles to this stage are highlighted in Figure 4.

- As in the development and enactment stages, educating legislators and state officials was once again one of the top-cited obstacles. It was identified as an obstacle in the compact administration stage by 39.8 percent of the administrators.
- And 37.8 percent of the administrators felt that promoting their compacts within their own states was problematic at this stage.

Figure 4 Obstacles to Compact Administration



Source: The Council of State Governments' survey, February 2004.

While 30 percent or more of the administrators cited these three obstacles, many respondents did not feel that the issues identified on the survey were impediments to compact administration. For example, the majority of administrators did not consider dealing with labor issues regarding licensing of staff who work in other states to be problematic, and most did not find networking with counterparts in other states to be an obstacle to compact administration. Dealing with compact-related litigation was not an obstacle for most of them. And almost half of the administrators felt that promoting the compact within their own states and balancing compact jurisdiction with member state sovereignty were not major barriers.

Types of Support to Aid the Interstate Compacts Process

The administrators were also asked to think about the needs of their current compacts and what types of support would be helpful to them. Their responses to potential kinds of support are outlined in Table 1.

Although networking with counterparts in other states was not considered a major obstacle in any of the four stages of the interstate compacts process, the most popular type of support among administrators was the desire for an outside organization to help provide networking opportunities for administrators. Compact administrators, typically, do not communicate with their colleagues who administer other interstate compacts, usually limiting their networking to the close-knit circle of experts who administer their particular compact in other states. Perhaps administrators want to expand their networking opportunities outside their own compact and learn about compact administration from people working on different compacts both within their state and in other states.

The majority of compact administrators also identified the need for assistance in the legal interpretation of compact requirements with more than half wanting non-technical explanations of compact requirements. This response stems directly from the fact that compact administrators typically are not attorneys and that few states offer comprehensive and timely legal assistance to compact administrators. It is understandable that they would need assistance in interpreting the sometimes complex and often evolving provisions of their compacts.

Many of the administrators expressed a need for common tools for use during the compact process, including administrative functions and structures, compact performance evaluation and new technological tools for the sharing of information across state lines. Further, by examining and sharing best practices in the field of compact administration, states could be able to streamline compact functions, eliminating redundancy and promoting some standardization in operations for a state's many compacts.

Administrators also liked the idea of a third party to help build coalitions to pro-

Table 1 Most Popular Types of Compact-Related Support

Type of Support	Percentage Who Thought It Would Be Useful
Networking opportunities for administrators	72.7%
Legal interpretation of compact requirements	71.5
Common tools for use during compact process	65.0
Coalitions to promote and support compacts	61.0
Information clearinghouse about compacts	61.0
Non-technical explanations of compact requirements	52.3
Monitoring/evaluation of federal activities' impacts on compacts	52.1
Help with determining all costs associated with compacts	47.5
Help with revising existing compact	43.7

Source: *The Council of State Governments' survey, February 2004.*

mote and support compacts and the concept of a clearinghouse of information related to compacts. They also thought it would be useful to have information on the impact that legislative and regulatory activity at the federal level would have on their compacts. And they also want help with determining the costs associated with their compacts as many compact offices operate on shoestring budgets and may not be able to meet the demands of the compact.

More than 40 percent of the respondents want help with revising their existing compact. When asked directly, "Is there need to make changes to your existing compact?", 46.2 percent of them said yes. This is significant in that it indicates that the body of existing compact law is outdated or in need of overhauling. While a majority of regulatory compacts were developed in the 1950s, 1960s and 1970s, the world has evolved at a much faster pace since then. As such, CSG has seen firsthand the need to revise agreements whose purposes are quite relevant, but whose internal mechanisms require modification and modernization. Further, aged interstate compacts often require updates to their purpose and policies. What was taken as sound policy in the 1950s may or may not be relevant today and issues that we take for granted today were not considered previously.

Conclusion

Interstate compacts go through four stages—development, enactment, implementation and administration. Compact proponents have encountered and may continue to face obstacles in each of these stages.

CSG has analyzed these obstacles and identified the types of support needed and wanted by compact administrators. In response, CSG has developed the National Center for Interstate Compacts to be an information clearinghouse on compacts, provide technical assistance and facilitate the creation and revision of compacts. For more information on this new center, visit www.csg.org (keyword: compacts).

Endnotes

¹William Kevin Voit, Nancy J. Vickers and Thomas L. Gavenois, *Interstate Compacts & Agencies 2003*, (Lexington, KY: The Council of State Governments, 2003). Much of the contact information was found and/or verified using Internet searches.

²The sample excluded compacts that are administered by separate interstate commissions, boundary compacts and compacts that have not been signed onto by more than one state.

³Thirty-five were deemed ineligible.

⁴Today, it is well established that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress. "Interstate Compacts – Backgrounder." <http://www.csg.org>

⁵Ibid.

Bio

Melissa Bell is the associate director of research for CSG. She is the author of several *Trends Alerts* on various topics of interest to state officials, including immigration, fiscal affairs and medical malpractice. She has a Ph.D. in public policy from the University of Kentucky. P.O. Box 11910, Lexington, KY 40578. (859) 244-8147. mbell@csg.org.