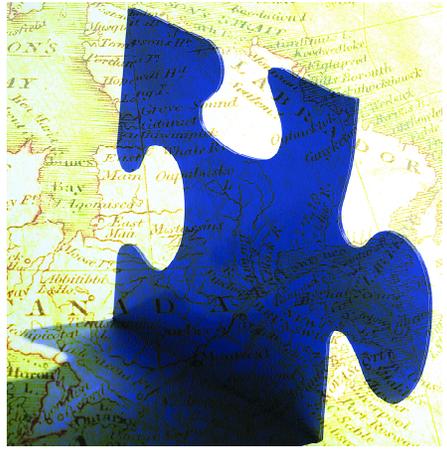




## Developing the Right Structure for Success

# 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 states 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 multistate compact.

