Interstate Compacts: Background, History and Modern Use

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Friday, February 21, 2014 at 10:14 AM

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NOTE: This is the first in an ongoing series about interstate compacts being developed by CSG’s National Center for Interstate Compacts.

Interstate compacts hold a unique place in American history. They were first referenced in Article I, Section X, Clause III of the U.S. Constitution and still represent the most structured and sustainable mechanism available to policymakers seeking state-driven solutions to a wide range of policy challenges. While the use of interstate compacts dates back to the founding of the country, the frequency with which they are used has expanded considerably since the end of World War II.¹ Compacts provide state policymakers with a sustainable tool capable of promoting interstate cooperation without federal intervention.

Contracts Between States
At their most basic level, interstate compacts are contracts between two or more states. As such, compacts are governed by the tenets of contract law, meaning an offer to enter the agreement is expressed by the first state to join the compact and accepted by each subsequent jurisdiction that also joins. A state voluntarily elects to join a compact in the same way that any piece of legislation is passed and adopted.

States have used interstate compacts to address a variety of challenges, including:

- Resolving boundary disputes;
- Managing shared natural resources; and
- Creating interstate administrative agencies in a wide range of policy areas, including tax reform, education, criminal justice, licensing, and energy and environment.

This diversity is one of the primary benefits interstate compacts provide. They can be used to address a variety of challenges, from the very simple to the extremely complex. Compacts also provide other advantages, such as allowing states to maintain their sovereignty by providing a means to act collectively outside the confines of federal legislation or regulation. Compacts let states develop a dynamic, self-regulatory system that remains flexible enough to address changing needs.

The History of Interstate Compacts
The use of interstate compacts has evolved considerably throughout the course of American history. As of 2013, more than 200 interstate compacts were active, with each state belonging to about 25 separate compacts. Virginia is a member of the most compact, adopting more than 40 different agreements,
while Hawaii has the fewest agreements—about 15 active compacts.\(^2\)

Most of the earliest compacts were bistate agreements intended to resolve border disputes. Border compacts represent the simplest form of the mechanism, with no oversight authority or governing structure required for enforcement. As the use of compacts became more common, compacts grew in sophistication. In the early part of the 20th century, states began entering into what would eventually become known as advisory compacts. These agreements between two or more states often were used to create study commissions to examine a problem and report their findings to the member states. While advisory compacts represented an evolution in the use of interstate compacts, they still lacked any kind of formal governance structure or enforcement procedures.

The creation of the Port Authority of New York and New Jersey in 1922 through an interstate compact signaled a significant shift in the use and application of interstate compacts.\(^3\) States began using them for the first time to establish regulatory agencies with the authority to act on the state’s behalf. While the formation of the port authority ushered in a new era, states really began using compacts as a means to resolve challenging policy questions beginning in 1955 with the creation of administrative compacts.

**INTERSTATE COMPACTS: ADVANTAGES AND DISADVANTAGES**

**ADVANTAGES**
- Flexible and Enforceable
- Interstate uniformity without federal intervention
- States maintain collective sovereignty
- Alternative to federal pre-emption

**DISADVANTAGES**
- Lengthy and challenging process
- Lack of familiarity with the mechanism among state government officials and the public
- Perceived loss of individual state sovereignty
- Delegation of state regulatory authority to an interstate agency

**Administrative Compacts**

Administrative compacts are often the most intricate of all compacts and have the most extensive administrative apparatus. Administrative compacts typically require the creation of an interstate agency to oversee an ongoing policy area. These agencies, typically known as commissions, often serve as quasigovernmental agencies and have the authority to pass rules, form committees, establish organizational policy, seek grants and ensure compliance with the compact. Additionally, many modern administrative compacts create a national office and hire staff to carry out the day-to-day operations of the compact.

While opponents of interstate compacts would argue these functions simply result in another level of bureaucratic red tape, administrative compacts have the unique ability to create economies of scale, saving states valuable resources during challenging fiscal times. For example, the Interstate
Compact for Adult [4] Offender Supervision [4], which was redrafted in 2004 by The Council of State Governments and the U.S. Department of Justice, is tasked with tracking the movement of adult criminal offenders and parolees across state lines. In order to streamline this process, the commission developed an online tracking system to create a more efficient monitoring process. The online monitoring system reduced what used to be a multiweek process down to a matter of minutes. With all 50 states and the four U.S. territories as members, the compact and the work of its commission have saved dollars and reduced staff time, saving states valuable resources.

Modern administrative compacts also provide states a number of additional advantages. Administrative compacts frequently have a clearly defined governance structure, ensuring that mechanisms are in place to resolve disputes between member states. The compacts also typically call for the creation of standing committees, which have the ability to make decisions and allow the compact to evolve over time.

Equally important, administrative compacts allow for flexibility and necessary adjustments through the promulgation of rules. While each member state of an interstate compact adopts nearly identical language, the rule-making authority that is frequently granted to commissions in administrative compacts ensures that the compact can evolve in a changing world without having to seek statutory change each time.

To learn more about CSG’s Compact Center, visit www.csg.org/ncic [5] or contact Crady deGolian at cdegolian@csg.org [6].

Resources:

- National Center for Interstate Compacts [7]
- National Center for Interstate Compacts Database [8]
- National Center for Interstate Compacts Resources [9]

References:

2 National Center for Interstate Compacts Database [10].

Interstate Compacts: Background, History and Modern Use [11]

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