INTERSTATE COMPACTS

The Council of State Governments
Sharing Capitol Ideas.
What is an Interstate Compact?

- Simple, versatile and proven tool
- Effective means of cooperatively addressing common problems
- Contract between states
- Creates economies of scale
- Responds to national priorities with one voice
- Retains collective state sovereignty over issues belonging to the states
History

• Interstate Compacts are rooted in the colonial past.

  *Because each colony was independent, disputes between them were worked out by negotiation that was submitted to the king for approval.*

• Interstate compacts are not new.

  *What has changed in the last century is the use of interstate compacts to create on-going administrative agencies.*
Congressional Consent

Compacts between States are authorized under Art. I, Sec. 10, Cl. 3 of the U. S. Constitution

No State shall, without the Consent of Congress . . . enter into any Agreement Compact with another State . . . “ U.S. Supreme Court holds, in effect, that “any” doesn’t mean “all” and consent isn’t required unless the compact infringes on the federal supremacy.

[See U.S. Steel Corp. v. Multi-State Tax Commission, 434 U.S. 452 (1978)]
Congressional Consent (Cont’)


Such Compacts are enforceable under the Supremacy Clause and the Contract Clause; But they remain subject to control of party states, which may amend or repeal them.

The Lack of Congressional Consent does not make such compacts unenforceable because they remain statutory contracts between states protected from impairment under the Contract Clause of the U.S. Const., Art. I, Sec. 10, Cl. 1 (See Dyer ex rel. W.Va. v. Sims, 341 U.S. 22, 28 (1951); Alabama v. North Carolina, 560 U.S. 330 (2010))
3 Primary Uses

1. Used to resolve boundary disputes.

2. Used to manage shared natural resources.

3. Used to create administrative agencies which have jurisdiction over a wide variety of state concerns:
   - State transportation
   - Taxation
   - Environmental matters
   - Regulation
   - Education
   - Corrections
   - Public safety
   - Licensure
Compacts

• Approximately 215 active compacts

• About 40 are inactive

• On average, each state is a member of 25 compacts

• Precedence for international participation

• Port Authority of NY & NJ (1922) signaled a new era in regulatory compacts.
Other Forms of Multistate Cooperation

Multistate Legal Actions
- Joint legal actions
- Tobacco settlement by NAAG

Uniform State Laws
- Uniform Law Commission
- No involvement with “collective action” per se

Administrative Agreements
- Executive agencies
- Formal or informal
Interstate Compacts – Key Benefits

1. Effectiveness and efficiency
   • *Economies of scale*

2. Flexibility and autonomy compared to national policy
   • “One size does not fit all”

3. Dispute resolution among the states

4. State and Federal partnership

5. Cooperative behaviors leading to “win-win” situations
Interstate Compacts – Operational Benefits

• National data & information sharing systems
• Uniform compact language and rules
• Proven governance structures
• National interface with external stakeholders / national organizations
• Coordination with other interstate compacts
• National office and staff (if necessary)
A state legislature’s ability to delegate regulatory authority to an administrative agency is “one of the axioms of modern government”

Justice Felix Frankfurter

Extends to the creation of interstate commissions by compact

*West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951)
Notable Compacts Developed by CSG

• Interstate Compact for Adult Offender Supervision
• Interstate Compact for Juveniles
• Interstate Compact on Edu. Opportunity for Military Children
• Midwest Interstate Passenger Rail Compact
• Surplus Lines Insurance Compact
Notable Medical and Licensing Compacts

• Nurse Licensure Compact – 24 States
• Compact on Mental Health – 45 states
• Drivers Licensing Compact – 50 states
• Emergency Management Assistance Compact – 50 states
• EMS Licensure Compact – In development
• Medical Licensure Compact – In development
• Physical Therapy Compact – In development
# Interstate Compacts – Development

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<th>Advisory Phase – (4-6 Months)</th>
<th>Drafting Phase – (8-12 Months)</th>
<th>Education and Enactment (18 months – 2 legislative sessions)</th>
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| • Composed of state officials, stakeholders, & issue experts  
  • Examine the issues and current policy spectrum  
  • Examine best practices and alternative structures  
  • Establish recommendations as to the content of an interstate compact  
  • Examine the need for Congressional Consent | • Composed of 5-8 state officials, stakeholders, issue experts (typically some overlap w/ Advisory)  
  • Craft interstate compact solution based on Advisory Group recommendations  
  • Circulate draft compact to specific states and relevant stakeholder groups for comment | • Drafting team considers comments and incorporates into compact  
  • Final product circulated to Advisory Group  
  • Released to states for consideration |
National Advisory Panel -- Goals

- Driven by state officials and subject matter experts
- Examine challenges, obstacles, and opportunities surrounding a particular topic
- Make recommendation to move forward with drafting a compact
- Establish specific recommendations to include in the draft
- Consider minimum threshold necessary to “trigger” compact commission
- Be inclusive
National Advisory Panel – Key Players

- State Government
  - Governors and policy staff
  - Executive agency directors
  - Legislative leaders
  - Legislators and staff

- External Stakeholders
  - National Associations/Groups
  - Academic/Scientific researchers
  - Federal Agencies

- Compact Experts
Drafting Team -- Goals

- Craft interstate compact solution based on recommendations of the Advisory Group
- Establish governance structure and adequate rule making procedures
- Circulate draft language to “test” states and relevant groups for comment
- Adjust compact language as appropriate
- Plan education and outreach phase
Drafting Team -- Considerations

• General considerations
  • Definitions
  • Purpose statement
  • Core articles
  • Internal organization and governance

• What to include?

• What can be sold?
Interstate Compacts – Model Development Process (Cont.)

Education and Enactment

- Drafting team considers comments and incorporates into compact
- Final product circulated to Advisory Board
- Released to states for consideration
- Education efforts developed simultaneously to support states considering new compact language
Contact Information

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Visit CSG’s National Center for Interstate Compacts online at:

www.csg.org/ncic