

Interstate Compacts

Overview & Use



The Council of State Governments

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.
- Thus interstate compacts are not new. What has changed in the last century is the use of interstate compacts to create on-going administrative agencies.

The Compact Mechanism

- A simple, versatile and proven tool
- Principal advantage: provides states with an effective, enforceable means of cooperatively addressing common problems – even though their own laws may differ – without relinquishing authority to the federal government

Compacts

- Approximately 200 compacts formed since the founding of the U.S.
 - About 38 are inactive
 - On average, each state is a member of 23 compacts
- Creation of the Port Authority of New York and New Jersey in 1921 signaled a new era in regulatory compacts.



Racing & Gaming

- Tri-State Lotto Compact
- Multi-State Lottery Agreement
- State & Indian Gaming Compacts
- * National Racing Licensing Compact

Interstate Compacts

- Agreements between states authorized under Article I, Section 10, Clause 3 of the U.S. Constitution – the “Compact Clause”
- “No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State”
- The U.S. Supreme Court has consistently held that Congressional consent is only required for compacts that tend to increase the political power of the states in a manner that encroaches upon or interferes with the just supremacy of the United States.
[U.S. Steel Corp. v. Multi-state Tax Commission, 434 U.S. 452 (1978)]

Interstate Compacts

- *Key Benefits* -

1. **Effectiveness and efficiency**
 - *Goal achievement with lower costs (economies of scale)*
2. **Flexibility and autonomy compared to national policy**
 - *“One size does not fit all”*
3. **Dispute settlement among the states**
4. **State sovereignty**
 - *Protection against “coercive regulatory federalism”*
5. **Cooperative behaviors leading to “win-win” situations**
6. **Threats of Federal preemption or mandates**
 - *Disparate state regulatory statutes*
 - *Technology development*
 - *Lobbying by other special interest groups*

Interstate Compacts

- *Operational Benefits* -

- National data & information sharing systems
- Enhanced enforcement and compliance mechanisms
- Uniform compact language and rules
- National office and staff *(if necessary)*
- Effective governance structures
- Centralized national training
- Uniform operations and procedures
- National interface with external stakeholders / national organizations
- Coordination with other interstate compacts

Interstate Compact Development

- *Key Players* -

State Government

- Governors and policy staff
- Elected executive officials
- Executive agency directors
- Legislative leaders
- Legislators and staff
- Legislative Service Agency directors

External Stakeholders

- National Associations / Groups
- Media
- Academic / Scientific Researchers
- Industry
- Federal agencies

Common Law

Contract Principles

- An offer to enter the agreement is expressed by statutory language enacted by the first state to join the compact and each subsequent jurisdiction accepts this offer by enacting statutory language, which is substantially similar to that enacted by the offering jurisdiction;
- Once enacted by two or more states, a compact, like any other contractual agreement, is protected from impairment by the states under Article I, Section 10, Clause 1 of the U.S. Constitution;
- Although a state cannot be bound by a compact to which it has not consented, once enacted a compact takes precedence over conflicting statutes of the state;
- A state cannot unilaterally nullify, revoke, or amend one of its compacts if the compact does not so provide.

Questions

Additional Questions

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Interstate Compacts

- *Education & Enactment* -

Education

- Develop comprehensive *Resource Kit* and other print promotional materials
- Develop informational Internet site with state-by-state tracking and support documents
- Convene “National Legislative Briefing” to educate state legislators and other key state officials

State Support

- Develop network of champions (state legislators, Governors, etc.)
- Provide on-site technical support and assistance (state-by-state via network)
- Provide informational testimony to legislative committees considering the compact

State Enactments

- Track and support state enactments
- Prepare for transition and implementation of compact
- Provide requested support as needed

3 Primary Purposes

- Resolve boundary disputes;
- Institutionalize and manage interstate issues pertaining to allocation of natural resources;
- Create on-going administrative agencies that have jurisdiction over a wide variety of concerns:
 - State transportation
 - Taxation
 - Environmental matters
 - Regulation
 - Education
 - Corrections
 - Public safety

Uses of Compacts cont.

- Many well known compacts:
 - NY-NJ Port Auth. Compact of 1921
 - Colorado River Compact (1929)
 - Interstate Compact on the Placement of Children (1960)
 - Washington Metropolitan Transit Authority Compact (1966)
- Increasingly common, broader in scope, more frequent use for regulatory purposes.

Interstate Compacts

- Bottom Line -

- Self-interests v. **Cooperative Behaviors**
- Individual v. **Collective Actions**
- Disparity v. **Uniformity**
- State Rivalry v. **State Alliance**
- Competition v. **Cooperation**
- **“Federalism without Washington”**

Interstate Compacts

- *Transition & Operation* -

Model Process

Transition

- Enactment threshold met
- State notification
- Interim Executive Board appointed
- Interim Committee's established (*if needed*)
- Convene first Compact meeting

Operation

- Ongoing state control and governance
- Staff support
- Annual meeting
- Long-term enhancements / upgrades