Interstate cooperation:
Interstate compacts make a comeback
by John J. Mountjoy

Interstate compacts are a distinctively American invention. They allow state governments to work across political and geographic boundaries to address a multitude of critical public policy issues.

The popular use of interstate compacts in the first two-thirds of the 20th century laid the groundwork for unprecedented interstate cooperation.

As we enter the 21st century, this age-old tool for states is enjoying resurgence in areas that are uniquely fitted to the states, including emergency management, corrections, juvenile justice and taxation.

Compact 101
Interstate compacts are contracts between states that carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Compacts are not a solution per se, but rather they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard or to cooperate in a critical policy area.

The law and use of interstate compacts is not particularly complex. Like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states.

Although typically overlooked as a state policy option, more than 200 interstate compacts exist today. Whether large or small, compacts play a role in everyday state relations and activities.

Most interstate compacts cover rudimentary functions, such as regulating boundaries and water rights, and have less than 15 signatories. For example, the Waterfront Commission Compact between New Jersey and New York regulates the practices in handling waterfront cargo in the Port of New York.

Several interstate compacts have 50-state membership, or close to it, and are managed by administrative or regulatory agencies. The American Association of Motor Vehicle Administrators oversees the Drivers’ License Compact, which facilitates recognition of drivers’ licenses issued in other states. The Interstate Compact for Education, administered by the Education Commission of the States, maintains close cooperation among executive, legislative, professional and educational leadership on a nationwide basis at the state and local levels.

Compact role
Some may question the need for interstate compacts to address multi-state policy issues. Why not leave such regulation to the feds?

During his 10 years as GEMA director, McConnell has played an instrumental role in developing and promoting a successful interstate compact—the Emergency Management Assistance Compact, or EMAC. EMAC allows state emergency management agencies to cooperate and share resources in the event of natural and man-made disasters.

“We can go to the federal government for all kinds of help when natural disasters strike, but the states [cooperating under an interstate compact] can provide specific resources quicker, which are likely to be problem specific,” McConnell said. “It’s less bureaucratic, and it’s far cheaper. It’s easier for us under EMAC to obtain resources from surrounding states than it is to use federal assistance, which we’d end up having to pay more for anyway. I suspect this is the case with many other interstate compacts as well.”

“States are rediscovering that they have the power to address their own problems better than the federal government,” said Rick Masters, The Council of State Governments’ legal counsel and special counsel for interstate compacts.

CSG, which has tracked interstate compacts for more than 40 years, maintains a clearinghouse of compact information. More recently, CSG helps administer EMAC and is facilitating the update of the Interstate Compact for Adult Offender Supervision and the Interstate Compact on Juveniles.

Compact history
Article I, Section 10, Clause 3 of the U.S. Constitution laid the legal foundation for interstate compacts: “No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.” Compacts actually preceded the Constitution, having been used in colonial times to resolve boundary disputes between colonies.

Prior to the 1920s, interstate compacts were typically bi-state agreements, addressing boundary disputes and territorial claims. In fact, only 36 interstate compacts were formed between 1783 and 1920. It is only in this century that states have turned to interstate compacts to facilitate cooperative solutions to multi-state problems.

After a lull in the late 1970s and early 1980s, interstate compacts are beginning to enjoy a resurgence. Since the early 1990s, states have initiated or updated several high-profile compacts. Examples include EMAC, the Interstate Compact on Industrialized/Modular Buildings and the Interstate Insurance Receivership Compact.

Compact future
Interstate compacts can set the framework for cooperative solutions to today’s cross-state challenges, from policing drugs to supplying energy or controlling sprawl.

“Issues within the states are becoming more complex and aren’t confined by state boundaries. As a result, solutions are becoming multi-state as well. Compacts are the only tool that is truly adequate for addressing these multi-state issues,” said Bill Voit, senior project director at The Council of State Governments.

An example is an interstate compact being considered to facilitate taxation of e-commerce.

Opponents of Internet taxation claim that it would be virtually impossible for online vendors to comply with the complex, often confusing system of state and local sales and use taxes. Since Internet sales are expected to reach $184 billion annually by 2004, states have a vested interest in breaking down this and other barriers to taxing online transactions.

Congress currently is considering the Internet Tax Moratorium Equity Act (S. 512) to help states simplify their sales and use taxes, in part by authorizing states to enter into an Interstate Sales and Use Tax Compact. The compact would create a “uniform, streamlined sales and use tax system,” convenient to remote sales.

At least 18 states are considering the model streamlined sales tax legislation in 2001. Kentucky, South Dakota, Utah and Wyoming already have signed bills into law.

Existing interstate compacts, many drafted in the 1930s, 1940s and 1950s, are ripe for amendment and revision. Technology and the Internet now make the sharing of information seamless and immediate, yet several interstate compacts are plagued by inadequate administration.

“Not only do we see the development of new compacts, but we are seeing the re-examination of existing compacts…revising them to keep pace with our changing world,” Masters said.

Developed in 1937, the Interstate Compact for the Supervision of Parolees and Probationers is one example of a compact in need of update. Adopted by all 50 states, the compact regulates the movement of parolees and probationers across state lines. The burgeoning offender population and the ease with which offenders now can travel have created several problems for the compact, including: frequent violations of compact rules, inability to enforce compliance, difficulty in creating new rules and slow, unreliable exchange of case information.

The antiquated compact needed a replacement that would provide states the authority, enforcement tools and resources to adequately track and ensure supervision of parolees and probationers.

The new interstate compact, the Interstate Compact for Adult Offender Supervision, provides these solutions. The new compact includes mechanisms for enforcement, accountability,
resource provision, information sharing and state-to-state cooperation. Currently, the compact has been introduced in 39 states and enacted in 18.

Just as technology can smooth the operation of interstate compacts, alternative dispute resolution techniques can increase their self-sufficiency. Enforcement tools within interstate compacts need to utilize more of the mediation and arbitration services that have proven successful throughout state government. By developing additional self-contained enforcement mechanisms, compact members would not need to rely solely on the crowded docket of the U.S. Supreme Court.

States should further utilize interstate compacts to address new problems and create new methods of interstate cooperation. If not, federal preemption in certain policy areas is a distinct possibility.

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**Internet resources**

CSG’s Interstate Compact Directory
ssl.csg.org/compactlaws/comlistlinks.html
The Council of State Governments maintains an online clearinghouse on interstate compacts, including a comprehensive guide and links to existing compacts.

Interstate Compact for Adult Offender Supervision
www.csg.org/clip/policy/isc.htm
An interactive, up-to-the-minute source on the compact, including fiscal notes, state-by-state status, FAQ on the compact, case studies and downloadable compact language.

Emergency Management Assistance Compact
www.nemaweb.org/emac/index.cfm
The site is your one-stop source for news and information for EMAC.

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**Compact case law**

In our federalist society, certain powers are delegated to each level of government. As such, interstate compacts are a tool reserved to the states and approved by Congress. The U.S. Supreme Court — the most widely used enforcement tool for interstate compacts — has affirmed this fact on the rare occasions that compacts have been legally challenged.

- *West Virginia, ex. rel. Dyer vs. Sims, 341 U.S. 22* (1951). The Court specifically referred to the state legislature’s adoption of and delegation of power to an interstate compact agency made up of its’ sister states as “one of the axioms of modern government” and as “a conventional grant of legislative power.”
• Cuyler vs. Adams, 449 U.S. 433 (1981) and U.S. Steel Corporation vs. Multistate Tax Commission, 434 U.S. 452 (1978). The Court reinforced the role of interstate compacts in the relationships between states, as a tool to be used by the states and approved by Congress.

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Compacts by the numbers
13 Interstate compacts with 25 or more members
14 Fewest compact memberships by a state (HI & WI)
42 Most compact memberships by a state (NH & VA)
27 Average compact memberships by a state
36 Compacts developed prior to 1920
150+ Compacts developed since 1920
200+ Interstate compacts currently in operation