

Bi-State Compact Agreements

Introduction

Major surface transportation infrastructure projects funded with federal dollars often involve more than one state. Interstate compacts are a useful way for states to cooperatively pursue such projects for the common good. Under current federal law, congressional approval is required for each interstate compact agreement. This requirement is both time consuming and a disincentive to project development. It can take years to obtain congressional approval leading to delays in the implementation of important bi-state infrastructure projects.

Moreover, owing to the challenges of obtaining Congressional approval for every interstate compact, states may look to other, non-binding opportunities to facilitate bi-state coordination for the development of major infrastructure projects. These non-binding agreements do not create the enduring decision making framework that a compact agreement does and can result in a variety of issues including:

- Lack of effective dispute resolution mechanisms
- Increased or even fundamental project risks for private participants
- Failure to reconcile inconsistencies in the law of the participating states
- Failure to implement consistent requirements related to tolling, vehicle miles travel (VMT) and other revenue generation

Proposition

In order to streamline this process, we propose that Congress adopt a general authorizing statute that allows states to enter into interstate compacts for the purpose of delivering surface transportation projects without specific congressional authorization then being required for each agreement. The goal of AIAI's current effort in this area is to develop a framework for such a statute that would promote cooperative problem-solving and the coordinated development of policy for projects that are regional and bi-state in nature.

Such regional and/or bi-state cooperatives can provide the states with the ability to confront their significant infrastructure challenges with a solutions-based system and further incentivize interstate cooperation through a streamlined process. Such framework would then form the basis of a general federal authorizing statute for interstate compacts, addressing a time-consuming and inhibiting project-by-project processes of Congressional approval, which often can only be pursued when a project is well into initial development.

Successfully advancing a major bi-state infrastructure project, especially a revenue generating project, requires coordination at all levels of government. A well-documented process that includes clearly defined decision making and internal dispute resolution processes should be the first order of priority. Creating guidance and approved templates at the Federal level will have the potential to accelerate project development and ensure that state leadership has the appropriate controls in place as they address these joint agreements. Such a framework would be permissive in nature and would not infringe the rights of states to collaborate in less formal ways if they determine it to be in their collective best interests.

The U.S. Supreme Court has firmly established that Congressional consent transforms an interstate compact within the Compact Clause into a law of the United States. See *Cuyler v. Adams*, 449 U.S. 433, 438, 101 S.Ct. 703, 706, 66 L.Ed.2d 641 (1981). This results in a binding and enforceable agreement between the states. Without consent of Congress, disputes between states have original jurisdiction in the U.S. Supreme Court and cannot be litigated in any other court. Once a compact is in place however, disputes related to an interstate compact can adjudicated in the same fashion as any federal statute.

When adjudicating a dispute arising from an interstate compact to which Congress has consented (proactively in this case) a court must make its decision based on the compact alone and may not order relief inconsistent with its express terms. Forming an interstate compact with the consent of Congress provides certainty that no other bi-state collaboration framework, even a formal agreement, can provide, particularly if the compact provides an internal process for remedies and dispute resolution.

Conclusion

Congress has the authority to adopt a general authorizing statute that allows states to enter into interstate compacts without specific congressional authorization for each agreement. A good example of this is set forth in 23 U.S.C. 134 and provides advanced authorization of compacts for the creation of Metropolitan Planning Organizations. The goal of the current effort is to develop guidelines and a framework to be included in a general federal statute that, if enacted by Congress, would greatly facilitate the use of interstate compacts as a tool for regional and bi-state infrastructure development. This is not intended to create additional government oversight, but rather create a forward-looking mechanism which will allow for a more concentrated, efficient, and effective use of interstate compacts to advance surface transportation infrastructure improvements.

This is a good government solution that does no harm, has no cost impact, and will do a great deal to help states collectively address the significant challenges our nation faces for surface transportation projects that cross state boundaries.