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## Western Interstate Nuclear Compact:

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### Introduction:

The Western Interstate Nuclear Compact was a law passed in Western U.S. States for the purpose of employing technological advancements in nuclear and adjacent areas of study. The benefits of nuclear and technological advancement being important for energy cooperation and enhancement of the economy in the West. This legislation is the legal Basis for the Western Interstate Energy Board<sup>1</sup>. The Western Interstate Nuclear Compact was initially passed in 1970 by congress, for the purpose of facilitating the states cooperation in this endeavor. The legislation that was passed by congress in 1970, was verbatim passed by state legislatures. Utah passed this legislation in 2008. The board was likely created due to state requests of congress, given many states passed their respective legislation before 1970, when congress originally passed it, but needed congressional permission/oversight due to the commerce clause. The main purpose of this legislation was to create a board, and delegate certain powers to this board. The board was considered an agency and the authority given to the board will be detailed later. What has actually happened was not exactly what the legislation enacted at the time, as changes over time change policy needs. This has come to a transition of this being nuclear focused, to this board developing the purview of examining energy issues in its entirety. The Western Interstate Energy Board provides resources that demonstrate this change over time. This research brief will analyze the legislation, the Western Interstate Energy Board, and implications/possibilities of the policy.

## Legislation:

The legislation pertained to The Western Interstate Nuclear Compact and later the The Western Interstate Energy Board originated in Congress in October of 1970. This legislation is divided clearly into Articles. These Articles consist of: I: Policy and Purpose, II: The Board, III: Finances, IV: Advisory Committees, V: Powers, VI: Mutual Aid, VII: Supplementary Agreements, VIII: Other Laws and Regulations, IX: Eligible Parties, X: Severability and Construction.

### **Article I: Policy and Purpose**

The purpose of this legislation was to employ technological advancements in nuclear and energy, for the purpose of guiding the growth of nuclear energy and other energy related technological advancements. Cooperation was a central aspect of the purpose of this legislation, so that states could cooperate in regulation, aid, advancement, and other aspects of coordination.

### **Article II: The Board:**

This legislation creates the Western Interstate Nuclear Board. The board was made to consist of one member from each party state, wherein each respective state determines the method by which that member of the board is appointed. The board will also appoint their own chairman, vice-chairman, and treasurer. There will be more on the board later.

### **Article III: Finances**

The board will submit its estimated expenditures to the governor of each party state, complying with necessary requirements for it to be put into the state's respective budget. These funds should be apportioned equally to all of the party states. The board has the responsibility to pay for necessary accommodations for board members to attend board meetings. The board has a requirement to keep accurate records of receipts and disbursements, and have an annual audit. The board cannot incur any financial obligations before they have received the funds for that obligation from the party state.

### **Article IV: Advisory Committees**

This article provides a basic outline allowing the board to establish committees it deems necessary. The legislation specifies that these committees can consist of a wide range of stakeholders, laymen, experts, private citizens, and representatives from industry, labor, agriculture, medicine, education, etc. It is not limiting and is pretty ambiguous for the purpose of giving them flexibility in this authority.

### **Article V: Powers**

By far the longest portion of this legislation, this consists of almost ¼ of the entire Western Interstate Nuclear Compact. Powers will be analyzed in greater depth in a later portion of this brief, however for a brief inventory, the powers delegated are generally limited to advisory roles, and encouragement roles. There are some tools here for the committee to work with, including educational roles, however there are no delegated roles for the purpose of rulemaking as other federal agencies have. While this is indeed not a federal agency, it has been referred to as an agency, so this section does clarify the powers that this "agency" has, and appropriates it as more of an advisory committee.

### **Article VI: Mutual Aid**

The aid given in this legislation is specifically pursuant to a nuclear incident, parties who belong to the compact have the duty to aid as much as possible. It does not necessarily state whether

this article would apply to only nuclear incidents. Given that only subsection a mentions nuclear incidents, and does not clearly apply it to the following subsections, nor make the request for aid necessarily dependent upon coping with a nuclear incident, it could be argued that requests could be made under this compact for aid that are not nuclear related are warranted. There would also be some sort of precedent in the fact that as the Western Interstate Nuclear Board has evolved to the Western Interstate Energy Board, as the legislation states in its purpose that it should also address related technological improvements, and the relation would be on the basis of energy. It becomes a bit of a “spirit of the law vs letter of the law” situation. The stricter interpretation, by the letter of the law, would assert that the aid requests that are of nuclear nature, by this compact, are the only aid requests that there is a duty of party states to contribute aid to. This is what this legislation particularly says, and is a more likely interpretation of this legislation. Regardless, the article contains additional subsections, giving authorities aiding in such an event the respective authority of their requesting state counterparts. It further absolves those individuals of liabilities should they arise, while positioning requesting states in the position to assume liability in such cases.

#### **Article VII: Supplementary Agreements**

This portion of legislation carves out some room to clarify that two states can enter into a joint venture or project together on related details, as long as that specific project is not already being done under this compact, and details some of the requirements of such a compact, such as financial commitments, terms of termination, etc. Supplementary agreements entered into pursuant to this compact must be agreed to by the board, and if they do not conflict with existing products, they would vote to approve the agreement. There are additional stipulations outlining that those supplementary agreements don't undermine, change or absolve any responsibilities member parties in the Western Interstate Nuclear Compact have.

#### **Article VIII: Other Laws and Relations:**

Article eight ties up some potential legal loose ends and loopholes. It states that this compact is not a way to get around any other laws, regulations, or duties the member parties (states) have, does not diminish the role, responsibilities, and rules any other agencies may have, especially federal agencies. It also does not change any of the member parties' state laws, nor allow the board to own or have any sort of nuclear energy project.

#### **Article IX: Eligible Parties, Entry into Force and Withdrawal**

Eligible states in this article are Alaska, Hawaii, Washington, Oregon, California, Idaho, Nevada, Arizona, Utah, Montana, Wyoming, Colorado, and New Mexico. The legislation states that once a state legislature enacts this legislation into their respective state law, they become a party to the compact. In Utah's case, this happened in 2008. This compact was additionally not effective until five states joined, which appeared to happen in 1969 when the compact reached 7 members. In order to withdraw, a repeal of the legislation needs to be passed, and the governor needs to inform the governors of the other party states, once this has happened then in two years the state will be withdrawn. Additionally, withdrawal does not absolve the party state from any liability incurred prior to withdrawal. This portion also states that Guam or American Samoa can join the compact, if their respective legislatures pass this legislation, and the board votes in favor. Additionally the mutual aid clause does not apply unless they specifically adopt it in full force, and they may not vote on the board unless this happens, (they become a full party to the contract)

## Article X: Severability and Construction

This clause states that if anyone says there is anything in this legislation that does not allow a member state to leave, it is wrong and invalid. It additionally states that if this clause is against a state constitution, it has no effect on other member states, the compact, or the ability for other party states to participate in this compact.

## Western Interstate Energy Board:

Based on available information, it seems that every state eligible has joined, except Hawaii and Alaska<sup>5</sup>. The Western Interstate Energy Board consists of members from all the mentioned states, including British Columbia and Alberta, Canada. It is worth mentioning that Utah, New Mexico and a member representing the U.S. Government have vacant spots. In continuation, the fact that British Columbia and Alberta have positions on the board is intriguing. The legislation initially provided in the 1970 Western Interstate Nuclear Compact does not list either of these two, or any, Canadian Provinces as eligible parties for the agreement. However, that does not mean that there has not been legislation passed since this that would allow for them to join as parties. It is within both the U.S. and these Province's economic interests to give them seats on the board. There are two major reasons for this, one of them being the degree of separation these states have from the rest of the major population of Canada. These provinces are relatively aligned with the United States at a cultural and economic level. This comes primarily from a geographic separation. Additionally, due to Alberta's notorious oil production, and massive oil exports to the United States<sup>6</sup>, Alberta in particular is heavily invested in the western United States energy market. Due to this, it would be reasonable for the U.S. and western states to want to include these additional key pieces to western energy coordination.



The board consists of additional subcommittees as well, such as the advisory committees originally laid out in the 1970 Western Interstate Nuclear Compact. These subcommittees consist of: Western Interconnection Regional Advisory Body (WIRAB), Committee on Regional Electric Power Cooperation (CREPC), Western Energy Markets Body of State Regulators (WEM-BOSR), Committee of State Representatives (COSR), Markets+ State Committee (MSC), and two nuclear committees: High-Level Radioactive Waste Committee (HLRWC) and Waste Isolation Pilot Plant Transportation Technical Advisory Group (WIPP TAG). These various additions to the board, and subcommittees demonstrate what would be reasonable to observe in any energy market, shifting needs, matters of attention, and necessary shifts in focus. This is an indication of change over time in the energy market, including the adoption of new technologies, realized social and economic costs to certain projects, regulation coordination and potentially uniformity across jurisdictions, and interstate (even international) commerce. These priorities can shift between legislation, presidential administrations, consumer preferences, technological advancements, capital investments, and more.

## The Powers of the Board:



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The powers that the board has, as mentioned previously in analysis of the legislation of the Western Interstate Nuclear Compact, are generally limited to advisory roles. The powers mentioned in legislation pertain to the following duties: encourage, promote, analyze, conduct, organize, study, recommend, advise, cooperate, etc. The biggest power is the

ability for the board to be a subcontractor for the Federal Government or other participating party states. This is probably the biggest functional tool that this board has. But given this power and its ability to spend money, it does have some authority to develop, adjudicate, and administer funds to different projects or organizations. One of these things includes cooperation with the private sector, which was relatively ambiguous regarding what that cooperation included. It also could recommend and conduct training, but in terms of its functional powers, that seems to be as far as it goes.

However, not all power in life or in government comes from the ability to make rules or legislate. Given the clear ability for the board to acquire and spend money, there is a good amount of room here for the board to spend funds. The projected budget for the board, in FY2025, is just shy of \$5 million<sup>7</sup>. This is not necessarily a lot, but there is plenty of room for the board to do what it was created to do: recommend policies, recommend regulations, and provide education. The board has the ability to conduct studies, surveys, and analyze data. This type of coordination with the intangible facts, stakeholders in the private sector, and even private citizens allows for strong, well thought out findings and policy recommendations. When these findings from the board are demonstrated to state legislatures in a consistent manner, that can draw an evident conclusion to consider and reasonable policy recommendations, it can shape the energy sector in the region, let alone a single state.

The majority of the board's work includes workshops, policy surveys, studies and recommendations. This generally relates to the energy sector as a whole, and thus many of these projects are not limited to nuclear, as mentioned. However there are projects that include nuclear, and many of these projects geared towards energy or electricity as a whole still have nuclear implications. Thus, the ability for the board to make wide scale and specific recommendations regarding the energy sector is strong, and there comes a lot of resources for the board to make informed policy decisions to state governments.

## Implications and Possibilities:

There are a lot of directions the board could go with the powers and information it has and finds. The board could become a public educational focus, dealing with informing the public on pressing issues in western energy. The board could focus on regulation, aiming to find regulations that are intended to make energy production safer, less environmentally damaging, and geared towards respective governments energy plans. The board could focus on efficiency and energy production, learning from the private sector what struggles they have, what



regulations are overly burdensome, assisting in new technological developments, or assisting coordination across state and international lines for ease of energy transportation. The board could focus on developing policies for state legislatures across the region, recommending state energy plans, risk assessments, public feedback, or promoting new ideas. There are different directions that the board could go as well, that are not mentioned. With all of this in consideration, it seems like the board has taken a virtually “all of the above” approach to addressing energy in the west.

Many boards such as the Western Interstate Energy Board are considered experts in their field of expertise, and state legislatures take their recommendations very seriously. The recommendations and

insights given by boards such as this one are a massive piece of guidance when it comes to legislatures making decisions in such matters. The implications this board has on public policy are, in theory, roughly 50% of the value of their recommendations. That is, they make their recommendations and they

are either passed or not passed. Now this is purely theoretical, and there are a lot of factors that play into this. However the point is to illustrate that this board, the research they do, and their recommendations can shape public policy in energy.

Nuclear energy is perhaps the most promising source of electricity generation, with such limited negative externalities when done correctly. However, there are always trade offs, and with this form of electricity generation comes massive hurdles. There have been plans in the private sector to ramp up nuclear energy production, from multiple companies. Some of these projects are currently underway, some have come to fruition, and some have been cancelled due to external forces. When it comes to balancing negative externalities and promoting clean, safe, efficient energy, nuclear energy does have big implications. Many of the things that need to be done in regards to nuclear energy are ways that the government can help, or barriers the government can remove to make it easier on the private sector to develop this energy. Perhaps when utilizing a tool such as this, that spans its influence across multiple states in a region, it can assist the delegation of burdens of help across states. For example, a nuclear plant that serves southeastern Idaho, southwestern Wyoming, and northern Utah may not be able to be constructed without certain financial incentives. If this incentive is a tax break, then perhaps it would be too much for Utah, Idaho, or Wyoming to bear alone, and the state government would not provide it due to it being too large of a loss in revenue. However, if this tax break were spread out either equally or likely proportionately on the basis of population between Utah, Idaho, and Wyoming, it may be enough for each of the states to contribute to this effort. When it comes to renewable energy, sometimes the answer is decentralization, and for certain energy



generation forms to go to certain areas in order to make it more efficient. However, perhaps the framework the Western Interstate Nuclear Compact provides would open up an avenue for collaboration and sharing responsibilities. These sorts of policy flexibilities could be applied to a variety of incentives, energy generation methods, or circumstances. However, we do see that given the research and recommendation tools this board does have, these sorts of effective recommendations are certainly a possibility.

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