



To: Executive Committee  
From: Greg Matson, Executive Director  
Date: May 2, 2024  
Subject: Recommended Amendments to Bylaws 13(b)(1) and 5(d), (f), (g), and (h)

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Attached are recommended amendments to Commission Bylaws 13(b)(1) and 5(d), (f), (g), and (h). The Bylaw 13 amendment is presented first, because the Bylaw 5 amendments are needful only if Bylaw 13(b)(1) is amended. This bylaw provision pertains to the membership fees paid by sovereignty member states. What is being proposed is a cap on the amount of fees that would be paid by any one sovereignty member state equal to 15% of the total membership assessment and fees. (Note that the Commission's National Nexus Program uses a 5% cap on fees paid by any one participating state in the program, so this is not an unfamiliar mechanism to the MTC.)

## BACKGROUND

The Commission's sovereignty member states support the purposes of the Multistate Tax Compact (Compact) through regular participation in, and financial support for, the general activities of the MTC, but are states which have not enacted the Compact.

The concept of sovereignty membership for states was first discussed at an Executive Committee meeting in November of 1993. At the time, states could be a party to the Compact by virtue of enacting it into their laws (becoming a compact member) or as an associate or project member. Only compact member states funded the Commission's general operations (e.g., uniformity efforts, legal support, and organizational matters). Compact members provided this funding through the mechanics of Article VI.4(b) of the Compact, which provides:

Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party States. The total amount of appropriations required under any such budget shall be apportioned among the party States as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. ...

Sovereignty membership was developed as a way for states whose tax administrations were supportive of the work of the MTC to join with the compact members states in funding the general operations and goals of the Commission. In other words, sovereignty states would share equally the apportionment of MTC funding with the compact member states.

Sovereignty membership was approved in 1994. The Commission's bylaws were revised to reflect sovereignty membership in 2001, and Bylaw 13(b)(1) linked the membership fee to the membership assessment for compact members Article VI.4(b) of the Compact.

Florida became the first sovereignty member state in July 1997; Vermont is the most recent, in July 2022. There are currently ten sovereignty member states, the most at any given time: California, Delaware, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, Rhode Island, Vermont, and West Virginia.

### PROPOSED BYLAW 13(b)(1) AMENDMENT

The amendment to Bylaw 13(b)(1) is being proposed because the membership apportionment set out in Compact Article VI.4(b) results in a membership fee for California that is incommensurate in relation to any other compact or sovereignty member. This is so because California has the largest sub-national economy in the world, and if California were a sovereign nation, it would rank in terms of nominal GDP as the world's fifth largest economy. Its GDP is about 50% larger than that of Texas, the next biggest state economy.

Unlike compact member states, whose membership and membership assessments are a matter of state law, sovereignty member states opt in to MTC membership, and, on occasion, opt out. While we expect this category of membership to continue to grow following the Commission's bylaw changes in 2020 that provided for sovereignty member participation in voting at Commission and Executive Committee meetings, organizational financial management can be easily upended when you derive fully one-third of your general operation revenues from one state. By setting an overall cap that brings California's membership fee more in line with the other large economy compact and sovereignty members, the MTC has more resilient financial footing.

The following charts provide a visual comparison. The first chart reflects the current fiscal year, where California's sovereignty membership fee was \$559,798 (the next highest amount was paid by Texas, \$178,340). The second chart reflects the proposed 15% cap in effect for FY2026, capping California's fee at \$256,440 — still the largest amount of any compact or sovereignty member, with Texas's being the next highest, at \$200,217. Of course, Texas, like nearly all of the states that were members before California became a sovereignty member in the fall of FY2022, would still be paying less than what it paid before California became a sovereignty member.

Chart 1: Current Fiscal Year

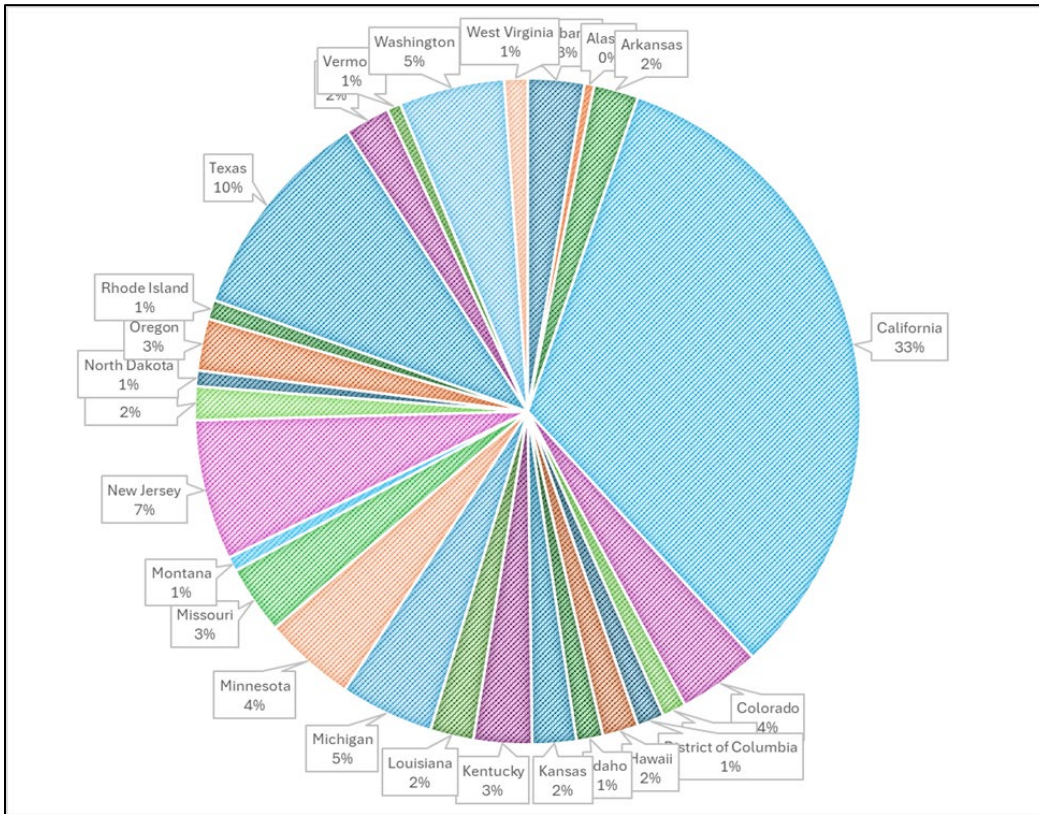
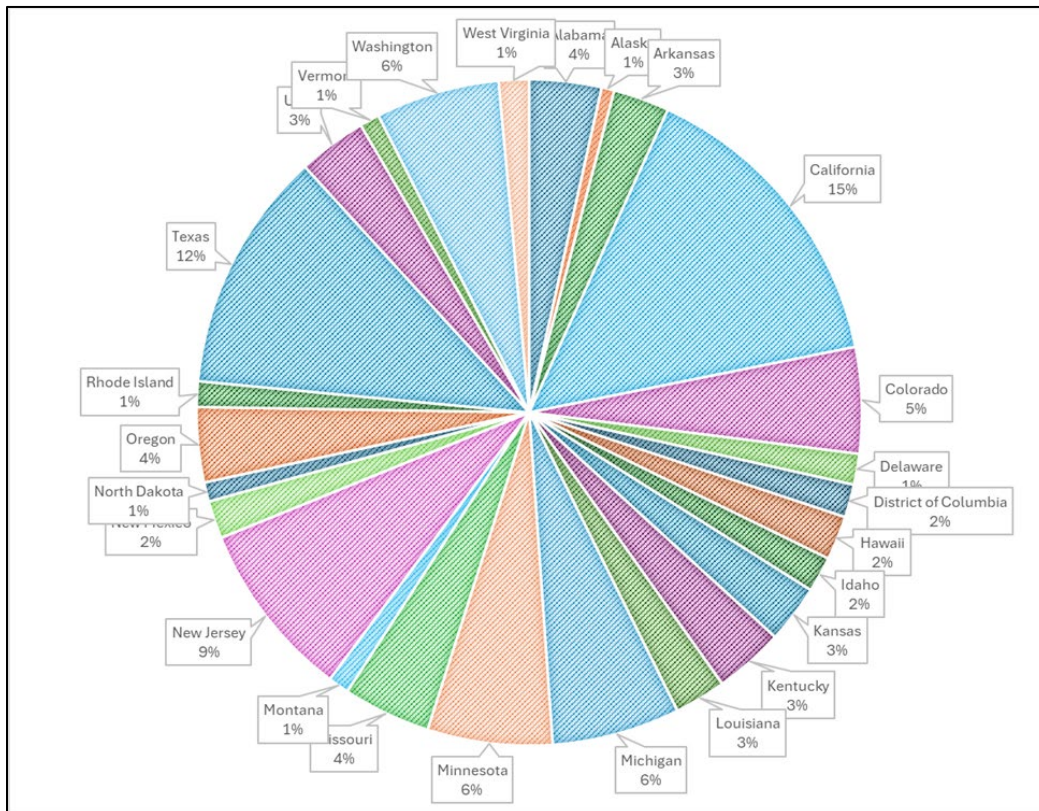


Chart 2: Fiscal Year 2026



## PROPOSED BYLAW 5 AMENDMENTS

If Bylaw 13(b)(1) is amended to include a cap on the membership fee of any one sovereignty state, there are corresponding amendments that should be made to Bylaw 5. Specifically, the additional population majority requirement in Bylaw 5(d)(3) should be replaced with one reflecting majority of apportioned membership assessments and fees.

Recall that before 2020, approval of any Commission business required a majority vote of the Commission members by both numbers and by their population. (This has never been a requirement for other committees, including the Executive Committee.) The general requirement for a majority vote by population was eliminated in 2020. But a new Bylaw 5(d) was added, retaining that requirement for financial matters, including the MTC's budget—since population serves as an easily determined proxy for the size of a state's economy, and therefore its share of the membership assessments that fund the Commission's budget.

But if a cap on a sovereignty member fee is implemented, then the fee amount might not correspond to the size of a state (measured by GDP or population). For that reason, the amendment to 5(d)(3) would change from a population majority requirement for voting with respect to financial matters to one based on the size of a voting state's share of the total membership assessments and fees for compact and sovereignty states.

The following illustrates how this would work: When the Commission considers and takes a vote on the annual budget recommended by the Executive Committee in July, Bylaw 5(d) would require the necessary affirmative votes by the state members be counted in three ways: (1) a majority of the number of compact member states, (2) a majority of the number of compact and sovereignty member states (combined), and (3) at least 50 percent of the most recent total membership assessments and fees by compact and sovereignty member states. The amendment also specifies that it is the most recently approved membership assessment and fees, which would be those approved at the last annual meeting (in this illustration, July 2023).

Note that this is no different than how the voting on the annual budget will occur this year, except population percentages from the current United States Statistical Abstract will be used.

Along with the voting changes in 2020, a new Bylaw 5(f) was added. It provides an apportioning rule for purposes of the population majority required when voting on financial matters where states have multiple tax agencies that administer taxes to which the Compact applies, but not all tax agencies in the state participate as members of the MTC. Eliminating the population majority requirement for voting on financial matters makes Bylaw 5(f) superfluous, and it should be deleted.

Current Bylaw 5(g) and (h) would also be renumbered to account for the elimination of Bylaw 5(f).

If approved by the Executive Committee, the 60-day prior notice required by Bylaw 12 would be provided to the states and the amendments would be before the Commission for final consideration at its annual meeting in July 2024.

A clean version of these bylaws after amendment is attached and is followed by a redline version that shows the changes made to the original bylaws.

- - - AS AMENDED - - -

**Bylaw 13: Affiliated Membership by States**

...

(b) ...

1. Sovereignty members pay a fee determined on the same basis as the membership assessment for compact members under Article VI.4.(b) of the Compact. Except no sovereignty member will pay more than 15 percent of the total of membership assessments and fees for compact and sovereignty members.

...

**Bylaw 5: Commission Quorum, Voting, and Minutes**

...

(d) Actions regarding the financial matters of the Commission require an affirmative vote of (1) a majority of the number of compact member states, (2) a majority of the number of compact and sovereignty member states, and (3) compact and sovereignty member states reflecting at least 50 percent of the most recent total membership assessments and fees apportioned among compact and sovereignty members under Article VI.4.(b) of the Compact and Bylaw 13.

...

(f) Any matter not contained in the original agenda sent pursuant to Bylaw 4(c) and considered at a regular meeting of the Commission or a special meeting of the Commission becomes effective only upon a determination by a two-thirds vote of the compact and sovereignty members or their alternates, or, if less than two-thirds of the compact and sovereignty members or their alternates are present, a unanimous vote of those present at such meeting. Such matters which do not receive a sufficient vote of those present at the meeting will be placed on the agenda of the next regular meeting as "Unfinished Business" or of any special meeting when specified on the agenda set forth in the notice thereof.

(g) The vote on any matter before the Commission will be taken in such manner as to show how each compact and sovereignty member voted, and a record thereof is to appear in the minutes of the meeting. Minutes of all meetings will be made by the executive director and drafts thereof made available to all compact members, sovereignty members, alternates, attorneys general of the party states, their designees or other counsel not less than 30 days prior to the next regular meeting. In the case of a special meeting, the draft minutes should be made available as soon as practicable after the meeting.

- - - REDLINE - - -

### **Bylaw 13: Affiliated Membership by States**

...

(b) ...

1. Sovereignty members pay a fee ~~equal to and~~ determined on the same basis as the membership assessment for compact members under Article VI.4.(b) of the Compact. Except no sovereignty member will pay more than 15 percent of the total of membership assessments and fees for compact and sovereignty members.

...

### **Bylaw 5: Commission Quorum, Voting, and Minutes**

...

(d) Actions regarding the financial matters of the Commission require an affirmative vote of (1) a majority of the number of compact member states, (2) a majority of the number of compact and sovereignty member states, and (3) compact and sovereignty member states reflecting ~~a majority of the total population of all compact and sovereignty member states according to the current United States Statistical Abstract.~~ at least 50 percent of the most recent total membership assessments and fees apportioned among compact and sovereignty members under Article VI.4.(b) of the Compact and Bylaw 13.

...

~~(f) When a compact or sovereignty member state has more than one agency charged with the administration of the type of taxes to which the compact applies but not all of those agencies regularly participate in and provide financial support for the general activities of the Commission, the amount of population used for the state under subsection (d) (3) is determined by taking the population of the state and multiplying it by a ratio of the amount of the type of taxes to which the compact applies that are administered and collected by that agency to the type of taxes to which the compact applies that are collected by the state.~~

~~(g)~~ (f) Any matter not contained in the original agenda sent pursuant to Bylaw 4(c) and considered at a regular meeting of the Commission or a special meeting of the Commission becomes effective only upon a determination by a two-thirds vote of the compact and sovereignty members or their alternates, or, if less than two-thirds of the compact and sovereignty members or their alternates are present, a unanimous vote of those present at such meeting. Such matters which do not receive a sufficient vote of those present at the meeting will be placed on the agenda of the next regular meeting as "Unfinished Business" or of any special meeting when specified on the agenda set forth in the notice thereof.

~~(h)~~ (g) The vote on any matter before the Commission will be taken in such manner as to show how each compact and sovereignty member voted, and a record thereof is to appear in the minutes of the meeting. Minutes of all meetings will be made by the executive director and drafts thereof made available to all compact members,

sovereignty members, alternates, attorneys general of the party states, their designees or other counsel not less than 30 days prior to the next regular meeting. In the case of a special meeting, the draft minutes should be made available as soon as practicable after the meeting.