

A Practical Guide to Intergovernmental Entities in Oregon

Creating and managing an intergovernmental entity under ORS 190.010(5)



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Acknowledgements

We wish to thank Christy Monson, an attorney with the Local Government Law Group in Eugene, Oregon, who reviewed and provided comments on a draft of this handbook. Christy has provided advice to many ORS 190 intergovernmental entities throughout Oregon. Her comments greatly improved this handbook.

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August 2020

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Copy Editor: Cat McGinnis, National Policy Consensus Center, Portland State University
Design: Martha Gannett, Gannett Design, Portland, Oregon
Photography: Gary Halvorson, Oregon State Archives

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Introduction

The National Policy Consensus Center houses programs that work with government entities and their stakeholders to resolve public policy disputes or implement collaborative solutions to community problems. At times, government collaboration projects evolve into a more permanent arrangement that leads to formation of an intergovernmental entity. This guide addresses the most common questions the National Policy Consensus Center receives about forming intergovernmental entities. The guide provides general answers based on the center’s years of experience with collaborative groups, but it does not provide legal advice. It is meant as a tool for considering the use of an intergovernmental entity. You should consult a lawyer about any decision to actually form an intergovernmental entity.

An intergovernmental entity is a public entity with specific and limited governmental powers and responsibilities—not unlike a city, county, a school district, or a special district (like a park district or a library district)—but with some notable differences. An intergovernmental entity is created when two or more governments enter into written agreement, approved by a vote of the founding governments’ governing bodies (for example a city council or county commission). This agreement delegates certain governmental tasks and responsibilities to a newly-created entity—the “intergovernmental entity.” Like a special district, intergovernmental entities typically provide a single government service (although Oregon law does not restrict how many services the entity can deliver). The intergovernmental entity is considered a local government and must follow most state laws related to local governments in Oregon.

An intergovernmental entity is created pursuant to Oregon Revised Statutes 190.010(5) through an intergovernmental agreement between the parties. (See appendix A.) Generally, government entities consider forming an intergovernmental entity only after deciding it is the best governance structure to address a particular problem or issue. Governments can work cooperatively through an intergovernmental agreement without forming an intergovernmental entity. Even though forming an intergovernmental entity is a major undertaking, there may be rewards—it may not impose new taxes, it may allow for the creation of new services or increase efficiency and coordination of services, and it may result in some cost savings.

This guide will answer questions that may arise as government officials consider the possibility of forming an intergovernmental entity to deliver a service or address a public policy problem. It will

also examine some issues these governments face as they consider how to lead and manage the new intergovernmental entity. Specifically, the guide will address the following questions:

1. What makes an intergovernmental entity different from other local governments?
2. What part of state law authorizes the creation of an intergovernmental entity?
3. When might you want to use an intergovernmental entity?
4. When might you want to avoid using an intergovernmental entity?
5. Generally, how does a group form an intergovernmental entity?
6. Do intergovernmental entities have to register with the state?
7. What powers are given to intergovernmental entities by Oregon state law?
8. Can state agencies and tribes join local governments in the creation and management of an intergovernmental entity?
9. About how many intergovernmental entities are there in Oregon?
10. What services do intergovernmental entities provide?
11. Do state laws treat intergovernmental entities differently than they treat other types of local governments?
12. What are the basic components of an intergovernmental agreement forming an intergovernmental entity?
13. As groups discuss the governance framework for a new intergovernmental entity, how might they progress through components or topics within a governance framework?
14. Can a board of directors for an intergovernmental entity include voting members from the private, nonprofit, or philanthropic sectors? Can a member of the public serve as a board member?
15. What are some creative or unique ways in which the governance framework of an intergovernmental entity might be shaped?
16. How might the concept of collaboration be included within the governance framework of an intergovernmental agreement creating an intergovernmental entity?
17. What are some examples of intergovernmental agreements forming an intergovernmental entity under Oregon law?
18. What names have been chosen by local governments as they created a new intergovernmental entity?

To help you, on the National Policy Consensus Center website at <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon> we have provided appendices to this report, including intergovernmental agreements that have been used to establish intergovernmental entities. These agreements are examples only and should not be used as templates, since all intergovernmental agreements should be tailored to meet the needs of individual governments and should be reviewed by legal counsel.

Q1 | What makes an intergovernmental entity different from other local governments?

An intergovernmental entity can be created by two or more units of local government.¹ It is an opportunity for collaboration and sharing of resources and responsibilities between the governing bodies. The intergovernmental entity is created through a written agreement, called an “intergovernmental agreement” approved and signed by each of the governing bodies that are parties to the agreement.

An intergovernmental entity established by this written agreement has whatever duties, authority, and responsibilities that the founding governments delegate to it. It is different from a city, county, or special district in a number of ways, including the following:

- It is created by and serves two or more units of local government and is—by its very nature—a collaborative entity.
- The members of the governing body are not usually elected by the people through a regular election process; rather, the intergovernmental entity is governed by people who are appointed to their seats (usually by the governments who created the intergovernmental entity). The governing body of the intergovernmental entity is often referred to as a “board” or “commission.”
- The way in which the intergovernmental entity arranges itself—its governance framework—can vary greatly and is determined by the founding governments through an intergovernmental agreement. Oregon law does not prescribe many details regarding how the intergovernmental entity’s governing board or commission is formed or organized. The founding governments have flexibility to arrange the governing body to fit their particular situation.
- The intergovernmental agreement can specify requirements regarding the intergovernmental entity’s leadership. Non-government stakeholders who have an interest in the public service being provided or the public policy issue at hand can be appointed to the intergovernmental entity, along with elected officials, and can have a say in how services are delivered or how the policy issue is addressed.

¹ Typically, in Oregon “local government” means a city, county, special district, or school district.

Q2 | What part of state law authorizes the creation of an intergovernmental entity?

Oregon Revised Statutes, Chapter 190, provides the authority for creating an intergovernmental entity through an intergovernmental agreement. It is available in the appendix available online at <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon>. ORS 190.010(5) specifically provides the language relevant to intergovernmental entities:

190.010 Authority of local governments to make intergovernmental agreement. A unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. The agreement may provide for the performance of a function or activity:

- (1) By a consolidated department;
- (2) By jointly providing for administrative officers;
- (3) By means of facilities or equipment jointly constructed, owned, leased or operated;
- (4) By one of the parties for any other party;
- (5) By an intergovernmental entity created by the agreement and governed by a board or commission appointed by, responsible to and acting on behalf of the units of local government that are parties to the agreement; or,
- (6) By a combination of the methods described in this section. [Amended by 1953 c.161 §2; 1963 c.189 §1; 1967 c.550 §4; 1991 c.583 §1]

It should be noted that local governments do not have to form an intergovernmental entity in order to cooperate with one another. There are probably thousands of intergovernmental agreements in place across Oregon that describe the terms and conditions of how a collaboration of local governments will work on a particular issue or problem. This collaboration doesn't have to include the creation of a new intergovernmental entity; thus, subparagraph (5) above allows a specific type of government collaboration.

Q3 | When might you want to use an intergovernmental entity?

If local governments want to work cooperatively on an issue or a project, they have at least two choices. First, they can simply agree that they will cooperate and enter into an intergovernmental agreement that describes the terms and conditions for the collaboration. In this case, they would not form an intergovernmental entity under ORS 190. A simple example would be a city asking a county to jointly share a building for their department of public works. The two public works directors could decide how the arrangement will work, county counsel or the city attorney would draft an intergovernmental agreement to make it official, and the county commission and city council would approve the agreement. In this example there aren't many high-level decisions involved.

In a more complicated example, two large cities and a county contemplate running a metropolitan-wide wastewater treatment facility that would serve each city and the urban unincorporated areas surrounding the two cities. Clearly, there are substantial infrastructure, budgetary, administrative, policy issues, and a long-term collaborative relationship to be established. Even though the project is complicated, the three jurisdictions see many advantages to a partnership and agree to develop an intergovernmental agreement to create a separate agency—an intergovernmental entity under ORS 190—to oversee, manage, and administer the wastewater treatment facility.

Some considerations when deciding whether forming an intergovernmental entity is the right approach for your project or service delivery goals are the following:

- The project or service is complicated and no one government can effectively deliver the service or address the problem alone;
- There is strong agreement among the founding governments that an intergovernmental entity would be more efficient or cost effective than providing services separately;
- The arrangement will likely be long-term;
- The arrangement will involve many stakeholders who need to work closely with one another; and
- The founding governments wish to include the general public or representatives from the nonprofit and business sectors on the board of directors to help govern the new arrangement.

Q4 | When might you want to avoid creating an intergovernmental entity?

Creating an intergovernmental entity is not a task to be taken lightly. An intergovernmental entity is a unit of local government—a public body and a municipal corporation. It essentially functions like a city, a county, or a special district. You have to ask yourself if the project or issue you're addressing requires the creation of a new public body in order to be successful. You may want to avoid creating an intergovernmental entity if the agencies can work cooperatively through an intergovernmental agreement without creating a new unit of government. Keep in mind that you not only have to concern yourself with the terms and conditions of the intergovernmental agreement creating the intergovernmental entity under ORS 190, but you also need to make decisions about how the new entity will be managed and how it will follow applicable state laws. Considerations include the following:

- What exactly are the services and authority of the new intergovernmental entity?
- What restrictions will you place on it?
- What will be the size of the budget and will you choose to comply with local budget law?
- Who will do the bookkeeping and accounting for you?
- Will the new intergovernmental entity have employees? (If so, you will need a human resources system to guide you.)
- What kind of oversight do the founding governments require?
- Will you be acquiring any goods or services? If so, you may want to adopt a purchasing policy that is consistent with state law.²
- How will the founding governments distribute assets that the intergovernmental entity purchases if the entity is terminated?
- How will liability for the intergovernmental entity's actions be divided among the founding governments?

Creating an intergovernmental entity is the right approach in some situations, but may be unnecessarily complicated in others.

² There are various ways to address the need for a purchasing policy that is consistent with state law. Three possible methods are: 1) hire employees to provide the needed administrative services; 2) acquire the services through a written agreement from one of the founding governments; or 3) a combination of the first two. For example, the intergovernmental entity could hire a director and the director could then negotiate contracts with a unit of government to provide administrative services.

Q5 | Generally, how does a group form an intergovernmental entity?

A new intergovernmental entity can be established in many ways. Usually, there is a group of local government staff or elected officials who have been working on an issue or a problem and who decide that a new intergovernmental entity is necessary in order to best address the issue or problem. These people could be called the “founding task group” of the new intergovernmental entity. As founders, they put together the initial outline of the governance framework for the new entity. They likely double-check with the governing bodies that formed the founding task group and amend the governance framework as appropriate. Then they hand the general concept to an attorney who will work with attorneys from the other jurisdictions to complete the intergovernmental agreement. According to ORS 190.085, the agreement must be approved by ordinance by each government who is a party to the agreement.

Q6 | Do intergovernmental entities have to register with the state?

Yes. State law was changed in 1991 and now requires all intergovernmental entities to file with the Secretary of State. ORS 190.085(2) provides guidance:

190.085 Ordinance ratifying intergovernmental agreement creating entity. (2) Not later than 30 days after the effective date of an intergovernmental agreement creating an intergovernmental entity under ORS 190.010, the parties to the intergovernmental agreement shall file with the Secretary of State copies of the ordinances required under this section together with a statement containing the name of the intergovernmental entity created, the parties to the agreement, the purpose of the agreement and the effective date of the agreement. [1991 c.583 §5]



Q7 | What powers are given to intergovernmental entities by Oregon state law?

The introductory section of the law, (ORS 190.010) provides a general description of what an intergovernmental entity can do. It says that two or more units of government may enter into a written agreement “for the performance of any or all functions and activities [emphasis added] that a party to the agreement, its officers or agencies, have authority to perform.”

In other words, if two units of government are cooperating on a project and sign an intergovernmental agreement, any service or activity that the founding government is authorized to provide can be accomplished by the new intergovernmental entity, as the agreement provides.

ORS 190.080 lists the specific powers of intergovernmental entities that are created through the intergovernmental agreement. The principal powers listed are as follows:

- Issue revenue bonds under ORS chapter 287A or enter into financing agreements authorized under ORS 271.390 to accomplish the public purposes of the parties to the agreement.
- Enter into agreements with vendors, trustees, or escrow agents for the installment purchase or lease, with option to purchase, of real or personal property if the period of time allowed for payment under an agreement does not exceed twenty years.
- Adopt all rules necessary to carry out its powers and duties under the intergovernmental agreement.

Note that ORS 190.080 specifies that intergovernmental entities may not levy taxes or issue general obligation bonds, except as provided in ORS 190.083.



Q8 | Generally, how does a group form an intergovernmental entity?

ORS 190.110 includes language describing how state agencies and tribes can join local governments in the creation and management of an intergovernmental entity. The language seems to suggest that state agencies and tribes can collaborate with local governments on creating and managing an intergovernmental entity. The language reads as follows:

190.110 Authority of units of local government and state agencies to cooperate; agreements with American Indian tribes; exclusion of conditions for public contracts. (1) In performing a duty imposed upon it, in exercising a power conferred upon it, or in administering a policy or program delegated to it, a unit of local government or a state agency of this state may cooperate for any lawful purpose, by agreement or otherwise, with a unit of local government or a state agency of this or another state, or with the United States, or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe. This power includes power to provide jointly for administrative officers.

We have been involved with establishing two new intergovernmental entities that involve state agencies as signatories. The Oregon Department of Justice was involved in the establishment of both entities and provided some specific requirements and wording for the intergovernmental agreement. Adding state agencies as signatories to the intergovernmental agreement is not easy. A conversation with the Department of Justice early in the process is valuable.

Q9 | About how many intergovernmental entities are there in Oregon?

We provide an estimate based on information from the Special Districts Association of Oregon and from the Archives Division of the Oregon Secretary of State's Office. We suspect that our estimate is low, primarily because the state law requiring intergovernmental entities to file with the Secretary of State did not go into effect until 1991.

In addition to the two sources mentioned above, we asked the Association of Oregon Counties and the League of Oregon Cities to email all county counsel and city attorneys in the state and ask them to forward information on their intergovernmental partnerships to us.

Using these sources, we have been able to identify sixty-two intergovernmental entities in the state. To put that into context, there are thirty-six counties, 241 cities,³ and probably more than 1,000 special districts⁴ in Oregon.

A spreadsheet in appendix B, available at <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon>, provides basic information on the intergovernmental entities in Oregon. It includes the name of the entity, the website address, the type of service the entity provides, the approximate effective date or the start of the entity, and the governments participating in the entity.

Q10 | What services do intergovernmental entities provide?

Figure 1 shows the services that intergovernmental entities are providing in Oregon. call-taking/dispatch and water utilities lead the list with six intergovernmental entities each. Councils of government and telecommunications each have five. For some reason, our sources did not identify the creation of fire authorities—two or more fire districts that serve a geographic area. We think they do exist. Perhaps they are operating through an intergovernmental agreement without creating an intergovernmental entity.

Interestingly, there are at least fourteen entities created to provide a new service that the founding governments had not already provided (but were authorized to provide.) A good example is the recreation category, which includes the Salmonberry Trail Intergovernmental Agency. This entity is a partnership between the Oregon Department of Forestry, the Oregon Parks and Recreation Department, the Port of Tillamook Bay, and Tillamook County. The governing board includes nonprofit groups and other non-government stakeholders interested in constructing an eighty-six-mile multi-purpose trail on and alongside a railroad right-of-way. The group of founders chose this type of governing entity because of the geography involved and the fact that the rail right-of-way runs through two counties, eight cities, three port districts, and a park and recreation special district. While the Oregon Parks and Recreation Department would seem to be the logical manager of a trail of this scope, the department desired a partnership of governments to spread the responsibility, costs, and benefits. It is truly a case where no single jurisdiction could undertake a project of this magnitude all by itself.

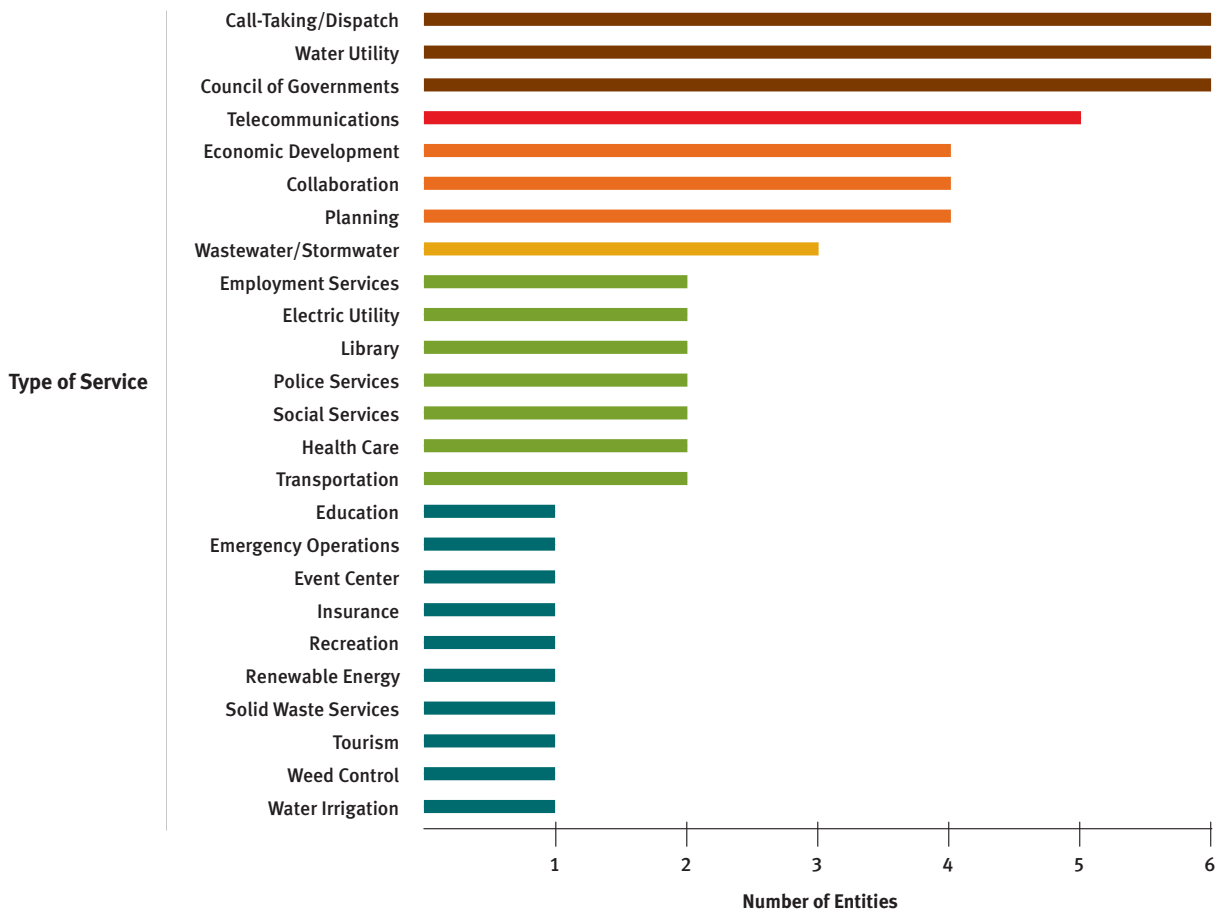
³ Wikipedia. List of Cities in Oregon. January 26, 2019. https://en.wikipedia.org/wiki/List_of_cities_in_Oregon

⁴ According to the Special Districts Association of Oregon website, 948 special districts hold membership with their organization. http://www.sdao.com/S4/About/Membership_Profile/S4/About/Membership_Profile.aspx?hkey=1e228c42-55ed-4436-b094-04d4fcee986b

There are other unique situations that result in the creation of an intergovernmental partnership. For example, the Eastern Oregon Trade and Event Center Authority is a partnership between Umatilla County and the city of Hermiston to lead and manage the event center in the city.

Another example of a unique, specialized intergovernmental entity is the Oregon Public Entity Excess Pool. The purpose of the pool, according to its founding intergovernmental agreement, is to provide a means for local public entities to jointly develop and fund predictable, stable, cost-effective, and efficient pooled risk-retention and risk purchasing programs. Such programs may include the creation of risk-retention, risk-purchasing of reinsurance, risk management training, and administrative services.

Figure 1. Number of Intergovernmental Entities by Service Provided



Q11 | Do state laws treat intergovernmental entities differently than they treat other types of local governments?

ORS 279A.010(1)(y) says “public body” has the meaning given in ORS 174.109. ORS 174.109 defines “public body” to include “state government bodies, local government bodies and special government bodies.” “Special government bodies” include “an intergovernmental body formed by two or more public bodies.” ORS 174.117(1)(f). Generally, Oregon law treats an intergovernmental entity as a public body; thus, most laws that affect the founding governments also apply to the intergovernmental entity and the services it provides.

An example is public record laws. They apply to every public body in Oregon and, therefore, apply to intergovernmental entities.

Public meeting laws are applicable to the governing bodies of intergovernmental entities. ORS 192.630(1) states that “all meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.”

Don’t forget that the intergovernmental entity is a separate unit of government and must have its own meetings, policies, budget, and other administrative functions, and the intergovernmental entity must comply with all applicable laws, including public meeting notice requirements.

Because intergovernmental entities are a public body under Oregon law, they must comply with all public contracting requirements in the expenditure of funds.

One major exception in which laws apply to intergovernmental entities is that these entities are not generally required to follow local budget law:

ORS 294.316 Application. The provisions of ORS 294.305 to 294.565 do not apply to the following municipal corporations and entities....(14) Intergovernmental entities created under ORS 190.010, including councils of governments described in ORS 294.900 to 294.930, except that an intergovernmental entity or a council of governments that proposes to impose ad valorem property taxes for the ensuing year or budget period is subject to ORS 294.305 to 294.565 for the budget prepared for that year or period.

While local budget laws do not generally have to be followed, the intergovernmental entity would likely benefit from a transparent budget system designed by professionals who are familiar with local government budgeting and accounting. One approach is to voluntarily agree to follow local budget law. In addition, intergovernmental entities may be required to complete an annual audit. According

to ORS 297.425, every “municipal corporation” (which may include intergovernmental entities) with total expenditures of \$150,000 per year or more is required to conduct an annual audit performed by a qualified municipal auditor. There is an exception for entities with expenditures under this amount that have satisfied the requirements of ORS 297.435(2).

This response provides only a cursory description of laws that apply to intergovernmental entities as public bodies. For a fuller understanding, you should consider consulting an attorney.

Q12 | What are the basic components of an intergovernmental agreement forming an intergovernmental entity?

Written intergovernmental agreements are required for two or more units of government to collaborate with one another under ORS 190.010. More specifically, ORS 190.020 requires a number of items to be covered within the agreement:

190.020 Contents of agreement. (1) An agreement under ORS 190.010 shall specify the functions or activities to be performed and by what means they shall be performed. Where applicable, the agreement shall provide for:

(a) The apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities.

(b) The apportionment of fees or other revenue derived from the functions or activities and the manner in which such revenue shall be accounted for.

(c) The transfer of personnel and the preservation of their employment benefits.

(d) The transfer of possession of or title to real or personal property.

(e) The term or duration of the agreement, which may be perpetual.

(f) The rights of the parties to terminate the agreement.

(2) When the parties to an agreement are unable, upon termination of the agreement, to agree on the transfer of personnel or the division of assets and liabilities between the parties, the circuit court has jurisdiction to determine that transfer or division. [Amended by 1967 c.550 §5]

Beyond these requirements, the authors of the intergovernmental agreement can include other rules for how the intergovernmental entity will operate as long as such rules are within the founding governments’ existing scope of authority.

In the end, founding task groups decide what additional provisions beyond those required in 190.020 to include in the intergovernmental agreement based on their particular situation. Although rare, in some cases, the intergovernmental agreement is quite detailed. Most of the time, it includes the governance framework and is then supplemented through the adoption of more detailed rules of operation, often called bylaws. Remember that the intergovernmental agreement is the “constitution” for the new entity; as such, it may not need to include a lot of detail.

Q13

As groups discuss the governance framework for a new intergovernmental entity, how might they progress through components or topics within a governance framework?

We have found that developing the governance framework within an intergovernmental agreement for a new intergovernmental entity can be accomplished through six key steps followed by a series of smaller decisions.

Step 1. Founding task group. The founding governments assemble a small founding task group of stakeholders who will work through the governing issues. Such groups might include, at minimum, representatives from the founding governments. It may be beneficial to involve high level staff (city manager or department heads) and one or two elected officials. It may also be useful to include a balance of interested non-government stakeholders. The role of this founding task group is to make some initial decisions about components of the governance framework. These initial decisions may be changed as the intergovernmental agreement is reviewed by each governing body (city council, county commission, or school board, for example) that is a party to the agreement.

Step 2. Services provided and limitations of authority. The founding task group provides a clear and concise description of services that the intergovernmental entity is allowed to provide, so that no confusion exists among the parties to the agreement. Likewise, the parties spell out what the intergovernmental entity clearly will not be authorized to do, so as to limit the authority of the entity.

Step 3. Number of board members. The founding task group determines the size of the board of directors (the board may be referred to as a commission). The board should be large enough to get the work done without over-burdening individual board members, but not be so large that it is unwieldy, requires excessive administration and management, and has difficulty working smoothly and making decisions. We have found that a board of around seven members often functions well.

Step 4. Composition of the board. Next the founding task group determines who will be on the board. The board will likely include representatives from all of the founding governments that will sign the intergovernmental agreement. The founding task group will also consider who else should be on

the board. Are there important stakeholders who will bring resources to address the issue or help solve the problem? Are there groups who have a vital interest in helping with the intergovernmental entity's work? Are there opponents to the work who should be represented? Should there be board seats for members of the general public? Should a nonprofit or a business development group have a seat on the board? Question 14 provides examples of how non-government people have been given voting seats on the intergovernmental entity board of directors.

Step 5. Is there a need for different classes of board members? In some circumstances, the founding task force suggests different categories or classes of board members. This approach may be requested by a party who is allocating substantially more resources than other parties, or it may be necessary because of political considerations. In addition, the founding governments may retain power to make certain decisions rather than delegating those decisions to the intergovernmental entity's board. For example, they may retain power to decide whether to appoint certain directors; whether to dissolve the intergovernmental entity; how to manage certain budget issues; or whether to adopt certain kinds of planning documents.

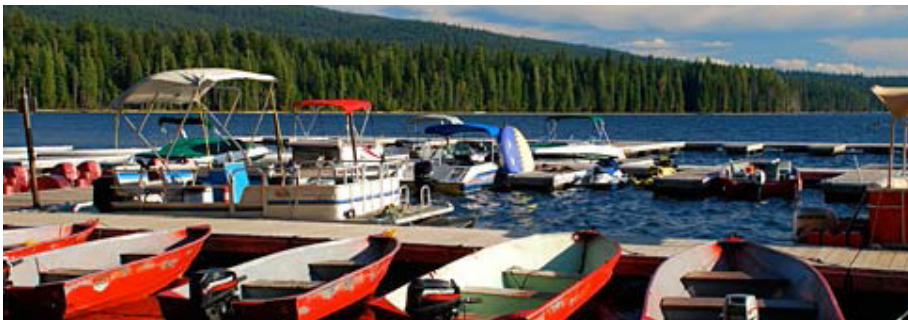
Step 6. Decide on issues related to dissolving the intergovernmental entity. ORS 190.080(5) requires that the intergovernmental agreement between the parties describe a procedure for terminating the entity.

In addition to the steps above, the founding task group may need to address other governance issues, including the following:

- **Decision making.** Will the board make decisions by one-person-one-vote or by a consensus process? If the founding task group is assembling a board that will collaborate closely, the board may benefit from using a consensus decision-making process.
- **Quorum and voting.** How many board members are required in order to hold a meeting? Will there be a different majority needed for specific issues, like adopting a budget or changing membership on the board?
- **Term of office.** What is the term of office for board members? Will terms be staggered to avoid all board members leaving at the same time?
- **Board member selection.** Will all board members be chosen by the founding task group, by the board members themselves, or by each individual group represented on the board?
- **Committees.** Will a committee structure be stated in the intergovernmental agreement? What rules must the committees follow? Who provides staff to support the committees? How will committee members be selected? Will there be subcommittees, working groups, or technical advisory committees? Will an executive committee (also sometimes called a steering committee)

be used to address issues between meetings of the board? How will members of the executive committee be selected, what will their roles be, and what procedures will they follow? Ideally, each committee will have a written framework or set of guidelines that does the following:

- Includes a purpose statement for the committee.
 - Describes the deliverables for the group
 - Specifies the size of the committee and the quorum requirements.
 - Outlines the appointment process—which people or groups are represented on the committee.
 - Sets a term of office for committee members.
 - Provides operating policies for the committee as appropriate.
 - Includes deadlines for work if applicable.
- Administrative support. Who provides administrative support for the board? Who pays for the administrative support? Sometimes the intergovernmental agreement will specify who will provide support and may also include how the expense is distributed across the intergovernmental entity. Will the intergovernmental entity need its own staff or will it borrow staff from the founding governments? In any case, you must be clear about who employs such staff.
- Funding issues. Will the partners in the intergovernmental entity each contribute a share of funds to pay expenses associated with the entity? How will the cost share be calculated? Who will be the fiscal agent collecting shares from the partners?
- Liability, insurance, and indemnification. Attorneys for the founding governments will likely insist on language addressing liability, insurance, and indemnification of the parties to the intergovernmental agreement. It is not uncommon for one attorney to write a draft of the clause and then negotiate the language among the parties. The attorneys will often agree on language where partners share liability and indemnify each other for claims and damages.



Q14

Can a board of directors for an intergovernmental entity include voting members from the private, nonprofit, or philanthropic sectors? Can a member of the public serve as a board member?

The answer to both questions is yes. The founding task group makes recommendations to the founding governments, who decide the composition of the board that is leading and managing the intergovernmental entity. The founding governments ultimately decide the membership on the governing board and they memorialize it within the intergovernmental agreement. The founding governments also document in the intergovernmental agreement if the non-government seats have different roles and powers than the government seats.

Below are some examples of intergovernmental entities which have established non-governmental seats on their board.

Metropolitan Wastewater Management Commission. The commission consists of seven voting members. Each of the three founding governments appoints one elected official to the commission. The Eugene City Council appoints two additional members to the commission and the Springfield City Council and the Lane County Board of Commissioners each appoint one additional member to the commission. These four appointments have been members of the general public.

Eastern Oregon Trade and Event Center Authority. The board consists of seven members: two from Umatilla County, two from the City of Hermiston, one from the Umatilla Fair Board, one from Farm City Pro Rodeo, Inc., and one from the West Umatilla County Motel Owner's Association.

The Coos Bay/North Bend Visitor and Convention Bureau. The bureau is governed by a board of five persons. One member each is appointed by the city council of each city and one by the Coquille Indian Tribe. One member each is appointed by the Bay Area Chamber of Commerce and the local hotel industry, subject to approval by the tribe and the councils of the two cities.

Mid-Valley Behavioral Care Network. This intergovernmental entity has a ten-member board of directors as follows: six members are the three commissioners each from Polk and Marion Counties; two members are the county administrator and chief administrative officer of Polk and Marion Counties; and the last two members are a representative from a provider that contracts with the Care Network and a Consumer Representative.

Q15 | What are some creative or unique ways in which the governance framework of an intergovernmental entity might be shaped?

Below are some examples of language from intergovernmental agreements that address special issues that sometimes arise when a governance framework is designed within an intergovernmental agreement. These are offered as examples only; we do not recommend that you use the exact language below, as your needs will vary.

Appointment of board or commission members and alternates. Frontier Telenet has language that includes provision for alternates on the board of directors.

Board of Directors. Frontier Telenet shall be governed by a Board of Directors (“Board”). The governing body of each Party shall appoint one (1) representative to the Board and one (1) alternate representative, each of which shall serve at the pleasure of the respective governing body and until replaced by such governing body. An alternate representative shall act in a Board capacity only during the absence of that Party’s representative. In the event of a vacancy, the governing body of the Party that appointed the departed representative shall appoint a successor.

Different classes of board members and different roles and responsibilities for each.

The intergovernmental agreement for Emergency Communications of Southern Oregon has two classes of directors—permanent board members and non-permanent board members. The permanent board members are from the largest police or fire agencies on the board—Jackson County Sheriff’s Office and the Medford police and fire departments—while the non-permanent members are from other public safety agencies.

Use of super majority. Frontier Telenet requires a unanimous vote of board members for certain types of actions:

2.3.1 Manner of Acting. A majority vote of the Board shall be necessary to decide any issue except that a unanimous vote of the Board shall be required to decide financial matters described in Section 2.3.2, for the addition of new members pursuant to Section 2.3.3, for the hiring and discharging of employees pursuant to Section 1.3.7, for the acceptance of or amendment to the scope of work pursuant to Sections 2.5.1 and 2.5.2, and for the dissolution of Frontier Telenet pursuant to Section 3.1.

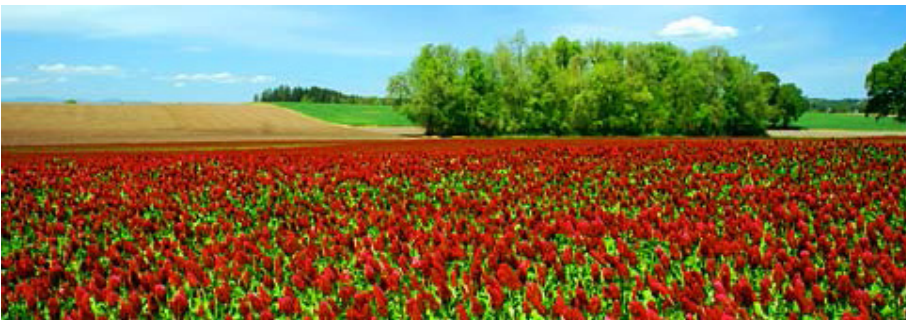
The Community Renewable Energy Association intergovernmental agreement requires a three-fourths majority vote for amending the intergovernmental agreement.

Section 10. Amendments to this agreement may be proposed at any regular meeting of Members and shall take effect when the amendment receives the affirmative vote of three-fourths (?) of its Member units of local government.

The Marion Area Multi-Agency Emergency Communications Center has language in its intergovernmental agreement requiring a two-thirds vote on certain items:

H. Items Requiring Super-Majority Vote for Approval. A Super-Majority vote of the Governing Board (two-thirds of all members) shall be required in order to approve the following items or actions.

- Approval or amendment of METCOM'S budget, including the User Fee formula;
- A decision to ask the Principals to issue debt for or on behalf of METCOM;
- A decision to acquire assets, equipment, real or personal property valued at over \$25,000;
- Admission of a new Principal or Subscriber;
- Appointment of the Executive Director;
- Amendments to this Agreement;
- Expansion of the scope of services provided by METCOM; and
- Termination of a Participating Agency for delinquencies in payment of User Fees.



Use of an executive committee to conduct business. The intergovernmental agreement creating the Oregon Public Entity Excess Pool has language establishing an executive committee and allowing it to conduct business between meetings. The founding members of the entity serve as four of the seven members of the executive committee.

B. Executive Committee

(a) The Board of Directors shall form an Executive Committee of up to seven (7) Members to conduct the business of OPEEP, as delegated by the Board and defined herein, between Board meetings.

(b) The Board may delegate to the Executive Committee and the Executive Committee may discharge any powers or duties of the Board except adoption of OPEEP's annual budget. The powers and duties so delegated shall be specified in resolutions adopted by the Board and incorporated into the Bylaws.

(c) Members of the Executive Committee shall be the Founding Members, plus three directors appointed by the Founding Members, unless such directors decline to participate in said Committee. The Founding Members shall represent 4/7ths of the Executive Committee membership, unless a Founding Member completely resigns its membership in OPEEP. In such case the remaining Founding Members can appoint a new Executive Committee Member. If three (3) or more Founding Members completely resign their membership in OPEEP, regular Executive Committee members will be elected by the full Board of Directors.

(d) The terms of office of the Executive Committee shall be as provided in the Bylaws.

The intergovernmental agreement creating the Mid-Valley Behavioral Care Network also has language establishing an executive committee.

4.4.1. The Board of Directors shall establish an Executive Committee. The Executive Committee shall be a six-person committee, and shall be comprised of the Board of Directors Chair and Vice Chair per § 4.2, one additional commissioner, county administrator or chief administrative officer or other individual appointed pursuant to §2.2.2 from each Member County, and one provider and one consumer appointed to the Board of Directors.

4.4.2. The Board of Directors Chair and Vice Chair shall be the Chair and Vice Chair of the Executive Committee as well, pursuant to § 4.2. A quorum of the Executive Committee shall be a majority of the appointed members and shall include at least three (3) of the four (4) representatives of the member counties. The Executive Committee may take action on behalf of the full Board at or between regularly scheduled Board of Directors meetings. Additionally, the Executive Committee may make recommendations to the full Board or Executive Director on all matters of interest or concern, including policy, administration or organization of the MVBCN. The Executive

Committee may be convened by the Chair or by the Executive Director. The Board of Directors has the discretionary power to delegate to the Executive Committee the ability to take any action on matters within the scope of the delegation.

Unequal board membership. The Coastal Sharing Network provides that Tillamook County has two representatives, while other partners have only one.

Initially, members of the Intergovernmental Council shall be established as follows: Tillamook County shall have two such representatives; the cities of Newport, Lincoln City and Toledo shall have one representative; and the Tillamook County School District UH-3J shall conjointly have one shared representative.

Different majority votes for different subjects. Some entities have language in their intergovernmental agreement that requires a different kind of majority for special subjects. The Columbia River Estuary Study Taskforce provides an example:

7.5 Decisions of the Council which involve recommendations for planning studies or the implementation of plans or which involve agreements between member agencies shall require an affirmative majority vote of the representatives from the members agencies of CREST, including an affirmative vote by Delegates or Alternates who represent the affected member agency or agencies.

Use of quorum. A quorum of board members is usually required in order to pass a motion. The language in most intergovernmental agreements defines a quorum as a majority of the board; thus, if there are eleven board members, then six are required in order to pass a motion. This is not the only way a quorum can be defined, however. In the case of the Educator Advancement Council, consisting of twenty-one board members (four standing board members and seventeen rotating board members), the quorum requirement is defined as three of four standing board members and ten of the seventeen rotating board members present.

Decision making. Some groups establish a consensus decision-making process within the intergovernmental agreement or within their bylaws. Reaching consensus can be simple, or complex. Below are some examples.

The Salmonberry Trail intergovernmental agreement includes a simple consensus process:

The Board shall strive for consensus on all decisions. However, if consensus is not achievable within a reasonable period of time as determined by a majority of all Directors, decisions shall be made by majority vote of all Directors. No decisions, whether by consensus or by majority vote, can be made without a quorum.

The Educator Advancement Council intergovernmental agreement includes a more complicated consensus process.

The Board shall strive for consensus decision-making on all decisions and will foster a collaborative approach to problem solving. When a matter is initially considered, every Board Director present at the meeting shall signal his or her position on the matter. The Board will then discuss the matter presented and will, if possible, attempt to reach a unanimous consensus regarding the matter. If after good faith efforts to reach a unanimous consensus, the Board cannot do so, the Board may decide to: a) delegate an issue to a working group for further exploration; or b) decide the matter by a majority “yes or no” vote in compliance with the voting authority described in this Agreement.

Creating an intergovernmental entity by other intergovernmental entities. In a couple of examples, intergovernmental entities were founding members and signatories on an intergovernmental agreement creating a new intergovernmental entity. The Linn-Benton Loop Transit service is an intergovernmental entity created by the Albany Area Metropolitan Planning Organization and the Corvallis Area Metropolitan Planning Organization—both ORS 190 intergovernmental entities—along with the Linn-Benton Community College, Oregon State University, and the City of Albany. The new entity manages and operates a transit loop between Albany and Corvallis.

Another example is Water Environment Services serving North Clackamas County. WES is an entity consisting of the Tri-City Service District, the Surface Water Management Agency of Clackamas County, and the Clackamas County Service District 1. The new entity was formed for the purpose of holding the assets of the partner organizations and to provide for singular management of the entities. The Board of County Commissioners of Clackamas County is the governing body of Water Environment Services.

We would recommend early conversations with your city or county attorney before spending much time on using this technique. It may be better to have the originating governments create the new entity.



Use of an administrative agent. The intergovernmental agreement for the Umatilla Basin Water Commission has clear language related to the use of an administrative agent to provide support services to the entity.

3.11.1 The Commission shall appoint a staff person or entity to serve as Administrative Agent for the Commission for Stage 1. Administrative support services to be provided by the Administrative Agent may include: (i) providing public notices; (ii) maintaining public records; (iii) receiving funds and making payments; (iv) assisting the Commission in complying with applicable public contracting requirements; (v) maintaining financial records; (vi) preparing budget reports; (vii) providing related clerical support; and (viii) other administrative support functions as explicitly agreed by the Administrative Agent and Commission.

Description of board responsibilities. The intergovernmental agreement for the Mid-Willamette Valley Behavioral Care Network has a clear description of the board of directors' responsibilities:

3. Board Responsibilities

3.1 The Board of Directors shall be responsible for:

- 3.1.1 **Governance:** Approve governance and administrative policies and procedures.
- 3.1.2 **Strategic Planning and Business Development:** Review and approve plans and alliances consistent with MVBCN mission and priorities.
- 3.1.3 **Contracting:** Serve as the MVBCN Contract Review Board and approve MVBCN contracts. The Board of Directors may delegate contract approval authority by Board action as deemed necessary.
- 3.1.4 **Risk Management:** Oversee the organization's response to fiscal and legal risks.
- 3.1.5 **Financial:** Set policies regarding fund distribution and approve budgets for the organization. Annually receive, review and approve an independent auditor's report.
- 3.1.6 **Other Duties:** All other duties and functions necessary to further the purpose of providing mental health and chemical dependency treatment services to the residents of Member Counties.
- 3.1.7 Approve the recruitment, hiring and evaluation of the Executive Director upon recommendation by the Executive Committee.

Q16 | How might the concept of collaboration be included in the governance framework of an intergovernmental agreement creating an intergovernmental entity?

Often, the founding governments establish a new intergovernmental entity in order to form a collaborative group—a group that intends to work through issues cooperatively. They want to be true partners with one another to work on the public policy issue or problem or to deliver a service. How can this issue of collaboration be addressed in the intergovernmental agreement? There are a number of ways.

Recitals in the intergovernmental agreement. Most intergovernmental agreements contain some sort of recitals that describe matters of fact and key reasons why the agreement is being drafted. You can include a paragraph discussing the concept of collaboration that the parties hope to achieve. Below is an example from the Salmonberry Trail intergovernmental agreement.

WHEREAS, the Parties agree that a governing body is needed to promote and facilitate coordinated direction and guidance to plan the development and maintenance of a multi-use trail within the Salmonberry Corridor that can fully achieve the four goals outlined within the plan; and,

WHEREAS, the construction and management of a multi-use trail envisioned by the Concept Plan is a complex undertaking that no single jurisdiction or entity can accomplish on its own; rather, a collaboration of many government agencies, nonprofit organizations, and the private sector is necessary to advance this project;

Membership of the board of directors. The founders of the intergovernmental entity have the power to establish a board of directors that includes stakeholders and interested parties and gives them equal voting rights. Having a truly representative and inclusive board can help achieve the goal of collaboration.

Decision making. The intergovernmental agreement can also include language describing a consensus decision-making process. Two examples of such language were provided in the answer to question 15 under “Decision Making.”

Q17 | What are some examples of intergovernmental agreements forming an intergovernmental entity under Oregon law?

We have included twelve intergovernmental agreements in the appendix available at <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon>. They are provided as examples only, and are not intended as templates for specific intergovernmental agreement language.

Q18 | What names have been chosen by local governments as they created a new intergovernmental entity?

There are a variety of names given to a partnership formalized as an intergovernmental entity. Some examples include the following:

Agency	Council
Alliance	District
Association	Group
Authority	Intergovernmental Agency
Board	Network
Commission	Partners
Consortium	Taskforce



Conclusion

This guide has provided a look at how intergovernmental entities in Oregon are created and how their governance frameworks are sometimes designed. It answered a number of questions that commonly arise as government officials consider the possibility of forming an intergovernmental entity to deliver a service or address a public policy problem or opportunity. Sample intergovernmental agreements provided in the appendix at <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon> illustrate founding governments' approaches to creating a governance framework for their intergovernmental entity. These samples should give you some ideas about what to consider, but your governance framework and intergovernmental agreement should be unique to your situation.

In its extensive work with government bodies, the National Policy Consensus Center has seen the benefits of collaboration between governments—whatever form that collaboration takes. Resolution of public policy issues and cooperative service delivery can be short term or long term, complex or straight forward. In any case, we have seen that creating a governance framework that documents how the collaborative group will operate, whether through an intergovernmental entity or another arrangement and with or without an intergovernmental agreement, can be beneficial for any collaborative group of governments. Collaboration does take organization and effort, but it provides substantial rewards.



Appendices to this document, including examples of intergovernmental agreements for intergovernmental entities listed here are available as pdfs on the National Policy Consensus Center website at: <https://www.pdx.edu/policy-consensus-center/practical-guide-intergovernmental-entities-oregon>

- Appendix A** Oregon Revised Statute 190 (Excerpts) Governing Intergovernmental Entities
- Appendix B** Oregon Intergovernmental Entities under ORS 190.010(5) by Type of Entity
- Appendix C** Sample Intergovernmental Agreement—Coos Bay-North Bend Visitor and Convention Bureau
- Appendix D** Sample Intergovernmental Agreement—Economic Development Council of Tillamook County
- Appendix E** Sample Intergovernmental Agreement—Educator Advancement Council
- Appendix F** Sample Intergovernmental Agreement—Emergency Communications of Southern Oregon
- Appendix G** Sample Intergovernmental Agreement—Frontier Telenet Intergovernmental Agency
- Appendix H** Sample Intergovernmental Agreement—Metropolitan Wastewater Management Commission
- Appendix I** Sample Intergovernmental Agreement—Mid-Valley Behavioral Care Network
- Appendix J** Sample Intergovernmental Agreement—Salmonberry Trail Intergovernmental Agency
- Appendix K** Sample Intergovernmental Agreement—Umatilla Basin Water Commission
- Appendix L** Sample Intergovernmental Agreement—Washington County Consolidated Communications Agency

