

— Oregon Municipal Handbook —

CHAPTER 11: WORKING WITH OTHER GOVERNMENTS



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Chapter 11: Working with Other Governments

Cities are connected financially and legally to a complex, interlocking, and interdependent system of governments – federal, tribal, state and other local governments. Local government officials must devote their attention and energies not only to the internal affairs of their organizations, but also to how their city interacts with other governments.

This chapter will describe how cities often work with other governments, including counties, special districts, the state of Oregon, and other governments such as tribes and the United States.

I. RELATIONSHIPS WITH OTHER GOVERNMENTS

As discussed below, understanding the nature of other governments is useful for cities to assess potential conflict and areas of cooperation. The types of overlapping governments – counties, special districts, the state of Oregon, United States and Tribes – each have their own authority and types of considerations. More information about Oregon local governments can be found in this Handbook – Chapter 1: Nature of Cities.

A. Counties

i. Two types of home rule: constitutional and statutory

Originally, counties functioned almost exclusively as agents of the state government. Their every activity had to be either authorized or mandated by state law. A 1958 amendment to the Oregon Constitution reserved to the voters of Oregon counties the right to adopt charters prescribing how their county governments should be organized, what powers they should have, and what procedure they should follow in administering county affairs.¹ Since 1958, nine of Oregon's 36 counties have adopted charters.²

In 1973, the Oregon Legislative Assembly enacted a statute delegating to all counties the power to enact local legislation on matters of county concern.³ The 1973 statute greatly expanded the discretionary authority of general law (non-charter) counties, although charter counties have more options than general law counties with respect to reorganization.⁴ Oregon

¹ Or Const, Art VI, s. 9a (the “Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter.”).

² Counties adopting charters: Benton (1972) Clatsop (1988), Hood River (1964), Jackson (1978), Josephine (1980), Lane (1962), Multnomah (1967), Washington (1962), and Umatilla (1993).

³ ORS 203.035.

⁴ *Id.*

counties therefore enjoy two kinds of home rule: constitutional and statutory.⁵

ii. Governing body structure

The governing board structure for charter counties is comprised of three to five elected officials. For Clackamas County, the board of commissioners is comprised of five elected officials. For Crook, Gilliam, Sherman, Wheeler, Grant, Harney, Morrow and Malheur counties, the elected officials consist of a county judge and two commissioners. For the remaining 18 counties, the county is governed by a board of commissioners comprised of three elected officials.⁶

iii. Matters of county concern

Generally, counties exercise their authority and render services in “matters of county concern.”⁷ Matters of county concern are similar to cities in areas such as roads, parks, land use planning, raising revenue, and police powers.⁸ Some common police powers exercised by Oregon counties include regulations on animal control, nuisance and code regulation, abandoned and impounded vehicles, tobacco sales, mass gatherings, and solid waste.⁹

iv. Overlapping jurisdictions

Applicability of a county ordinance adopted under the counties' statutory delegation of powers is limited to areas outside cities unless the cities consent by action of the city councils or voters.¹⁰ Some county charters also have provisions that limit a county's exercise of powers inside cities. Even in the absence of such provisions, the attorney general has ruled that "ordinances of 'home rule' counties would not . . . be effective within a city which has delegated to itself under its charter the power to regulate the same subject."¹¹ However, there are some

⁵ See generally ASSOCIATION OF OREGON COUNTIES, COUNTY HOME RULE IN OREGON (2005), https://drive.google.com/file/d/0B4bfUJ9POS_RjVYMDhWZHowbHM/view?resourcekey=0-vQ8hnGby1VzLj4u0GxVDsA (last accessed December 30, 2022).

⁶ See ASSOCIATION OF OREGON COUNTIES, COUNTY STRUCTURES (2022), <https://drive.google.com/file/d/1rV4kPNEO6sjPudc1wHoNHcU1ZHFcHvX/view> (last accessed December 30, 2022).

⁷ ORS 203.035.

⁸ *Id.*

⁹ See generally ASSOCIATION OF OREGON COUNTIES, COUNTY HOME RULE IN OREGON (2005), https://drive.google.com/file/d/0B4bfUJ9POS_RjVYMDhWZHowbHM/view?resourcekey=0-vQ8hnGby1VzLj4u0GxVDsA (last accessed December 30, 2022); See also ASSOCIATION OF OREGON COUNTIES, SHARED STATE-COUNTY SERVICES (2022), https://drive.google.com/file/d/0B4bfUJ9POS_NmY4c0RZbVJreEU/view?resourcekey=0-ZvW9t-HoCw_xDudStiXiw (last accessed December 30, 2022).

¹⁰ ORS 203.040.

¹¹ See Op Atty Gen 6495 (1968).

notable exceptions such as maintenance of a “county road,” a designated road type that indicates maintenance responsibilities by the county, even if the road is in city limits.¹²

In addition to these functions that are similar to cities, many counties operate functions that are unique to counties or functions that counties share with the state of Oregon. For example, cities in Oregon do not assess property or collect their own property taxes: state law mandates that function to counties on a countywide basis.¹³ State law also requires counties to conduct city elections.¹⁴ Counties also administer a number of services that extend to residents of cities as well as unincorporated areas – public health and mental health programs, county surveyor, property document recording, county jails, search and rescue, vector control, solid waste disposal, county fairs, veteran services, and others.¹⁵

v. Issues in city-county relations

Friction sometimes arises in city-county relations. The issues are often financial, such as the double taxation issue when cities complain that city property owners pay county taxes but some county services are provided only outside cities. County roads annexed to cities remain a county responsibility until the city voluntarily takes over, and there are city-county disagreements over the level of maintenance that should be provided on such roads.¹⁶ City councils and county governing bodies in many areas hold joint periodic meetings to keep communications open on these and other issues.

Since many city services overlap with county services, there are opportunities to coordinate activities. The advantages of utilizing intergovernmental cooperation in the form of an intergovernmental agreement are discussed below.

B. Special Districts

School districts are the largest special purpose local governments in terms of number of personnel and size of budget. All parts of the state are within at least one district, and parts of the state are also within a community college district. More numerous are the non-school special districts which were created for cemetery maintenance, county service, domestic water supply, drainage, fire protection, health, irrigation, library, parks and recreation, people’s utility, ports, road assessment, sanitary, soil and water conservation, special road, vector control, water

¹² See ORS 373.270; See also ASSOCIATION OF OREGON COUNTIES, COUNTY ROAD MANUAL, 203-204 (2022).

¹³ See ORS chapters 308 to 312.

¹⁴ ORS 246.200 to 246.210.

¹⁵ See generally ASSOCIATION OF OREGON COUNTIES, SHARED STATE-COUNTY SERVICES (2022), https://drive.google.com/file/d/0B4bfUJ9POS_NmY4c0RZbVJreEU/view?resourcekey=0-ZvW9t-HoCw-xDudStiXiw (last accessed December 30, 2022).

¹⁶ See ORS 373.270; see also 373.310 to ORS 373.330 (giving cities of Gresham, Myrtle Point, and Salem jurisdiction over certain county roads declared city streets).

control, water improvement.¹⁷ Excluding school districts, there are more than 1,000 special districts located in every region of the state.¹⁸

Note that county service districts organized under ORS chapter 451 are an unusual mix of counties and special districts to provide services to specific areas in a county. Usually governed by the county governing board, services can include library, road, law enforcement, cemetery, animal control, water service, public transportation, agricultural educational extension services and parks.¹⁹

i. Principal act authority

Special districts provide a specific service and all decision-making and all funds collected are dedicated to providing that service. Unlike cities, which are typically governed by home rule charter, special districts derive nearly all of their authority directly from statutes, known as the “principal act.” A district’s principal act provides for the duties and responsibilities of the district, the method of elections, and limits to the district’s authority.²⁰

Principal acts commonly grant special districts the following: (1) to sue and be sued; (2) to construct, reconstruct, operation, maintain real and personal property; (3) to enter into contracts, deeds, leases; (4) to assess, levy and collect taxes; and (5) to employ necessary persons. Any city interacting with a district should review the appropriate principal act to understand the district’s authority and limitations.²¹

The process for special district boundary changes, including formation, dissolution, merger, consolidation, and annexation, are determined by statute.²²

ii. Issues in city-special district relations

An area of contention between cities and special districts are urban renewal programs. Special districts are concerned that future tax revenues are diverted from the special districts to the urban renewal agency, often a city, with little input by the special district. Although the laws were amended in 2009 and 2019 to require more cooperation with the impacted special districts and limit the maximum indebtedness of an urban renewal plan except with concurrence of overlapping special districts, many special districts continue to be concerned about the loss of future revenues.²³

¹⁷ SPECIAL DISTRICTS ASSOCIATION OF OREGON, WHAT IS A SPECIAL DISTRICT?, <https://www.sdao.com/files/a3473de8b/what-is-special-district.pdf> (last accessed January 1, 2023).

¹⁸ *Id.*

¹⁹ ORS 451.010.

²⁰ See *City of Powers v. Coos County Airport*, 119 P3d 225, 201 Or App 222 (Or. 2005).

²¹ See e.g., ORS 838.005 to 838.075 (principal act of airport districts).

²² ORS 198.705 to 198.955.

²³ See ORS 457.089; ORS 457.190(4); ORS 457.220(4); ORS 457.455; ORS 457.470.

C. State Government

Oregon has three branches of government -- executive, legislative and judicial. Cities interact with the each of the branches in different ways. The following will discuss how cities commonly interact with the state of Oregon.

i. Executive branch

Oregonians elect five statewide officials to manage the executive branch of government.²⁴ These officials are the governor, secretary of state, treasurer, attorney general, and commissioner of labor and industries.²⁵

Many state agencies have programs that regulate city activities. The following list illustrates the agencies with whom cities most frequently interact, but it is not a comprehensive list:

- *Department of Land Conservation and Development.* Administers statewide land use goals and rules, reviews city comprehensive plans and land use ordinances, and provides grants-in-aid and technical assistance.
- *Department of Environmental Quality.* Promulgates standards for air and water quality, except in Lane County, where the county and its cities have established a regional air pollution authority. Provides technical assistance and advice on a wide range of matters such as water and air quality, solid waste, and recycling.
- *Department of Transportation.* Constructs and maintains state highway system and administers federal and state grants-in-aid for city road systems.
- *Secretary of State.* Prescribes local government audit standards and supervises the administration of elections.

ii. Oregon Legislative Assembly

The present Oregon Legislative Assembly is a bicameral system—two houses with senators and representatives.²⁶ The Legislature enacts new laws and revises existing ones, makes decisions that keep the state in good economic and environmental condition and provides a forum for discussion of public issues.²⁷

²⁴ See *Executive Branch*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/state-executive.aspx> (last accessed January 1, 2023).

²⁵ *Id.*

²⁶ See *Legislative Branch*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/state/legislative/about.aspx> (last accessed January 1, 2023).

²⁷ *Id.*

The Legislature reviews and revises the governor’s proposed budget and passes tax laws to provide needed revenue.²⁸ The Oregon Constitution requires that the state must not spend money in excess of revenue.²⁹

The Legislature also influences executive and judicial branch decisions. Enacting laws and adopting the budget establish state policy that directs all state agency activity and impacts the courts.³⁰ The Senate confirms gubernatorial appointments to certain offices. The Legislative Counsel Committee reviews state agency administrative rules to ensure that legislative intent is followed.³¹

Beginning in 2011, the Oregon Legislative Assembly meets each year, limited to 160 calendar days in odd-numbered years and 35 calendar days in even-numbered years.³²

Most of the work of the Legislature takes place in committees. Committees of the Legislature can amend bills, pass them out with or without recommendation as to passage, table them or simply let them die. Because of the broad discretion vested in committees, the powers of the presiding officers of each legislative chamber in appointing committees and in referring bills are of crucial importance.

Most action of the Legislature has some direct or indirect effect on local government. City and county officials have frequent dealings with individual legislators, particularly from their own districts, and with legislative committees and leaders. Local government officials receive information from many sources about bills that might affect them, but one of the most important is the weekly *LOC Bulletin* which is sent out electronically by the League of Oregon Cities each Friday. An important part of the legislative effort of this organization is to keep city officials informed of legislative developments both during and between sessions.

iii. Judicial branch

Oregon’s judicial branch of government reviews cases for compliance with federal, state and local laws.³³

The judicial branch of state government affects local government by: 1) awarding damages, imposing penalties, or issuing orders in cases to which a local government is a party; and 2) interpreting constitutional provisions, charters, laws, ordinances, and rules that determine what a local government may do or not do, and how it may do it.

Local governments may be drawn into court in a variety of ways, including petitions for writ of review of their actions in the circuit court, actions for damages in tort or contract, and

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Ballot Measure 71, Approved November 2, 2010.

³³ See *Judicial Branch*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/state-judicial.aspx> (last accessed January 1, 2023).

petitions for writs of mandamus or injunction. Local governments can minimize the risk of lawsuits by retaining competent counsel, keeping their legal advisors informed of their actions, and following the legal advice they receive from their advisors.

iv. Issues in city-state interactions

Often, cities and the state work together to accomplish objectives for their communities. However, there is friction in the city-state relationship when the state: (1) exercises preemption over local concerns; (2) imposes limitations or constraints on city activities (usually in financial matters); (3) mandates certain city functions, activities, or expenditures, and (4) changes to state shared revenues.

- *Preemption.* The state preempts a matter on which local government might otherwise act when it precludes local government regulation completely or in part. Examples of preemption specifically provided by law include energy facility siting and the regulation of real estate brokers and salespersons. Implied preemption may exist in laws even though preemption may not be specifically and expressly stated.

Less sweeping preemptions are those in the state traffic code. Under these laws, local governments are merely preempted from enacting local ordinances or regulations that conflict with state law. A 1986 Oregon Supreme Court decision holds that the wording of the city home rule amendment prevents cities from setting criminal penalties that are greater than those established by state law for the same crimes.³⁴

- *Limitations.* Limitations and constraints are used extensively to regulate cities. Examples include statutory debt limits, limits on the length of time for which a serial levy may be approved, conduct of local elections, political activity of public employees, and public contracting.
- *Mandates.* Mandates are state action that requires increased city expenditures. Mandates can take many forms including statute or conditions to a grant. Some common examples include land use planning, providing unemployment and workers' compensation for employees.

Although many mandates are necessary, cities object to mandates that they regard as unnecessarily intrusive. In November 1996, the voters passed an amendment to the Oregon Constitution stating that cities may not need to comply with a state law or administrative rule adopted after January 1, 1997, that requires the expenditure of money for a new program or increased level of service for an existing program until the state appropriates reimbursement for any costs incurred.³⁵ Cities should consult

³⁴ *City of Portland v. Dollarhide*, 300 Or 490 (1986).

³⁵ Or Const, Art XI, s. 15.

with their legal counsel to determine whether and to what extent the power applies to an unfunded mandate imposed by the state.

- *Shared Revenue.* The state shares revenues from the Highway Trust Fund, liquor revenues, marijuana tax revenues, cigarette tax revenues and 9-1-1 tax revenues. Although cities have a long history of sharing revenue with the state in exchange for not taxing these industries, cities are concerned about long term stability of the revenue. For example, gas tax revenues in 2020 dropped for passenger vehicles due to the pandemic and more fuel efficient and electric vehicles but trucking increased due to online shopping.

D. Other Governments

i. United States

Contracts with the United States can be executed for number of reasons such as grant assistance with Federal Aviation Administration, cooperative policing or security agreements. Although most cities will not contract directly with the United States or a federal agency, many cities do receive federal grants. Several federal laws and requirements apply to cities, including the Americans with Disabilities Act, environmental quality, and nondiscrimination. Through the voluntary acceptance of federal grants, the federal government imposes federal regulations such as Davis-Bacon prevailing wage requirement, relocation assistance, and historic preservation requirements.

ii. Indian Tribes

Within Oregon, there are nine federally recognized Indian Tribes. In 2001, SB 770 passed the Legislature, requiring state agencies to include Tribes in the development and implementation of state programs that affect tribes.³⁶ In Oregon, Tribes are legislatively represented through the Oregon Commission on Indian Services (LCIS), an advisory body of 13 Tribal leaders and legislators.

Most cooperation with Indian Tribes will be with the state of Oregon. For example, in 2022, the Coquille Indian Tribe and the state agreed to co-manage fish and wildlife habitat in Southern Oregon to address issues such as dwindling fish on the Coquille River. The state of Oregon is a leader in state-Tribal government-to-government relations.

According to former LCIS Director Karen Quigley, local governments are encouraged to: (1) appreciate and respect the legal and historical basis of Tribal governments; (2) learn the distinction between federally recognized tribal governments and non-federally recognized tribal governments, Indian organizations, and self-identified Indians, and (3) ask before adopting a new policy or program – will this action affect tribal government interests? Some cities have a

³⁶ See ORS 182.163 to 182.168.

“history of exploring ways to cooperate with local Tribes to expand opportunities and provide services in a time of scarce resources in a way that enhances the health, safety and welfare of their citizens, tribal members and non-Tribal members.”³⁷

In addition to the above considerations, cities may also consider that each Tribe is their own elected government, with their own laws. Since each tribe is unique, each Tribe has their own unique culture, legal history and struggle. Cities are encouraged to reach out to and ask to learn more about working with an individual Tribe and consider possible partnerships.

II. INTERGOVERNMENTAL AGREEMENTS

Cities often find it advantageous to work with other cities or with counties, special districts, the state of Oregon, or Tribal nations. These relationships are often formalized into an intergovernmental agreement (IGA) authorized by law.³⁸

An IGA is any agreement that involves or is made between two or more governments in cooperation to solve problems of mutual concerns. Local governments are encouraged to make the most efficient use of their powers by enabling them to cooperate with other governments based on mutual advantage.³⁹ Such agreements often result in lower cost and more effective provision of public services – especially where there are significant economies of scale or more efficient utilization of staff or other resources.

Examples of intergovernmental cooperation to tackle issues like the need for expensive technology and equipment and improve on the delivery of services that alone would be difficult to provide. For example, expensive pieces of road maintenance equipment that see limited use throughout the year can be shared between cities—particularly those that have relatively few miles of road to maintain and/or limited budgets. Agreements can be applied to an array of other cooperative efforts, such as volume materials purchasing, professional services, shared emergency medical services, joint youth or senior programs, combined planning efforts, and joint quasi-municipal government to operate a water utility.

Oregon statutes authorize cities to enter into intergovernmental agreements with other governments for the performance of any and all functions and activities that a party to the agreement has the authority to perform.⁴⁰ IGAs have whatever duties, authority and

³⁷ KAREN QUIGLEY, OREGON’S APPROACH TO STATE-TRIBAL RELATIONS – AND HOW LOCAL GOVERNMENT MAY WANT TO USE SOME OF IT, <https://www.oregonlegislature.gov/cis/Pages/education.aspx> (last accessed January 1, 2023).

³⁸ ORS 190.010.

³⁹ ORS 190.007 states, "In the interest of furthering economy and efficiency in local government, intergovernmental cooperation is declared a matter of statewide concern. The provisions of ORS 190.003 to 190.130 shall be liberally construed."

⁴⁰ Id.

responsibilities that the founding governments delegate to it. The IGA is approved and signed by each of the governing bodies that are parties to the agreement.

Developing an IGA can be challenging. This section provides an overview of the types of IGAs, when and how they are used, and answers to frequently asked questions.

A. Legal Authority

Before 1953, the Oregon Legislature gave local governments the express authority to cooperate with other governmental entities.⁴¹ Recognizing the value of intergovernmental cooperation, in 1967, the Oregon Legislature declared the matter of statewide concern and encouraged such cooperation to further the “economy and efficiency in local government” and that the “provisions of ORS 190.003 to 190.130 shall be liberally construed.”⁴²

Oregon law gives cities the authority to cooperate another local government, an Oregon state agency, another state agency, the United States or its governmental agencies, or an Indian Tribe or its agencies.⁴³ Local governments include “county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.”⁴⁴

B. Intergovernmental Cooperation Activities

In addition to the broad grant of authority, the statutes enumerate the methods of intergovernmental cooperation. In cooperation with other governments, cities may provide for the performance of the following functions or activities: (1) consolidating a department; (2) jointly providing for administrative officers; (3) operating joint facilities or equipment; (4) providing a service or duty for another government; (5) creating an intergovernmental entity that acts on behalf of the local governments, or (6) any combination of the above.⁴⁵

In addition to the general provisions, Oregon law authorizes specific intergovernmental cooperation. One such authorized use is the ability to obtain “benefits” for the use of an intergovernmental entity.⁴⁶ For example, a type of benefit that is authorized would include grants for a 9-1-1 dispatch center.

Oregon statutes also allow intergovernmental cooperation for “geographic data that have commercial value” and to collect fees for access to such data.⁴⁷ Cities are also authorized to enter into agreements with the United States to “perform security functions at a military

⁴¹ ORS 190.003 to 190.265.

⁴² ORS 190.007. *See State ex rel. Dewberry v. Kitzhaber*, 259 Or App 389, 403 (2013), *rev. den.*, 354 Or 838 (2014); *Chinese Consol. Benevolent Ass'n v. Chin*, 316 Or App 514 (2021).

⁴³ ORS 190.110(1).

⁴⁴ ORS 190.003.

⁴⁵ ORS 190.010.

⁴⁶ ORS 190.035.

⁴⁷ ORS 190.050.

installation or facility in the United States and to receive payment for performing the functions.”⁴⁸

C. Type of Agreements

An IGA is created when two or more governments agree to cooperate and formalize the agreement in writing. An IGA is approved by the governing bodies of the participating governments.

There are numerous types of IGAs, but generally, such agreements fall into two different categories: (1) creation of an intergovernmental entity that has established a delegated governance structure, and (2) agreements formed for a specific purpose, but the parties have not created a governance framework. As described below, depending on the type of IGA, state law requires specific terms and conditions to be in the IGA.⁴⁹

i. Intergovernmental entities

An Intergovernmental Entity (IGE) is a public entity with specific and limited governmental powers and responsibilities. The participating governing bodies delegate certain governmental tasks and responsibilities to the newly created IGE.⁵⁰ Since the IGE is delegated duties and authorities by the participating governing bodies, it is similar to a city, county, a school district, or a special district, but with some notable differences.

Generally, Oregon law treats an IGE as a public body; thus, most laws that affect the founding governments also apply to the IGE and the services it provides.⁵¹ One major exception to the laws that apply to IGEs is that these entities are not generally required to follow budget law.⁵²

As described below, Oregon law requires certain items to be addressed within the agreement but does not prescribe how the IGE is formed or organized.⁵³ Thus, the

Examples of Intergovernmental Entities:

- Clackamas 800 Radio Group
- League of Oregon Cities
- Lane Council of Governments
- South Central Oregon Economic Development District
- Central Oregon Workforce Consortium
- Columbia River Estuary Study Taskforce
- Josephine County-City of Grants Pass Solid Waste Agency
- Umatilla Basin Water Commission
- Tri-County Cooperative Weed Management Area

⁴⁸ ORS 190.112.

⁴⁹ ORS 190.020.

⁵⁰ See PORTLAND STATE UNIVERSITY, A PRACTICAL GUIDE TO INTERGOVERNMENTAL ENTITIES IN OREGON: CREATING AND MANAGING AN INTERGOVERNMENTAL ENTITY UNDER ORS 190.010(5) (2020), https://www.pdx.edu/policy-consensus-center/sites/g/files/znlidhr3416/files/2020-09/NPCC_Gov_Guide_Final_9-16-20.pdf (last accessed January 1, 2023).

⁵¹ ORS 175.109 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).

⁵² ORS 294.316(14).

⁵³ ORS 190.020.

forming governments are given flexibility to collaborate and craft an IGE that will best fit their situation.

Members of the IGE governing body are not usually elected by the people through a regular election process; rather, the IGE is governed by members who are appointed by the City Council(s). The IGE is often referred to as a “board” or “commission.”

An IGE can be the benefactor of the transfer of possession of or title to real or personal property. All governance, financial, administrative such as information systems, human resources support, payroll, legal, personnel, facility, equipment, and liability details for the IGE should be set forth in the IGA. As discussed below,

Each party must determine whether the benefits outweigh the costs of participating in the IGE. As discussed above, the benefits could be the need for expensive technology and equipment or to improve on the delivery of services that alone would be difficult to provide. Although an IGE may not obtain revenue through a levy taxes or general obligation bonds, an IGE can issue revenue bonds.⁵⁴ The liabilities could include: (1) transfer of employee liabilities such as PERS, sick leave, vacation leave, long-term disability; (2) transfer of facilities, apparatus, equipment, and (3) budgeting issues such as beginning fund balance and reserves.

A phenomenal resource on IGEs is Portland State University, A Practical Guide to Intergovernmental Entities in Oregon: Creating and Managing an Intergovernmental Entity under ORS 190.010(5) available at https://www.pdx.edu/policy-consensus-center/sites/g/files/znlchr3416/files/2020-09/NPCC_Gov_Guide_Final_9-16-20.pdf.

ii. Specific purpose cooperation

Specific purpose cooperation is a type of IGA is a form of intergovernmental cooperation but does not have a separate governance structure. In this type of IGA, the participating governing bodies retain more control over the delegated functions rather than vest the decision making in the governing structure. The participating governments also retain the ability to control of their own property, equipment and employees, but may share the expenses and revenues from coordinating their services.

Since the participating governments maintain control over their own resources, the issues that are negotiated in a special purpose IGA are reduced and will not require as much discussion and negotiation. As a result, special purpose cooperation IGAs are easier to form than an IGE and are far more commonly used than an IGE.

Like described above, Oregon law requires certain items to be addressed within the agreement but does not prescribe how the collaboration is organized.⁵⁵ Thus, the forming governments are given flexibility to collaborate in a way that will best fit their situation.

⁵⁴ ORS 190.080.

⁵⁵ ORS 190.020.

D. Contents of the IGA

Regardless of the type of IGA, state law requires certain issues to be addressed within the agreement.⁵⁶ The issues, if applicable, that must be addressed are the following:

- Apportionment of costs of performance.
- Apportionment of revenue and accounting for revenue.
- Transfer of personnel and the costs of the employment benefits.
- Transfer of possession of or title to real or personal property.
- Term or duration of the agreement, which may be perpetual.
- The rights of the parties to terminate the agreement.⁵⁷

Most IGAs are simple cooperation agreements and will contain the minimum amount of provisions based on the situation. IGAs can be modified by the parties to meet the needs of emergent issues.

E. Practice Tips

When determining the form and content of an IGA, consider the following when crafting an intergovernmental agreement:

1. *Purpose.* What is the purpose of the cooperation? What types of services and activities will be accomplished?
2. *Parties.* What governments will be cooperating? Consider the potential conflicts with the governments (as discussed above). Will it be a simple two-government cooperation or is there a need to include multiple parties?
3. *Resource needs.* Will one government be able to absorb the work or does the nature of the cooperation need its own staffing and resources? Will it need its own budget and if so, will you comply with local budget law through the cooperation?
4. *Decision-making.* Will the participating parties make the decisions or delegate the decisions to a separate board? What type of oversight do the founding governments require?
5. *Liability.* How will the founding governments divide the liability?
6. *Assets.* Will the founding governments retain the assets or will the assets be distributed to an entity?
7. *Termination.* How much notice is needed to terminate the cooperation? How will the governments distribute assets once terminated?

⁵⁶ ORS 190.020.

⁵⁷ ORS 190.020.

8. *Other impacts.* Will the cooperation impact other parties such as Indian Tribes? Should the other identified parties be consulted?

Several examples of IGAs – both IGEs and specific purpose cooperations—are available online.⁵⁸

⁵⁸ See PORTLAND STATE UNIVERSITY, A PRACTICAL GUIDE TO INTERGOVERNMENTAL ENTITIES IN OREGON: CREATING AND MANAGING AN INTERGOVERNMENTAL ENTITY UNDER ORS 190.010(5), https://www.pdx.edu/policy-consensus-center/sites/g/files/znlchr3416/files/2020-09/NPCC_Gov_Guide_Final_9-16-20.pdf (last accessed January 1, 2022); Washington County, <https://www.washingtoncountyor.gov/support-services/documents/csda-grant-iga-template/download?inline> (last accessed January 2, 2022).