

# Governing Tools for the 21st Century

How State Leaders Are Using Collaborative  
Problem Solving and Dispute Resolution

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This guide to instituting the use of collaborative processes in state government describes the range of ways state agencies across the country are employing these tools in their day-to-day operations. It includes an overview of best practices for integrating the use of collaboration and dispute resolution, and provides information about where to go for further resources.

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## OVERVIEW OF AGENCIES' USES OF COLLABORATIVE PROCESSES

Joint problem solving, consensus building, negotiation, mediation, dispute resolution, and conflict resolution are some of the terms used to describe collaborative processes. What these processes have in common is that they bring people together to work collaboratively toward agreements.

This spectrum of collaborative processes ranges from parties informally negotiating on their own to parties working with a facilitator or mediator to enable them to sit down together to find common ground.

Collaborative processes can be used not only to resolve disputes, but also to prevent them. Preventive processes include those in which you foresee conflicts and provide ways to address them when they arise. A proactive approach is useful when an issue is known to be contentious. You may decide to engage a facilitator when you anticipate the need for help in collaborating effectively. By anticipating conflict and involving key parties early on, conflicts can be managed creatively as they arise, and can provide a platform for building consensus on solutions.

Agencies are using these processes both internally, to resolve issues like workplace or interpersonal conflicts, and to develop consensus and buy-in on plans and projects. Externally, agencies are engaging in collaborative problem solving and mediating disputes with contractors, the regulated community, and citizens. Collaborative processes have also worked extremely well for both intergovernmental and interagency issues.



State agencies are using collaborative approaches in a number of areas:

## Government

**Administrative functions**

**Regulation and enforcement**

**Licensing and permitting**

**Policymaking**

**Intergovernmental relations**

**Human resource management**

Following are descriptions and examples of how agencies are using collaboration and dispute resolution in these various areas.

## ADMINISTRATIVE FUNCTIONS

Agencies are finding collaborative practices to be especially helpful in the business of government.

### Contracts

Disagreements develop and evolve during the life of a contract, from pre-award through closeout. Issues that remain unresolved often end up in litigation. Mediation and other forms of dispute resolution are being used regularly as alternatives prior to litigation.

However, the most productive way to handle a potential dispute is to do so when parties are negotiating the contract, before a dispute has arisen. A cooperative atmosphere typically prevails at that juncture, so agreeing on rational, fair, dispute resolution procedures is a relatively simple task. Once a dispute erupts, it is much more difficult for parties to agree on anything, including how to go about resolving it.

*In Texas*, most contracts entered into by state agencies must include language about the dispute resolution process to be used by the agency.

*In Massachusetts*, state contracts include provisions for voluntary mediation through the Massachusetts Office of Dispute Resolution.

*In Kansas*, a law requires the Department of Social and Rehabilitation Services to authorize mediation in the event of contract disputes between the department and non-profit organizations that provide services to disabled individuals.



*“As former Secretary of a state resource agency, I recommend that conflict resolution processes should be part of every agency director’s toolbox.”*

**Jennifer Salisbury**  
**Former Cabinet Secretary, New Mexico Energy, Minerals and Natural Resources Department**

## Partnering

Partnering has become a common practice on large construction projects both within and outside of government. Partnering involves getting all the parties on a project to agree at the outset to adopt a cooperative approach to eliminate—or at least reduce—conflicts, litigation, and claims. In partnering, parties typically meet in a workshop setting to establish common objectives and identify what will be needed to achieve those objectives. They also identify the inevitable “rocks in the road” they are likely to encounter, and devise problem-solving procedures to deal with them.

*In Arizona*, thanks to effective partnering, the Department of Transportation (ADOT) reports that since June 1994 it has saved more than \$2 billion in construction costs and nearly 11,000 contract days. ADOT has had to settle only two of its claims by arbitration.

*In New York*, the state has used partnering since 1992 on more than \$3 billion worth of construction projects including schools, bridges, tunnels, prisons, office buildings, and hospitals. The costs of these projects have ranged from \$5 million to \$500 million.

*In Texas*, the US Environmental Protection Agency Region IV and the state’s Natural Resources and Conservation Commission used partnering to work out common objectives and better ways of communication and problem solving between the agencies.



## Other Administrative Functions

ADR can be useful in dealing with a variety of disputes falling under state administrative procedure acts (APAs), including contested cases, enforcement proceedings, and policy and/or rule formation, as described in the sections that follow. Florida and Washington have incorporated ADR provisions as amendments to their state APAs. The states of New Mexico, Oregon, and Texas have enacted freestanding government ADR statutes and rules to authorize agencies to use dispute resolution.

## REGULATION AND ENFORCEMENT

Disputes constantly arise when agencies enforce regulations. Enforcing regulations and encouraging compliance in the least costly, least adversarial, and most effective way are crucial to ensuring that government policies are implemented. Negotiated and mediated approaches are being used successfully to work out enforcement of such issues as environmental protection, child protection, taxation, and civil rights.

*In Florida*, the Department of Environmental Protection has used mediation in an average of 60 enforcement actions each year. Thanks to the success of this program, legislation was enacted that provides for mediation of enforcement actions seeking fines of \$10,000 or less. In addition, staff has been trained in negotiation skills so that they can communicate more effectively and informally resolve problems with permit holders.



*In Texas*, the Child Protective Services Division of the Department of Protective and Regulatory Services developed a mediation program to handle disputed or complex child custody cases. This was in response to legislation limiting temporary foster care to 12 months and creating the need to streamline the judicial process. Mediation has produced settlements at all stages in case processing and has proven to be more efficient and cost effective.



*In Ohio*, the Board of Tax Appeals has been using mediation since 1991. About 90 percent of mediated cases reach settlement. Results are improved efficiency and monetary savings, including the time that taxpayers and prosecutors would have spent traveling and presenting their cases in the state capital. Similarly, the Utah Tax Commission mediates cases through a "Problem Resolution Program."



*"Voluntary, non-binding alternative dispute resolution processes offer citizens another avenue for ending their conflicts. They assist us in ensuring that the legal system provides mechanisms that are speedy, fair, and less expensive."*

**Bill Pryor**  
**Attorney General of Alabama**

## LICENSING AND PERMITTING

Some states now offer applicants for licenses or permits—or those who oppose them—an option to negotiate or mediate differences over contentious issues.

More and more states are turning to mediation to address consumer complaints against holders of licenses. Investigating and prosecuting these kinds of complaints has become enormously costly, and many states are seeing a growing backlog of cases. Mediating these cases has proven to be cost effective and time saving for all involved parties.

*In New Mexico*, the Environment Department is using facilitated negotiations to resolve conflicts over contested permits when issues are outside the jurisdiction of the agency.

*In Colorado*, the Department of Liquor Licensing uses mediation to resolve complaints that allege behavior of a licensee or its patrons is causing neighborhood problems.

*In Florida*, the Department of Business and Professional Regulation's mediation program has reduced the average length of time for case disposition from 136 days to 47 days, and the average cost of case resolution has been slashed from \$1,225 to \$211, resulting in a savings of almost \$400,000.



*“Over the past three years, the Florida Department of Transportation has used consensus building to deal with a number of difficult issues. We find that these processes provide for better communication, save time and money, and strengthen important relationships.”*

**Thomas F. Barry, Jr.**  
**Secretary, Florida Department of  
Transportation**

## POLICYMAKING

Consensus processes have been used since the mid 1970s to develop scores of federal and state rules, policies, and legislative proposals addressing controversial environmental problems, regulating health and safety concerns, and allocating scarce budgetary or other public resources.

Facilitated processes can also be used to promote information exchange or collaboration through involving the public. Strategic planning and visioning are methods that enable multiple parties to set common goals and then work together toward achieving them.

*In Delaware*, the governor decided to use a mediator to work out a 22-year old dispute between industry and environmental organizations over regulations to protect the coastal zone. The dispute was resolved when parties successfully negotiated an agreement on a rule ensuring environmental improvement on the coast.

*In California*, the Cal Fed Bay-Delta project involved 15 state and federal agencies and more than 2,000 private stakeholders in developing a collaborative agreement to restore ecological health and improve water management for the San Francisco Bay Delta. It encompasses 70 percent of California and is the largest ecosystem restoration program in the United States.

*In Oregon*, a broad based advisory committee to the Oregon Department of Transportation developed consensus recommendations on a contentious rule to guide access management, or how decisions are made about where new entrances to state highways are constructed. (A PCI video titled “Building Consensus: Transportation Rulemaking in Oregon” describes this process.)



*“The Minnesota Legislature’s Health and Human Services Committees have had a great deal of success using work groups, joint task forces, and facilitated discussions to arrive at agreements on tough issues like welfare reform, long-term care reform, and health care costs. These approaches have enabled us to find common ground, and at the same time, streamline our decision-making process.”*

**Sheila Kiscaden**  
**Minnesota State Representative**

## INTERGOVERNMENTAL RELATIONS

Government works best when the federal, state, and local levels work together effectively to coordinate the delivery of programs and services. Yet this does not always happen, particularly since agencies within different levels of government frequently have differing mandates, missions, and objectives. Increasingly, collaborative approaches are being used to work out controversial issues among different agencies and levels of government.

*In Washington*, the legislature enacted a statute that encourages agencies to use dispute resolution processes for interagency disputes. The Attorney General and the Governor's Office offer assistance to agencies in informally resolving interagency disputes. This approach has been very successful; to date, there have been no formal requests for mediation.

*In Maryland*, the Department of Families, Youth and Children is negotiating agreements with each of the counties over ways to reform the human service delivery system. (This successful program is featured in a PCI video titled "Government Working Smarter.")

*In Ohio*, state and county emergency management agencies have gotten together for the past several years to jointly work out plans, methods of communication, and ways to resolve problems as they arise.



*"What we've done in Maryland is what I call systems reform... We are fundamentally altering our expectations for government. How we act. How citizens act. How different levels of government act. And how we all act effectively, smartly, together."*

**Kathleen Kennedy Townsend**  
**Lieutenant Governor,**  
**State of Maryland**

## HUMAN RESOURCE MANAGEMENT

Every agency encounters employment disputes. From hiring and firing, suspensions, promotions, and demotions to claims of discrimination and harassment, employee disputes often are the most difficult disputes for agencies to manage. Even among agencies that have labor contracts and complaint and grievance systems, workplace mediation programs can help parties address interpersonal issues not covered by union contracts. The goal of workplace mediation programs is to find lasting solutions to these kinds of disputes, preserve working relationships among staff members, and save time and money.

*In Minnesota*, the workplace mediation program focuses on interpersonal, non-contract disputes. Mediators are drawn from a pool of neutrals shared among 16 state agencies and all levels of employment. Situations have been resolved through mediation more quickly, and participants register a high degree of satisfaction with the process. In the initial pilot project, 43 cases were mediated, 37 reached full agreement, and five reached partial agreement.



*In Ohio*, four state agencies have been using mediation for the past five years to resolve workplace disputes: the Department of Commerce, the Department of Family Services, the Bureau of Employment Services, and the Ohio Environmental Protection Agency.



Colorado, Texas, and Washington have similar workplace mediation programs.



*“Governor Leavitt has made the deployment of statewide mediation one of his main priorities. It is a major part of his effort to streamline government.”*

**Rich McKeown**  
**Chief of Staff**  
**Utah Office of the Governor**

## TEN KEYS TO SUCCESS

1.	Find champions among leaders who can help achieve high level buy in and support.
2.	Employ a program manager or coordinator who can provide skillful strategic direction.
3.	Provide continuous education and training to build capacity.
4.	Use a collaborative approach, involving staff and users to develop your program.
5.	Follow these four basic steps to initiating the program: 1) assess the needs, 2) plan the program, 3) demonstrate or pilot the program, and 4) evaluate the results.
6.	Employ a systems approach, adopting procedures to prevent as well as resolve disputes.
7.	Create incentives and remove disincentives to the use of collaborative practices.
8.	Develop policies and guidelines in support of the program.
9.	Ensure adequate resources to support the program.
10.	Reward and celebrate accomplishments.



### Further Information and Resources

More about the keys to instituting collaborative processes is available at [www.policyconsensus.org/tools/10keys.html](http://www.policyconsensus.org/tools/10keys.html)

## EXAMPLES OF COLLABORATIVE PRACTICES IN STATE GOVERNMENT

Agency Function	<i>Administrative</i>	<i>Human Resource Management</i>	<i>Licensing and Permitting</i>
<b>Collaborative or ADR Process</b>	<p>Dispute prevention – 1) contract clauses; 2) partnering</p> <p>Dispute resolution – mediation and other ADR processes</p>	<p>Employee workplace disputes – mediation to supplement grievance and complaint systems</p> <p>Training in conflict management for employees</p> <p>Early resolution of EEOC discrimination claims – mediation</p>	<p>Facilitated and mediated negotiation between license/permit seekers and their opponents</p> <p>Mediation of complaints against licensees</p>
<b>State</b>	<p>Texas: All state contracts have ADR clauses</p> <p>Massachusetts: State contracts provide for voluntary mediation of disputes and claims</p> <p>Arizona: Department of Transportation employs partnering</p>	<p>Minnesota Workplace Mediation: 16 state agencies</p> <p>Ohio Workplace Mediation: Departments of Commerce, Human Services, EPA and Employment Services</p> <p>Colorado: Volunteer mediators for workplace disputes, and training for mediators</p>	<p>New Mexico: Environment Department</p> <p>Colorado: Department of Liquor Licensing</p> <p>Florida: Department of Business and Professional Regulation</p>
<b>Other References/Resources</b>	<p>Partnering: <a href="http://www.amc.army.mil/amc/command_counsel/partnering.html">www.amc.army.mil/amc/command_counsel/partnering.html</a></p> <p>Sample clauses: <a href="http://www.cpradr.org">www.cpradr.org</a></p> <p>Air force ADR contract info: <a href="http://www.safaq.hq.af.mil/contracting/toolkit/adr/">www.safaq.hq.af.mil/contracting/toolkit/adr/</a></p>	<p>Minnesota Workplace Mediation Pilot Project: <a href="http://www.doer.state.mn.us/tdr/pdfs_rtf/wrkp-web.pdf">www.doer.state.mn.us/tdr/pdfs_rtf/wrkp-web.pdf</a></p> <p>Ohio Workplace Mediation Pilot Program: <a href="http://www.state.oh.us/cdr/brochures/wmpbrochure.htm">www.state.oh.us/cdr/brochures/wmpbrochure.htm</a></p> <p>ACR Guidelines For The Design Of Integrated Conflict Management Systems Within Organizations: <a href="http://www.acresolution.org/research.nsf/articles">www.acresolution.org/research.nsf/articles</a></p>	<p>Florida DBPR program: <a href="http://fc.state.fl.us/owa_myflorida/owa/myflorida_www.main_story?top_key_str=1264">http://fc.state.fl.us/owa_myflorida/owa/myflorida_www.main_story?top_key_str=1264</a></p>

To contact the agencies or states listed below for more information about their programs, see the on-line Directory of State Dispute Resolution Programs at [www.policyconsensus.org](http://www.policyconsensus.org)

<b><i>Polycymaking</i></b>	<b><i>Regulation and enforcement</i></b>	<b><i>Intergovernmental Relations and Coordination</i></b>
<p>Mechanisms to facilitate wider involvement in decision making over complex, contentious issues:</p> <p>Negotiated Rulemaking</p> <p>Facilitated policy dialogues to develop legislative proposals</p> <p>Collaborative public participation</p> <p>Strategic planning and visioning</p>	<p>Negotiated and mediated approaches being used to encourage compliance in less costly, less adversarial ways</p>	<p>Working together to plan, manage, and coordinate activities across agencies and levels of government</p>
<p>Delaware: Governor's Office convened mediation to resolve 22-year dispute between industry, environmental groups, and state</p> <p>Oregon: Department of Transportation sponsored consensus process on rules to manage access to state highways</p> <p>California: Cal Fed Bay-Delta agreement among federal and state agencies to restore ecological health and manage water in San-Francisco Bay-Delta</p>	<p>Florida: Department of Environmental Protection mediates average of 60 enforcement actions per year</p> <p>Texas: Child Protective Services mediates complex child custody cases</p> <p>Ohio: Board of Tax Appeals mediates more than 25 percent of cases</p>	<p>Maryland: Department of Children, Youth and Families is negotiating with each county to reform human service delivery</p> <p>Washington: Statute encourages agencies to use ADR to resolve interagency disputes</p> <p>Ohio: State and county emergency management agencies collaborate to resolve conflicts</p>
<p>Practical Guide to Consensus: <a href="http://www.policyconsensus.org">www.policyconsensus.org</a></p> <p>Oregon Handbook for Public Policy Decision Making: <a href="http://www.odrc.state.or.us/ppdrp.htm">http://www.odrc.state.or.us/ppdrp.htm</a></p> <p>Texas Negotiated Rulemaking Desk Book: Order: <a href="mailto:cppdr@mail.law.utexas.edu">cppdr@mail.law.utexas.edu</a></p> <p>Guide to Negotiated Rulemaking: <a href="http://www.ofm.wa.gov/nrm/nrm.htm">http://www.ofm.wa.gov/nrm/nrm.htm</a></p>	<p>Florida: <a href="http://consensus.fsu.edu/index.html">http://consensus.fsu.edu/index.html</a> (see "Fact sheet")</p> <p>Texas Children's Justice Act Project Performance Report (including mediation pilot projects): <a href="http://www.tdprs.state.tx.us/Child_Protection/pdf/CJA2000PerfRep.pdf">www.tdprs.state.tx.us/Child_Protection/pdf/CJA2000PerfRep.pdf</a></p> <p>Ohio Board of Tax Appeals: <a href="http://www.state.oh.us/bta/rules.htm#5717_1_21">www.state.oh.us/bta/rules.htm#5717_1_21</a></p>	<p>"Government Working Smarter" (17-minute video featuring Maryland's negotiations): <a href="http://www.policyconsensus.org">www.policyconsensus.org</a></p>

## CONCLUSION

The tools of collaborative decision-making and conflict resolution are not meant to replace traditional governmental processes, but rather to supplement them and help government keep up with changing times and changing needs. This guide has provided you with information about these tools, and how to get started implementing them.

For more information on the use of these processes, visit the PCI website at [www.policyconsensus.org](http://www.policyconsensus.org). The site includes a Directory of State Dispute Resolution Programs and contact information, best-practice tools, useful publications, links, and other resources. Or contact us with your questions. We want to help your program succeed!



[www.policyconsensus.org](http://www.policyconsensus.org)

*Our traditional government structures were designed over 200 years ago to ensure stability and prevent radical changes. Now major changes aren't coming every 80 to 100 years, they're coming every three to four years. Traditional methods of lawmaking and regulation alone aren't able to keep up. To the extent we can involve people more directly in the problem solving process, and give them ownership, investment and a stake in the solutions, the more successful we are going to be. I think these methods are the governing tools for the 21st century.*

*– Governor John Kitzhaber, Oregon*

Governors, legislatures, and agency leaders are promoting greater use of collaborative processes. They recognize that these processes provide effective ways of governing and working with citizens. Experience over the past 20 years has demonstrated to leaders that these methods can provide valuable supplements to traditional processes.

This booklet is a guide to instituting the use of collaborative processes in state government to achieve better outcomes. It describes the range of ways state agencies across the country are employing these tools in their day-to-day operations. It includes an overview of best practices for integrating the use of collaboration and dispute resolution, and provides information about where to go for further resources.