

ALLIANCE FOR INNOVATION

BIG IDEAS

THE FUTURE OF LOCAL GOVERNMENT 2017



ABOUT BIG IDEAS 2017

At the 2017 BIG Ideas Meeting, thought-leaders from local government, the private sector, and academia convened to discuss the role of local government within the structural confines of state and federal regulations. The relationships have grown tighter year-by-year as local governments are preempted or restricted from taking local action on social, environmental, and economic issues. Over the course of an October weekend, attendees were inspired by provocateurs to consider the optimal level of autonomy for local governments. Participants were challenged on whose interests should be protected, what values drive these decisions, and how people's rights are preserved. Attendees were asked to rethink the role of government and how it influences the design, plan, and regulation within our cities, counties, and towns.

Following this introduction, you will find a summary and analysis of what unfolded during the weekend as well as additional resources to explore this topic.



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THE EMERGING AND UNCERTAIN ROLE OF
LOCAL GOVERNMENTS IN SOCIAL MINEFIELDS:
NAVIGATING THE WATERS BETWEEN LOCAL
AUTONOMY AND STATE PREEMPTION

BIG THEMES

WHO GOVERNS?

“MUNICIPAL CORPORATIONS OWE THEIR ORIGIN TO, AND DERIVE THEIR POWERS AND RIGHTS WHOLLY FROM, THE LEGISLATURE. IT BREATHES INTO THEM THE BREATH OF LIFE, WITHOUT WHICH THEY CANNOT EXIST. AS IT CREATES, SO IT MAY DESTROY. IF IT MAY DESTROY, IT MAY ABRIDGE AND CONTROL.”

-JOHN DILLON

The United States Constitution refers to only two governing entities that are expressly given the power to govern: the federal government and the state government. In 1868, Iowa Supreme Court Judge John Dillon established what is now known as “Dillon’s Rule,” which codified the idea that local governments are but an extension of their state and therefore given only the express powers defined by their state legislatures. In the 1860s, when corruption ran rampant in local government in Midwestern and Northeastern cities, Dillon espoused a growing consensus that it was the role of the state to protect residents from this local government malfeasance by expressly limiting the powers of local government to that which is essential and indispensable to the municipalities existence and functioning. Where the constitution had been silent, Dillon opined regarding what would define local government authority to this day. Hundreds of U.S. court decisions have employed and upheld Dillon’s Rule in determining the scope of municipal powers and rights.



INCREASING POLITICAL DIVIDE

Today’s landscape reflects a growing political divide between rural and urban areas and a nation that is becoming increasingly more polarized. This dynamic makes it more difficult to reach the same consensus as Dillon. In a survey administered to those attending the BIG Ideas Meeting, attendees rated their overall relationship between their state and local jurisdiction—30% indicated it was good, and the other two-thirds defined it as fair or poor. No attendee said it was excellent. Furthermore, 84% of BIG attendees indicated that states were taking too much control over their local jurisdictions. From the perspective of attendees, special attention used to be given to cities and their views, but that is less and less the case. Increasingly, local government will have to consider new methods on how to improve their relationship with state government.

“Local Government has a role in shifting us back to a partner with other levels of government”

-Tansy Hayward



ONE STEP FORWARD, TWO STEPS BACK

The 2017 BIG Ideas Work Paper documents multiple instances where the state has denied local authority through nullification, preemption, restrictions, standards, and mandates over the last 16 years. As the host committee was preparing for this year's BIG Ideas meeting, national attention was on Charlotte, North Carolina when the city passed a local ordinance banning discrimination against the LGBTQ community and allowed transgendered individuals the choice of using the bathroom with which they gender identified. In response, the state passed H.B. 2, also known popularly as the "bathroom bill," which overruled the ordinance and brought the issue of state preemption into the national spotlight. In addition, all local governments in the state were preempted from passing any other ordinances of a non-discrimination nature. As a result, students in all schools had to use the bathroom that matched the sex identified on their birth certificate. Although this element was repealed in March 2017, local governments are still preempted from legislating on other non-discrimination issues as well.

State legislative acts like H.B. 2 have a stifling impact on local governments. Jurisdictions now fear legal reprisal, loss of local authority, or the loss of state aid. Many will choose inaction over the adoption of new initiatives not expressly allowed by the state despite growing needs or requests by their constituents to address local issues. That inaction, in turn, could lead to further erosion of citizens' trust in government. Where trustworthiness is an important connection between citizens and government, that connection may be undone by the local government's inability to act quickly to their needs.

What is the risk of innovation and advocacy? As local government officials, we may be proud of introducing landmark legislation and being the voice that stands for the people. Unfortunately, these actions can backfire. Following the framework identified by the BIG Ideas Work Paper, local governments can prepare

themselves to take action and be better informed about the environment in which they are operating. This toolbox of strategies can be used to take that context and evaluate the approach and boundaries for greater discretionary authority and flexibility. In turn, this approach can be used to effectively frame conversations with state legislators, raising awareness and discussing the consequences of preemption and restrictions that prohibit a city's ability to be innovative.

WHEN CITIES GO TOO FAR

Local governments have, to some extent, advanced these challenges by stepping outside their traditional roles. One might ask, has local government gone too far in legislating soda taxes and bathroom access? Or, is it their purview as the level of government closest to citizens? What level of government is ultimately responsible for the quality of life in our communities?

The lines have blurred. When did obesity become a local issue? Many of the issues that have created confusion are ones we likely created ourselves. The BIG Ideas program was designed so that attendees could ask these questions and have these difficult conversations.

Many of the questions surrounding whether cities have gone too far are those issues that touch on social equity and environmental protections and taking action when higher government levels can't or won't. Pushing these limits can put a jurisdiction at risk and may result in the passage of super-preemption legislation. Super-preemption has a cooling effect on local government.





In fear of state or federal preemption, cities no longer have the ability to debate issues that they may be best suited to be dealt with at the local level. In some states, the sanctions are so severe that cities lose their state share of revenues or officials can be privately sued for espousing community and individual protections—a sort of super-preemption.

Out of the BIG Ideas discussion came three central ideas on the topic:

The Hypocrisy of Rationalization: People will defend local government actions when the issue is in their favor, but when local government acts against their interests, local government actions are in the wrong and beyond their authority. It is easy to choose different cases that favor the state or local government based on the issue. The good news is that rationalization occurs with all issues.

It is a Balancing Act: Our constitution provides checks and balances within and between all levels of government. The federal government has supremacy, although the states will challenge this, and, in turn, local governments will challenge the state. In principle, this means that even when a local community wants to do something with majority support, it does not necessarily mean they have the right to do it. We should realize that there are diverse views on governing authority between the three levels of government—federal, state and local—that apply to multiple issues.

A Role of Defining Domains: Regulatory power for local government comes from the state, but how should this power be restrained? For example, in North Carolina, the balance between

state and local power can be beneficial. Certain services are funded at the state level (transportation, etc.) with state funding provided to cities with some flexibility on how to spend. The inherent standardization between local jurisdictions and the state creates confidence in the actions of both state and local government employees and the residents they serve.

WHEN CITIES DON'T GO FAR ENOUGH

Local leaders should be empowered to adopt policies to meet the needs of their local community members. According to the National League of Cities, “whenever there is a lack of leadership at the state or federal level, local leaders step up and find innovative solutions to serve their community’s needs,” as local leaders are in the best position to advocate for their communities.

As one attendee noted, it comes down to the respect for people and place. Ask the question, “Does it create respect for people in the place I serve?” If an action is causing concern and hurting the people we serve, it is our duty to find out what’s causing them pain and to act to resolve the problem.

A FRAMEWORK FOR FURTHER DISCUSSION

The conversation at BIG Ideas relies heavily on research conducted by the Local Government Research Collaborative (LGRC) in advance of the meeting. With a topic like local autonomy and a nation-wide audience, the difficulties of speaking the same language and staying focused on local government and state relations became glaringly apparent. Multiple issues were introduced based on geographical differences from homelessness to hydraulic fracturing, the sharing economy to the choice of bathrooms. As local officials, it is too easy for the conversation to switch tracks towards solving the immediate problem without tackling the overarching issue of state and local relations. However, one observation from Mayor Strickland from Tacoma, Washington highlighted the importance of keeping the conversation focused on local autonomy. According to Strickland, cities are being put in the “Special interest” box and reduced to the same playing field as other lobbyists in Washington, DC and the state legislatures rather than being viewed as partners.

FACTORS

This year’s Work Paper, “Navigating the Waters between Local Autonomy and State Preemption,” by Dr. David Swindell, Dr. Carl Sternberg and Dr. James Svara lays out a framework to both discuss and assess the state of local government autonomy. Given the growing concern about the recent growth in state restrictions and preemptions of municipal and county authority, the goal of the work paper, and its framework, is to help elected and administrative local government officials understand the legislative environment and be equipped to take actions that meet their local community needs.

There are numerous examples of cities that are trying to “do the right thing,” resulting in state actions that both negatively impact the state and ultimately can result in cities losing funding, becoming economically disadvantaged, or further preemption. In the case of the bathroom bill in North Carolina, state actions

have led to cities losing potential tourism and convention dollars from organizations that are boycotting the state. In other cities, state funding has been threatened in the same way the removal of federal funding has been threatened to “sanctuary cities.” In response to the City of Tempe, Arizona attempting to destroy seized weapons, almost all local regulation of guns have been preempted, including the ways in which the city can dispose of their own property. Better understanding the environment may result in better outcomes that meet both the goals of the states and the cities within their legal authority.

The nature and breadth of state delegation of authority is only one of many factors that share the autonomy of local governments in a state. The framework identifies a range of state-local relations by the types of actions taken by the state or local governments and how they may differ in home-rule and Dillon’s-rule states. The nature of state-local interaction depends upon the issue of the situation; states may permit local action, restrict local action and/or require local action as part of this framework. In each instance, the framework can be used to develop a greater awareness of the factors that shape the autonomy, or lack thereof, of local governments in a state.

What are the factors that determine the degree of local autonomy that you have? The table below, as identified by the LGRC in the BIG Ideas 2017 Work Paper, compares the nature of state-local interaction with the type of state-local relationships.

Big Ideas Work Paper: Navigating the Waters between Local Autonomy and State Preemption

<http://bit.ly/2lou3lx>

NLC Paper: City Rights in an Era of Preemption: A State-by-State Analysis

<http://bit.ly/2lny49Z>

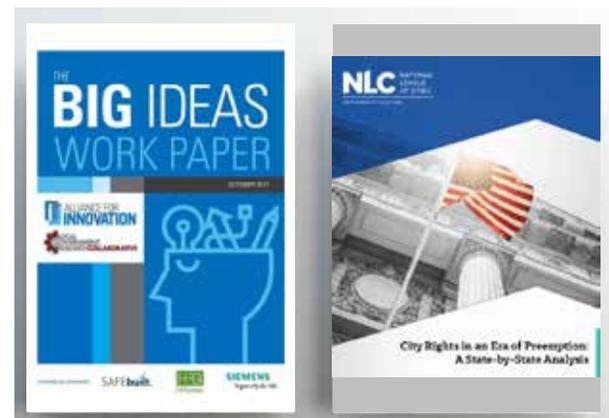


Table 1: Factors Contributing to Variations in Local Autonomy

Nature of state-local interaction	Type of Action		Type of state-local legal relationship	
			Home rule states or local governments	Dillon's rule/non-home-rule states or local governments
Permit local action	Broad or specific authorization ¹	Broad authorization to all or to designated municipalities plus specific authorization in laws	Express powers granted to city in charters or in state law	
	Limited or targeted authorization	Use classification to permit some cities to act	Local bill to grant power to a specific city (if local legislation is allowed) or group of cities	
Restrict local action	Omission	Fall to include in general authorization ²	Fall or refuse to grant express power	
	Targeted restriction	Use classification to prevent some cities from acting	Intervention in single jurisdiction (if local legislation allowed)	
	Nullification	Nullify local policy / program / practice in conflict with state laws	Intervention in single jurisdiction (if local legislation allowed)	
	Prohibition	Forbid local action that is not consistent with the state law	Forbid local action that is not consistent with the state law	
	Penalize	Sanctions imposed for specified actions	Sanctions imposed for specified actions	
	Preemption	Preempt the authority of local governments to act in specified areas	Preempt the authority of local governments to act in specified areas	
Require Local Action	Requirements	Set standards that all governments must meet	Set standards that all governments must meet	
	Mandates	Require all governments to act (e.g., unfunded mandate) or comply with requirements	Require all governments to act (e.g., unfunded mandate) or comply with requirements	

¹ Cities and counties must agree to use the authority. Only one city in Utah uses a home rule charter. • ² Iowa provides home rule in the state constitution, but does not permit local fiscal autonomy. • ³ For example, forbidding “lunch shaming” programs. • ⁴ For example, penalties for “sanctuary cities.” • ⁵ For example, requiring local governments to apply the same property tax rate to all property owners regardless of income.

TAKING ACTION

The limiting of local government authority can occur independently, whether your city operates in a Dillon’s rule state or a home-rule state; however, different approaches may be more successful to address the situation depending upon this relationship. In addition to an assessment of the opportunities and constraints derived from this relationship, the framework identifies possible approaches that may have greater success depending upon the state-local legal relationship.

The following table from the BIG Ideas 2017 Work Paper refers to how local governments can take action by comparing the types of state-local legal relationships.



Table 2: How Local Governments Can take Action

Type of Action	Type of state-local legal relationship	
	Home rule states or local governments	Dillon’s rule/non-home-rule states or local governments
Use legal powers and test the limits	Locally initiated legal action within broad powers. Take advantage of home rule option if available	Locally initiated legal action within granted powers
Request additional powers	Seek broad authorization for all cities from legislature for previously un-granted power	Seek specific authorization from legislature for all local governments or request local bill to permit action
“Workaround”	Find method that is consistent with state law	Find method that complies with or circumvents restrictions
Referendum	Change state policies	
Defiance	Resist preemption and limitations	
Advocacy & voluntary efforts	Awareness raising by the government and partnerships with nongovernmental organizations to promote preferred policy outcome	

HOW TO APPLY THE FRAMEWORK

Applying the Framework to Specific Issues

Attendees were asked to discuss two case studies, one on minimum wage and the other on broadband, and report out on their discussions. Of the framework and approaches to what local governments should be permitted to legislate, attendees agreed that we should look more closely at the option of government raising awareness and forging partnerships with non-governmental organizations to promote policies and outcomes. Cities and counties can work together to leverage local government authority. If a city does not have the power to

take certain actions, due to the possibility of putting their own organizations in jeopardy, partnering may help; for example, asking local leadership groups for their opinions where cities are lacking influence. Additionally, attendees noted that knowing who should lead is critically important. Stakeholders can be so emotional that they become a weak link in creating the solution. The governing body may not have the expertise to best respond to the issue. In these cases, local governments can form partnerships, not just with other levels of governments, but with the people who are stakeholders in these issues or whose rights may be in jeopardy.

What is trying to be accomplished may appear to be precluded, but alternative methods may be applied to address the issue. An example listed in the work paper regarding tax relief in a gentrified area shows that a city can accomplish the same goals by attempting to address an issue in an innovative way or through a workaround. In this case, the goal to provide tax relief was accomplished through an indirect subsidy to the low-income residents who live in the gentrified areas rather than solving the problem by changing state regulation.

The likelihood of success in this political climate may not be the best for those challenging the state or federal government for greater local authority, but that should not preclude acting on issues that are of great concern to your residents. As noted by Alliance Board Member and ICMA Southeast Regional Director, Randall Reid, “Polarization is not solving anything.” Instead of pointing fingers, there is the opportunity to simplify processes and create community conversations. Local government officials can create a place that is safe for both resident and employees to discuss these topics. “If we are not actively listening, we are not allowing them to govern,” deftly stated Sarah Poulton, Downtown Special Projects Manager for the Town of Chapel Hill, NC.

Cities must be wise about the battles they choose. Questions to ask may be: Are citizens really concerned? Are all voices being heard? Is it financially or politically worthwhile to take an action?

As a city is taking action, leaders should have a clear understanding of the issue, remain flexible and stay focused. City leaders must also learn how to better tell their story and explain the return on investment when speaking to state leaders.



Applying the Framework to Leadership

Conversations around these issues, not surprisingly, continued to revolve around the notion of leadership. The better the leadership, the better the outcomes. When applying this framework, managers need to remember that they are not the elected officials. Local government administrative leaders

feel a calling to lead and a connection with democracy, but do not lead in the same way as an elected official. In the role of a local government employee, the focus is on educating the council and ascertaining whether elected officials want to push certain conversations forward given full knowledge of the current political climate and the likelihood of success. When constituents demand that the city take a stand on a social issue, then a manager may act, but it should, in most cases, start with the community, not the manager. Additionally, some attendees noted that when we are talking about issues and deciding upon policy, or even publishing information for the public discourse, it should not be assumed that all members of the community will think that what is being done is good or right.

Leadership still has to be a major element in how local government employees approach their jobs and the people they serve. City administrators can educate by leading by example and setting a tone for the rest of the organization. As part of their efforts, they can instill trust and build a better brand for their communities.

Local government leadership is critical to addressing core issues. The rural versus urban divide is an issue that continues, one which we have seen have negative consequences at times when urban core communities are pitted against rural communities. Putting aside differences, local governments can work together to create intergovernmental partnerships that address these disparities and advocate for flexible solutions at the state and national level. For instance, in the state of Pennsylvania, the municipal league is advocating for a toolbox of local taxing solutions that can be adopted in each municipality based on their local conditions and needs rather than advocating for one solution that would meet the needs of only rural communities or urban communities.



“LEADERS DON’T HAVE TO KNOW EVERYTHING AND ALL THE OUTCOMES, BUT DO NEED TO HAVE THE FAITH, COURAGE AND CONFIDENCE TO STEP OUT AND DO WHAT THEY BELIEVE IS RIGHT. IF WE FAIL, WE ACCEPT THE CONSEQUENCE AND MOVE ON. THERE IS NO OTHER WAY TO LIVE.”

-BILL HORNE

DIVING DEEPER

During the Sunday discussion, the BIG ideas panel role-played as Judge John Dillon, Chief Judge of the Iowa Supreme Court; Mayor John Heilman, Mayor of West Hollywood, CA and an early champion of domestic partner rights; Governor Greg Abbott, Governor of Texas since 2015 who also served in the Texas Legislature and on the Texas Supreme Court; and Mayor Michael Bloomberg, former Mayor of New York City, now CEO of his own company and the 10th richest man in the world. Each panelist represented the prevailing perspective of these figures (both contemporary and historical). Taking on these personas, the panelists were able to answer questions by the BIG Ideas attendees through a different lens.

The session began raucously with Reid, as Judge Dillon declaring, “I’ve impacted your life more than you understand. I am the “Darwin” of the government community.” According to Reid, Dillon’s rule is much like Darwin’s - it is a theory and a rule, and it may not be what you want to hear, but it is the prevailing practice.



Leaders or Followers: Questioning Our Role

Both of the discussions around the case studies at BIG Ideas boiled down to questions regarding equity, access and the roles that race, gender and sexual orientation play into those issues. As stated by Renata Robinson, Chief Diversity Officer for the City of Boulder, “When we are talking about innovation, we are talking about inclusion. We must ask the hard questions to have perspective.”

Many people came into local government wanting to make systems work better, more fairly and more ethically, but perhaps not necessarily to invoke social change. The conversation at BIG Ideas challenged attendees to examine the role of the local government in issues of social justice and social change.

“WHEN WE ARE TALKING ABOUT INNOVATION, WE ARE TALKING ABOUT INCLUSION.”

-RENATA ROBINSON



Pam Weir, Assistant to the City Manager of Goodyear, AZ, so clearly stated the feeling in the room by sharing her experience and views on the role of local government in social justice, “I think that local government, even the most basic operational services, has always been about social justice and about social change. When we look at the advent of the council-manager form of government, a lot of the roots of that were in social equity issues. Is the trash actually being picked up in every neighborhood equitably, are the potholes being repaired equitably, are the police treating the citizens equitably? And so, a focus on the most basic operational services—whether intended or not—is a huge player in how we define community and how we define whether or not people are valued.

What brought me into local government was knowing that the City of Phoenix, whether they planned to or not, were saving the lives of undocumented, homeless, trans-gender youth, who in July had no place to escape the heat but the library, but the bus system. And so, aside from anti-discrimination resolutions, we are already in that space. I do agree that for each individual person, you decide for yourself that spectrum of where something is merely a political issue that should be left to the politicians and the point at which your job security means less than people's lives."

In the face of injustice, silence can be seen as acceptance. According to some attendees, city officials no longer need to just accept and to move forward, they need to be innovative and that means being inclusive. A council does not have to issue an anti-discrimination resolution, for the city to be in this space. As Pam Weir iterated, "I believe that basic operational services have always been about social change and social justices. Is it not important that those services be provided equitably and fairly? That's something we need to decide ourselves. It is not about the structure of government or legal principles, it is about what difference are we making in the lives of our constituents. It is a clarion call to us in local government and what are we actually there for."



"FOR EACH INDIVIDUAL PERSON, YOU DECIDE FOR YOURSELF THAT SPECTRUM OF WHERE SOMETHING IS MERELY A POLITICAL ISSUE THAT SHOULD BE LEFT TO THE POLITICIANS AND THE POINT AT WHICH YOUR JOB SECURITY MEANS LESS THAN PEOPLE'S LIVES."

-PAM WEIR, CHAIR OF THE NEXTERA ADVISORY GROUP



TOOL: PEER THROUGH THE LENS OF THE CONSENT OF THE GOVERNED

FILL-IN-THE-BLANK

HOW SHOULD POLITICAL POWER BE APPLIED IN THIS ISSUE/INSTANCE IN THE BEST INTEREST OF WHO IS THE MOST PROFOUNDLY IMPACTED?

The Voice of the People

Who governs? As described by provocateur Mike Rankin, City Attorney for Tucson, AZ, it is not the state legislature or the manager-council form of local government, in the American system of government, the people govern, or "the governed govern." In the Declaration of Independence, it states "...that to secure these rights, governments (plural) are instituted among men deriving their just powers from the consent of the governed." In this fundamental constitutional principle, all political power is inherent in the people and framed to limit the power of the federal government and reserve power to the states. In turn state constitutions often embed this same principle. This same phrasing is repeated, for instance, in the Arizona state constitution. At any level of government, officials have to ask how their actions comport with this fundamental principle. To Rankin, consent of the governed means, "For an exercise of political power to be just or legitimate or legal, that exercise of power has to be made with the consent of the people who are most directly and profoundly impacted by that exercise of government." Rankin challenges the attendees of BIG Ideas and all elected officials and government employees to keep this in mind when looking at each individual issue, whether it be plastic bag bans or the destruction of firearms by a city. Independent of the issue or whether you operate in a Dillon's rule state or home-rule state, this underlying principle can be applied universally and provide a guidepost for the decision-making process.

GOING FORWARD

What Do Attendees Think of BIG Ideas?

We heard you! We heard various iterations of the following suggestion, "Get to Sunday!" Year after year, attendees come to BIG Ideas for the unique, juicy conversations that bubble up as the weekend progresses. BIG Ideas provides a unique experience where each discussion builds upon the other to create an atmosphere where attendees feel safe to speak candidly about the issues facing their communities. Attendees want to discuss the puzzling questions, the heavy stuff that only percolates to the top with the force of conviction and some agitation.

"BIG is always such a fantastic learning experience. It allows local leaders to really sink into a topic that they might not normally take the time sink into and develop a broader appreciation for how that topic impacts their organization as well as envision concrete action steps to address the challenges that

emerge through the conversations on the topic."
-David Swindell, Arizona State University

"BIG Ideas is superfood for your government brain."
-Charlie Bush, City of Sequim

"I had an excellent first BIG experience in Raleigh. The setting and location made difficult discussions possible, but all were carried out with mutual respect and understanding. The small group format and intimacy of the conference, in general, facilitates frank discussion among attendees. Even as someone not in traditional leadership position, myself and my ideas were welcomed, and I was encouraged to participate."
-Sarah Poulton, Town of Chapel Hill

Find out more information about BIG Ideas 2017 and future BIG Ideas meetings at www.transformgov.org/bigideas.

BIG IDEAS 2018

October 26 | Austin, TX

"AS LEADERS, WE CAN FRAME THE DIALOGUE. THERE IS A CONTINUUM OF CHOICE AND SO THINK ABOUT HOW CAN WE DESIGN THE RIGHT PROCESS TO LEAD US TO THE CHOICE AND THEN APPLY THAT PROCESS BROADLY"

- MIKE SABLE, DIRECTOR OF FACILITIES SERVICES, HENNEPIN COUNTY, MINNESOTA



Having Fun at BIG Ideas

As with every BIG Ideas Meeting, the Alliance incorporates an outing to a regional attraction to counter the intensity of the discussions. This year, the Host Committee coordinated tours of Dorothea Dix Park, some retail therapy in downtown Raleigh, and a truly BIG dinner beneath a full-size skeleton of the largest animal on earth at the North Carolina Museum of Natural Sciences. These outings inject energy and allow for renewed focus as the conference segues to its Sunday morning conclusion.



ALLIANCE FOR INNOVATION

411 N. Central Avenue, Suite 400

Phoenix, AZ 85004

888.496.0944 • join@transformgov.org