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The Role of AI in Special Districts: Legal Risks and Governance Solutions

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Agenda

- Training Objectives
 - Overview of AI
- AI Implementation Playbook
 - Governance
 - Use Policies
- AI and the Law
 - Employment Issues
 - Wage & Hour
 - Labor Relations
- Key Takeaways



Objectives

- Provide a basic understanding of AI
- Describe an approach to implementing AI
- Review laws and legal issues implicated by AI use
- Discuss AI use cases

Historical Retrospective



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Fast Forward...

- Public Agency AI Use Cases:
 - Use AI to monitor images from wildland cameras to detect wildfires, allowing a faster response (CalFire)
 - Use AI to capture images from cameras on City vehicles to detect and grade potholes, then generate automated work orders for street and road repairs (City of Corona)
 - Uses AI to monitor and track residential permit compliance and plan reviews (City of Honolulu)

Overview of Artificial Intelligence



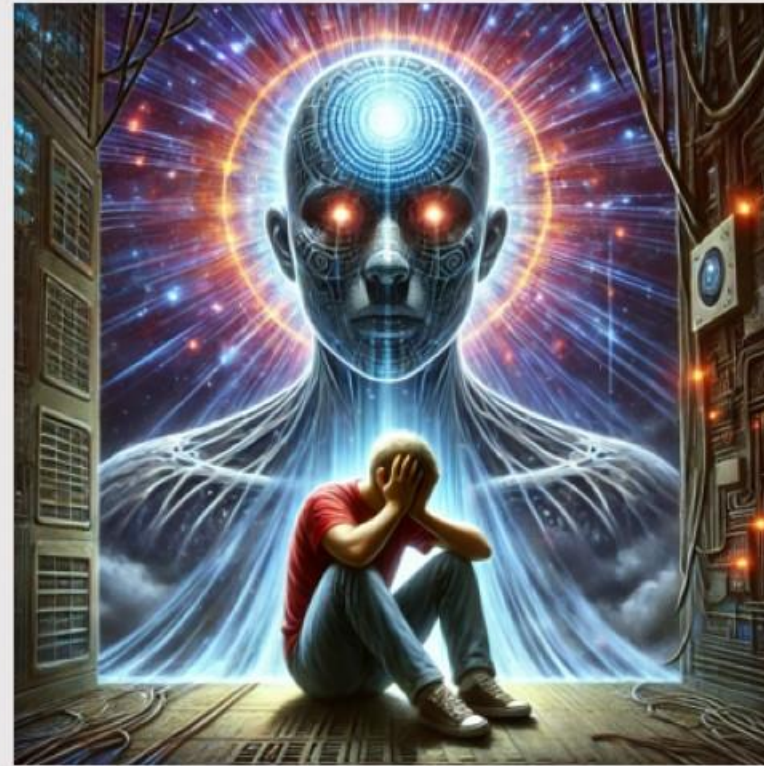
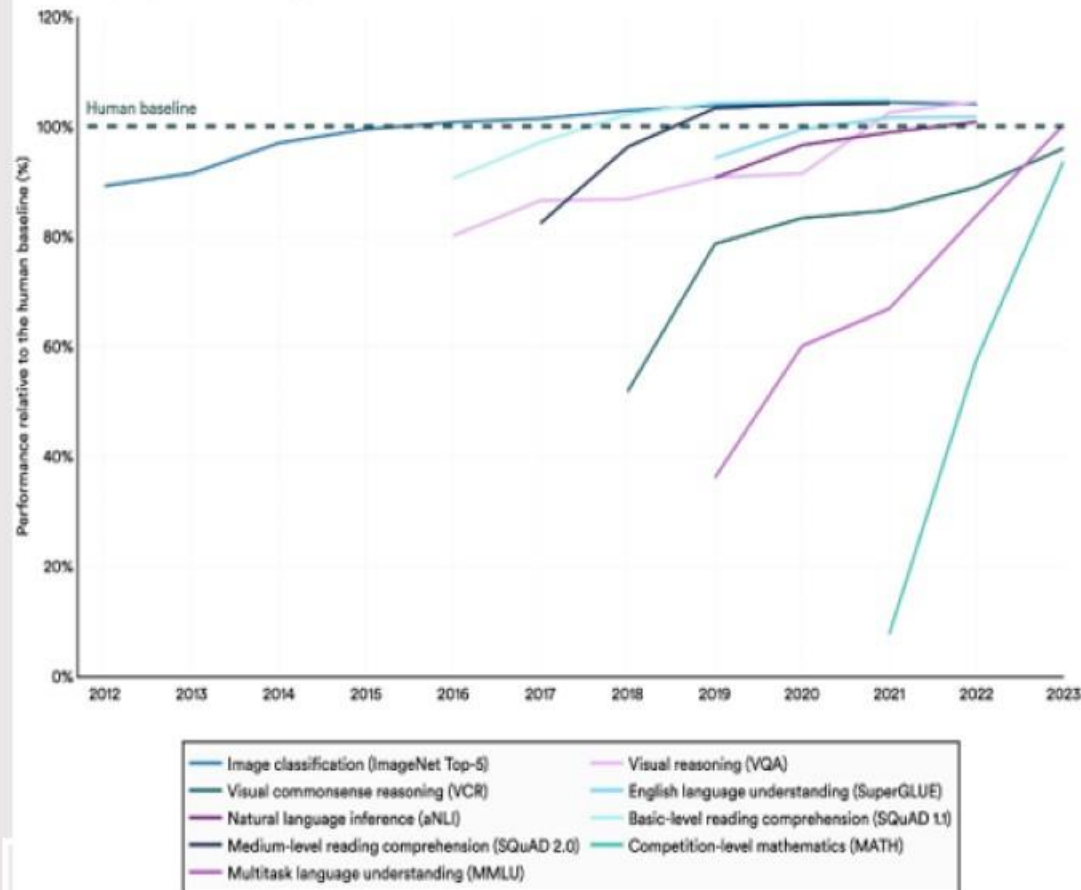
Overview of AI

- Massive data collection (words, images, videos)
 - Imperfect data → Imperfect results
 - Human biases → AI biases
- AI detects patterns in data to predict next most logical piece of data in sequence
 - More data improves Large Language Model (“LLM”) accuracy
- AI services add algorithm/instructions for processing data
 - Different security, privacy, and use philosophies
- Traditional AI vs. Gen AI

Developments are Ongoing – Technological Evolution

Select AI Index technical performance benchmarks vs. human performance

Source: AI Index, 2024 | Chart: 2024 AI Index report



Adoption of AI

- Adoption and use of AI
 - Differs by industry, age of user, role in organization
 - Individual employee use of AI is outpacing organizational strategy for such use
 - Risks associated with organizational lag?
- Reasons for slow adoption by public agencies?
 - Complacency/Absence of profit-motive/Bureaucratic inertia
 - Resistance from labor
 - Risk aversion

Promise and Perils of AI

- Promise
 - Increased efficiency/productivity
 - Less time spent on mundane tasks
- Perils
 - Inaccuracies and hallucinations
 - Proliferation of biases/discrimination
 - Potential for omnipresent surveillance/compromised privacy
 - Anxiety associated with fear of change and potential job loss

AI Implementation Playbook



The Four Pillars of AI Governance



AI Implementation Playbook

- Public Agency Implementation Playbook
 1. Identify mission-enhancing uses
 2. Establish governance structure
 3. Adopt tools and implement infrastructure
 4. Adopt policies to ensure responsible use and address security concerns
 5. Strategize about measuring and monitoring AI performance/impact
 6. Recruit and retain or train talent capable of using the technology and tools
 7. Develop user-focused testing, training and feedback loops

Step 1: Identify Potential Uses

- Uses consistent with Agency's mission
- Uses for both operational and administrative purposes
 - Improve quality of services
 - Increase efficiency and productivity
 - Review work for errors/identify areas for improvement

Step 2: Set Governance Structure

- Who has authority (e.g., board of directors, government officials, stakeholders)
- What processes are followed to make decisions?
- Policies & Rules
- Accountability & Oversight
- Transparency
- Participation & Inclusion
- Risk Management & Compliance (Reporting Mechanism)

Step 2: Set Governance Structure (Cont'd)

- Committee/Working Group
 - Chair/Point person
 - Membership
 - Core leadership
 - Information Technology/Security
 - Legal
 - Departmental representatives
- Other structure
 - Test group?

Step 3: Adopt Tools and Technology

- **AI Tools:**
 - ChatBots
 - Writing and Content Generation
 - Image Generation
 - Productivity and Organization
 - Coding
 - Specific Uses
- **Pilot:** Test value and feasibility with limited users in a controlled environment.
- **Refine:** Expand use to additional users, optimizing the technology along the way.
- **Scale:** Roll out the technology to capture all the value.

Step 4: Adopt AI Use Policy

- Components of AI Use Policy
 - Purpose
 - Definition of key terms
 - Scope – Applies to all employees, interns, volunteers
 - Terms of Use
 - Approved or Prohibited AI Tools?
 - Approved or Prohibited Uses of AI?
 - Privacy and Confidentiality
 - Secure/private settings and training opt-outs
 - Enforcement

Step 4: AI Use Policy – Other Considerations

- Review existing policies that AI Use Policy may affect to ensure consistency:
 - Use of Agency Resources/Technology Use
 - Privacy/Confidentiality
 - Prohibition against Discrimination and Harassment
- Consider and address potential security threats/risks related to AI use

Step 5: Monitoring and Measuring Outcomes

- **Align with Agency Use:** Identify what the agency would like to monitor and how to measure outcomes (Step 1)
- **Assess** whether tools are being used effectively
 - Internal Assessments
 - Human review is essential
 - Test sample of AI outcomes
 - External Assessments
 - Appropriate for large-scale or mission-critical use cases

Step 6: Recruit and Retain or Train

- Do the necessary skills already exist among District employees?
- If not:
 - Training for existing employees
 - Hiring employees
- Offer AI literacy training for all employees

Step 7: Testing and Feedback

- Test pilot program with user base → collect feedback → adjust program/tool → test with user base again
- Communicate with + collect feedback from non-user stakeholders in addition to user base

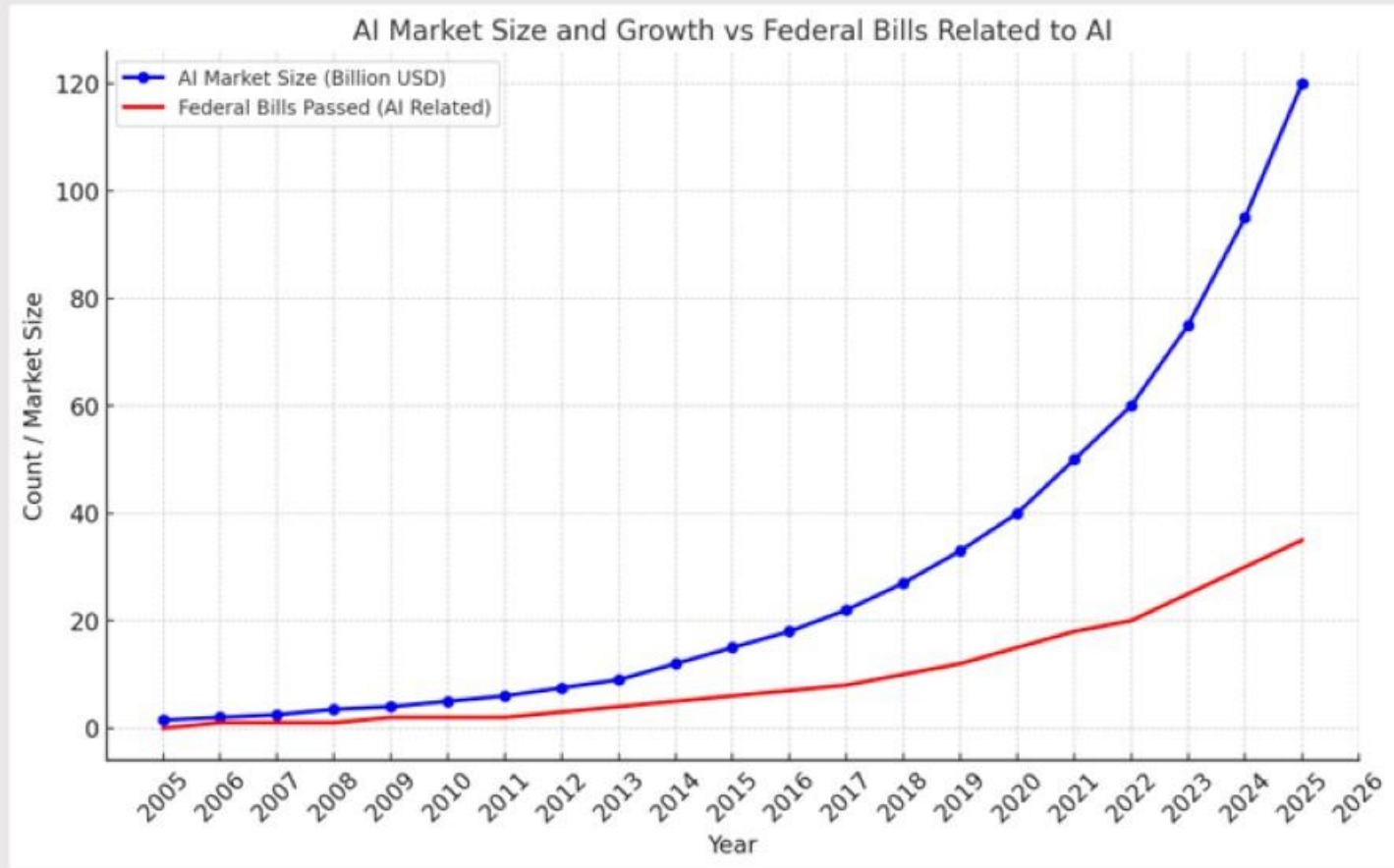
Summarizing AI Governance

- **What** are our needs?
- **Which** tools will help us fill those needs?
- **Who** will be involved in implementing the tools?
 - Identify governance structure
 - Assessment of existing skills/capacity
 - Identify user base and stakeholders
- **How** will we implement the tools?
 - AI Use Policy and training
 - Pilot program testing and feedback

AI And the Law



Pace of Technology vs. Regulation



Overview of Legal Authority

- Sources of authority
 - Existing statutory and regulatory frameworks applied to AI
 - AI-specific agency guidance
 - Proposed laws and regulations specific to AI

Legal and Legislative Action in California

- Gov. Newsom's AI Report
- Pending Legislation
 - Transparency and public disclosures
 - SB 420: AI Bill of Rights
 - SB 7: "No Robot Bosses" Bill
 - AB 1018: Automated Decision Systems
 - AB 489: Health care professions: deceptive terms or letters: artificial intelligence
 - AB 222: Data centers: energy usage reporting and modeling
 - AB 222: Data centers: energy usage reporting and modeling
 - AB 410: Bots: disclosure
 - SB 524 - Law enforcement agencies: artificial intelligence
 - Audit requirements
 - ❑ AB 1018: Automated Decision Systems
 - ❑ SB 503: Health care services: artificial intelligence
 - Whistleblower protections
 - ❑ SB 53



Employment Issues



Employment Issues – Human Resources Use Cases

- Human Resources Chatbot for FAQs
- Document translation
- Revise job descriptions and interview questions
- Streamline employee onboarding/training programs
- Analyze retention and turnover trends
- Draft performance evaluations and discipline

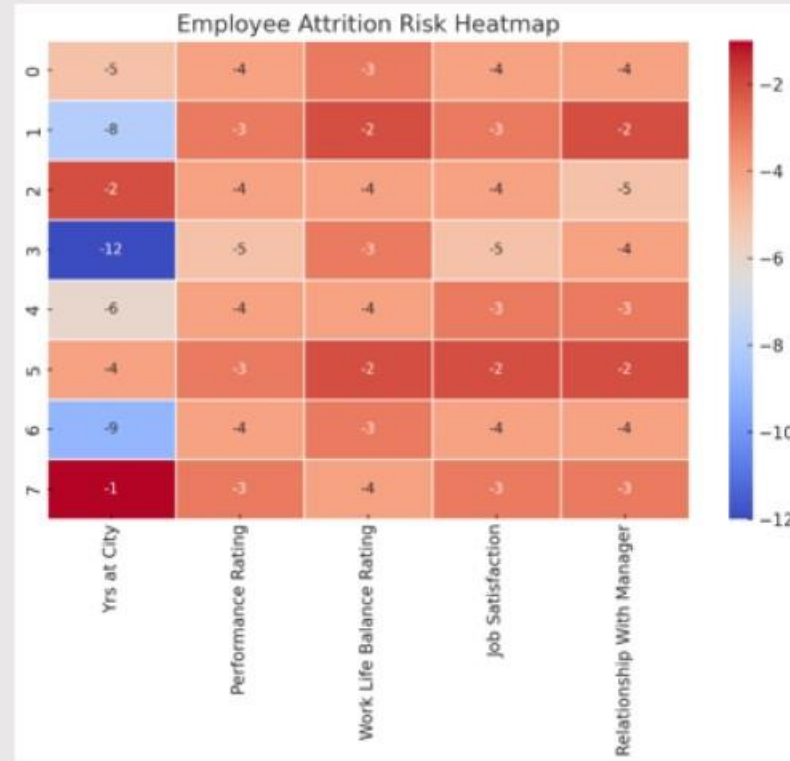
Recruitment and Hiring

- AI can help screen, score, rank, and assess applicants by matching resumes to job description
- Pros
 - Efficient (i.e., saves time)
 - Predictive analytics
 - *May* reduce (human) bias
- Cons
 - *May* increase (algorithmic) bias (*Workday* case)
 - May screen out candidates who are members of a protected classification
→ Claims of discrimination
 - Lack of documentation supporting decisions

Demo: Analyzing Attrition

EE ID	Age	Gender	Dept.	Yrs at City	Salary	Performance Rating	Work Life Balance Rating	Job Satisfaction	Relationship With Manager	Promotion
1001	35	F	Parks/Rec	5	75000	4	3	4	4	No
1002	42	M	IT	8	95000	3	2	3	2	No
1003	28	F	Pub. Works	2	60000	4	4	4	5	Yes
1004	51	M	Finance	12	110000	5	3	5	4	Yes
1005	39	F	HR	6	80000	4	4	3	3	No
1006	33	M	Parks/Rec	4	72000	3	2	2	2	No
1007	45	F	IT	9	98000	4	3	4	4	Yes
			Pub							

Demo: Attrition Heat Map



Operations/Workload Planning

- Analyze demand for services to inform resource allocation and scheduling
 - Scheduling software may already use AI to match employee preferences/restrictions to shifts
- Analyze need for services to be more productive (Corona), efficient (Honolulu), responsive (CalFire)

Case Study

- Whitmore Parks and Recreation District is recruiting for a Recreation Coordinator using AI-based prediction software. The AI produced a ranked list of candidates. The top ranked candidate was a recent graduate with little experience but with keywords that match the job descriptions. A lower ranked candidate has 20 years of experience but had employment gaps.
- The Department Head wants to rely on the AI ranking because it explained that employment gaps are unfavorable indicators.

Evaluations and Discipline

- Analyze performance data
 - Unprotected absences
 - Tardiness
 - Project delivery (timeliness, quality, etc.)
- Draft evaluation or statement of charges using job description, agency policies, performance data, records (supervisors' notes)
 - Rationale for discipline/ratings
 - Match agency policies to employee's performance/conduct
 - Recommendations for improvement (i.e., PIP)

Applicant/Employee Concerns

- Short-term
 - Bias and algorithmic discrimination leading to inequitable outcomes
 - Surveillance (i.e., violation of privacy) leading to d
- Medium- or long-term
 - Existential concerns about being replaced



Wage and Hour



Wage & Hour Issues – Overview

- Legal obligations under the Fair Labor Standards Act (FLSA)
- Use Cases:
 - Calculating hours worked
 - Payroll management
 - Audits and analysis of special pay practices

AI Impact – DOL Bulletin

- DOL Bulletin (No. 2024-1)
 - Work Hours Compliance
 - Employers must pay employees for all hours worked, as defined under the FLSA
 - AI systems should not solely determine "hours worked" based on productivity metrics
 - Human Oversight
 - Employers must exercise due diligence to avoid wage underpayment due to AI misclassification
 - Human oversight is necessary to validate AI-generated data on employee hours and activities



Case Study

- The Whitmore Water District implemented an AI-based time and productivity tracking system to streamline payroll and monitor employee output in its hybrid workforce. The system did the following:
 - Used keystroke and application monitoring for remote workers
 - Employed geofencing and facial recognition for on-site workers
 - Automatically flagged and deducted "idle time" and "non-productive hours"
 - Generated weekly productivity scores, which were shared with management for performance reviews
 - *Potential legal implications under the FLSA? FEHA/ADA? MMBA?*

Payroll

- Automation of payroll processes
 - Calculation of compensation (regular hours, overtime, premiums/special pays, etc.)
 - Tax compliance
 - Streamline population of payroll forms
- Error detection and deduction
 - Data validation – Identification of inconsistencies or errors in timesheets
 - Anomaly detection

Payroll (Cont'd)

- Time tracking and attendance integration
 - Facial recognition for clock-ins and outs
- Predictive analytics
 - Cost-forecasting

FLSA Audits

- Time logs
 - Identify discrepancies (e.g., off-the-clock work and unpaid breaks)
- Payroll data
 - Correct calculation of the regular rate and overtime rate
- Classification
 - Verification of exempt and non-exempt employees

FLSA Audits (Cont'd)

- Attendance
 - Cross-checking for discrepancies
- Data integration
 - Integrate data from HR, payroll and time-tracking systems
- Documenting and reporting

Labor Relations



Labor Relations Issues - Overview

- Obligation to bargain implementation of AI?
 - AI as a tool to support/assist employees
 - AI as a tool to monitor the workplace and employees
 - AI as a disruptor of established job duties and operational structure
- AI use cases in labor relations
 - Preparing classification and compensation studies
 - Responding to requests for information
- Potential forthcoming statutory limitations

Is the Implementation of AI Negotiable?

- Management rights
 - Selection of technology
 - Determining the means and methods of operation
- Implementation of AI generally not a negotiable decision
- But there may be negotiable effects/impacts
 - Provide notice and engage in good faith negotiations, if union identifies negotiable effects/impacts

Bargaining – Union Proposals

- Unions may make proposals to limit the use of AI
 - Preserve bargaining unit work performed by employees/protect union jobs
 - Ability to use AI surveillance data in disciplinary decisions

Bargaining – Agency Use Cases

- Use of AI to perform market analysis
 - Review and analyze market data for terms re: compensation, benefits and other terms and conditions
- Use of AI to respond to requests for information
 - Review, analyze and respond to requests for information
 - Particularly useful for requests involving significant amounts of data/information

Exercise: Responding to a Request for Information

- Union requests data on the amount of overtime worked by employees in the past quarter.
 - How can you use an AI tool?
 - What should the prompt be?
 - What data can you use?
 - Other considerations?

Key Takeaways



Key Takeaways

- The time to start thinking about AI is now
- But don't rush—invest in planning and strategy
- Be realistic about your agency's needs, skillset, and resources
- Remember the four pillars

Questions?



Thank You!

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