

MEMORANDUM

DATE: May 16, 2012
TO: Cynthia Battenberg
FROM: Susan E. Bloch
COPY: Jayne W. Williams
RE: **Oversight Board Alternates**

This Memorandum responds to your request for information regarding whether alternates may be appointed to serve on oversight boards established to review the activities of successor agencies pursuant to Assembly Bill x1 26.

It is our view that alternates are not permitted to be appointed to oversight boards because Health and Safety Code Section 34179 states that specified entities/individuals each have authority to appoint certain members to the oversight board, but the legislation does not authorize appointment of alternates.

In comparison, certain other statutes that provide for formation of public bodies do specifically provide for alternates. For example, Government Code Section 56325 addresses the composition of local agency formation commissions, and provides that the appointing bodies shall appoint commission members and shall also designate alternates who may serve and vote in place of the appointed commissioner if the appointed commissioner is absent or disqualified from participating in a commission meeting. Similarly, Government Code Sections 66620 and 66622 describe the composition of the San Francisco Bay Conservation and Development Commission and specific procedures for appointment of alternates.

Although it addresses the appointment of alternates to a state commission, Attorney General Opinion 62 Ops.Cal.Atty. Gen. 479 supports the view that alternates may not be designated unless authorized by statute. The Opinion notes: "As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence

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of statutory authorization" [Id. at 482; citations omitted.] and concludes that "...duties involving the exercise of judgment and discretion may not be delegated unless authorized by law....this rule would be applicable to the local officers and the remaining members [of the commission]". [Id. at 492, citations omitted.] The commission in question is comprised of certain specified office holders and other appointees who represent a variety of interests including cities, counties, and private citizens. The Opinion notes that statute authorizes those commissioners who are appointed because they hold certain specified offices to designate certain persons to act in their absence (e.g. the Director of a State department may designate a Deputy Director of the same department), but notes that there is no similar authority for the appointment of alternates for Commissioners who are appointed as representatives of specified interests.

Since pursuant to Health and Safety Code Section 34179(g), oversight board members serve at the pleasure of the entity that appointed the member, the appointing entity may appoint a replacement member of the oversight board in the event that the original appointee become unavailable. Appointments made by public agencies should be made in accordance with the Brown Act (i.e., at a public meeting).

Please contact me if you have questions regarding this matter.

SEB:SB

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