



February 12, 2010

The likelihood that Senator Abel Maldonado (R-Santa Maria) will succeed John Garamendi as California's 47th Lieutenant Governor, before the November General Election, took a decided turn for the worse this week and could be headed directly to the courts. On February 9th it was leaked that less than a handful of Assembly Democrats were likely to vote for his confirmation. The straw poll of the Assembly Democratic Caucus took place prior to two hours of tough questions before the Assembly Rules Committee that eventually preferred to send the confirmation to the Assembly Floor without a recommendation.

Thursday, February 11th, was Senator Maldonado's day of reckoning. The Senate took up the confirmation first and approved the appointment on a vote of 26 to 7 with Senators Aanestad, Denham, Ducheny, Florez, Runner, Wyland and Yee voting "No."

The Assembly vote was a bit more dramatic where it initially rejected the confirmation on a vote of 36 to 34. Upon reconsideration and after being notified that the governor would challenge the Assembly's confirmation vote unless there were 41 votes against Senator Maldonado, the final vote was still only 37 to 35. Assembly Member Gilmore, who was at his home in Hanford suffering from pneumonia, drove up to the Capitol so he could be added to the final roll call. The Assembly's Chief Clerk, E. Dotson Wilson, disagreed with the governor's stance, stating that failure to secure a majority vote constitutes rejection. It should be noted that it isn't the first time that the courts may decide the fate of an appointment of a constitutional officer. In 1988 the Senate rejected the nomination of Dan Lungren as state treasurer on a vote of 19 to 21 after the Assembly had confirmed the nomination. In the earlier case the California Supreme Court rejected Lungren's bid to take office. Governor Schwarzenegger's Legal Secretary Andrea Lynn Hoch said in [press release](#) that the two situations are completely different. Just we are going to press, the governor [announced](#) that he is abandoning his plan to swear in Sen. Maldonado as lieutenant governor and re-nominated him to the post, restarting a new 90-day clock to confirm him.

The Assembly roll call on Senator Maldonado's confirmation was as follows:

"Ayes (37):" Adams, Anderson, Arambula, Beall, Bill Berryhill, Tom Berryhill, Blakeslee, Caballero, Conway, Cook, Emmerson, Fletcher, Fuller, Gaines, Galgiani, Garrick, Gilmore, Hagman,, Harkey, Huber, Huffman, Jeffries,, Knight, Lieu, Logue, Miller, Monning, Nestande, Niello, Nielsen, Norby, Portantino, Silva, Smyth, Strickland, Tran, and Villines.

"Noes (35):" Ammiano, Bass, Block, Blumenfield, Bradford, Brownley, Calderon, Chesbro, Coto, Davis, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Hall, Hayashi, Hill, Lowenthal, Ma, Mendoza,

Nava, John A. Perez, V. Manuel Perez, Ruskin, Saldaña, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, and Yamada

“Absent or Not Voting(7):” Carter, De La Torre, de Leon, DeVore, Hernandez, Jones, and Salas. Of the seven not voting, only Wilmer Carter (D-Rialto) was absent or excused, so it wasn’t exactly a profile in courage for the other six who were present but decided to abstain.

An ever expanding coalition of large and small businesses and their trade associations continued to educate legislators this week on the real impacts of requiring three percent income tax withholding from independent contractors. The California Chamber of Commerce is leading this lobbying effort and has produced an excellent [factsheet](#) on the issue that clearly relates the consequences of the ill-conceived idea. Farm Bureau has participated in numerous meetings with legislators and their staff to help explain the high cost of this shortsighted gimmick that further accelerate the collection of income taxes that may or may not be due and payable at the tax year’s end. This proposal has been recklessly touted as a way to get greater tax compliance from the underground economy, when in fact it only targets companies that already report Form 1099-MISC, thus in all likelihood it will only stimulate growth in the businesses that deal strictly in cash.

As with virtually all of the proposed budget “solutions” offered in the Eight Extraordinary Session, actual bill language has been kept a closely guarded secret. If past history repeats itself, the proposed statutory language will probably first be seen on the day it will be voted on and sent to the governor. Legislative Counsel has previously keyed this type of bill as a majority vote measure since it more like a long-term, no-interest loan to the state than a tax increase. Unfortunately, it would be a no-interest loan that will come at a huge cost of compliance for businesses large and small. Thankfully, Governor Schwarzenegger has previously vetoed this proposal and he has vowed to veto it again.