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Future Raises Could Be Sticking Point In NY Wage Fight

By **Pete Brush**

Law360, New York (March 05, 2013, 8:21 PM ET) -- New York State Assembly Democrats on Tuesday passed a bill to raise the state's hourly minimum wage from \$7.25 to \$9 and tie it to inflation, wresting the issue away from Gov. Andrew Cuomo and setting up a possible battle with Republicans over whether future hikes would be automatic.

The 101-44 party line vote shook up the legislative picture, not only because Cuomo had sought to fold the wage hike into budget negotiations — something that appeared less likely with the Democrat-dominated Assembly's move — but also because the bill contains the so-called indexing provision that Cuomo's proposal does not feature.

The Assembly bill, which would see the raise take effect Jan. 1, 2014, would index future raises to the consumer price index starting in 2015.

"This is a matter of human dignity. It's about the value of labor," said Assembly Speaker Sheldon Silver, D-Manhattan, prior to the vote. "Our minimum wage would be between \$10 and \$11 per hour today if it had kept pace with inflation over the last 40 years."

While Cuomo likely would not oppose an indexing provision, many Empire State Republicans have said over the past year, and said again Tuesday, that they could only reluctantly support a wage hike if it were detached from the indexing provision.

Indexing is "the most objectionable part" of the legislation, Johnstown, N.Y., Republican Assemblyman Marc W. Butler said, echoing the sentiments of many of his counterparts in both houses.

Democrats, however, argue the indexing provision would head off future legislative battles and note that of 19 states that already have enacted wage hikes above the \$7.25 federal minimum, 10 have indexing provisions.

"That's why we want to index, so we don't have to go through this again," said Harlem Democrat Keith Wright, the bill's chief sponsor, who added that more than 925,000 New York wage earners would benefit from the raise.

Democrats also argue, citing independent studies, that indexing would generate a dynamic in which the poorest workers in the state continue to catch up with the rich instead of getting a onetime boost.

"A meaningful way to reverse some of the income polarization that has plagued New York over the past three decades would be to set \$11.15 an hour as the goal ... and then start raising the state's minimum wage in reasonable steps each year," the independent New

York Fiscal Policy Institute said, for example, in a January study.

The proposal has also the support of New York wage-and-hour lawyers.

Raising the minimum wage by \$1.75 per hour for a 40-hour week would mean \$70 extra per week, a sizable increase that would raise the liability stakes for employers who did not immediately comply, said Levy Davis & Maher LLP partner Jonathan A. Bernstein, who represents clients in overtime and wage disputes.

"In view of these large numbers, larger employers will likely comply immediately," he said.

Indexing future wage hikes to inflation likely wouldn't cause compliance issues provided the state is clear about the yearly hikes, according to Bernstein.

"Compliance with the indexing provision probably depends on whether annual increases in the minimum wage are adequately publicized," he said.

Wage-and-hour lawyer Brian Schaffer, a partner with Fitapelli & Schaffer LLP, says he finds it "incomprehensible" that lawmakers could vote against the proposal, which would allow minimum wage workers in the state's restaurants, big-box stores and other service businesses to make more than the \$15,000 per year they currently earn.

"A new minimum wage of \$9 would also have another impact, in that the overtime rate for the lowest-wage workers would increase from \$10.88 to \$13.50," Schaffer said. "This is long overdue, as living in New York on a minimum wage salary is nearly impossible."

Union leaders pointed out on Tuesday that many big retailers, including Costco, and some business groups including the Greater New York Chamber of Commerce, support the wage hike.

"When a low-wage worker receives an extra dollar, they spend every penny of it," said Retail, Wholesale and Department Store Union President Stuart Appelbaum.

Not all Empire State business groups are of the same mind. The Albany-based National Federation of Independent Businesses/New York, for example, said the Assembly vote marked a breakaway move by Silver, who ignores the fact that small businesses "cannot afford a mandated increase in labor costs."

Republicans in the Assembly, including Al Graf of Suffolk County, lined up Tuesday to label the proposal a "job killer" and vote against it.

A lack of Senate action Tuesday — and the lack of a Senate bill that contains the same provisions as the Assembly's proposal, led Graf to warn that the Assembly's effort amounted to no more than "a nice press release."

But Democrats have been buoyed by polling that shows New Yorkers overwhelmingly support their proposal and believe their move will put pressure on the Senate and on the governor.

"80 percent of the folks in the state of New York want this raise in the minimum wage," Wright said. "Hopefully it's something the folks in the other house can do."

Graf's argument that the Assembly's move amounted to little no more than grandstanding was disputed by State Senator Mike Gianaris, a Queens Democrat, who noted that — between the Senate's traditional Democratic caucus and the state's five-member Independent Democratic bloc, which wields majority power with Senate Republicans — there are enough "D" votes to push the bill through the Senate.

"The votes are there," Gianaris told WCNY radio. "We have this governing structure in the Senate that allows a minority of members to keep things from getting done. It's inhibiting progress."

--Editing by John Quinn and Lindsay Naylor.

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