

5317

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and
when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to installment
contracts for the financing of technology

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (b) of subdivision 1, paragraphs (c) and (d) of
2 subdivision 2, paragraph (a) of subdivision 3, paragraph (a) of subdivi-
3 sion 4, paragraphs (a) and (b) of subdivision 5 and paragraphs (a) and
4 (b) of subdivision 6 of section 109-b of the general municipal law, as
5 amended by chapter 258 of the laws of 1994, are amended to read as
6 follows:
7 (b) "Installment purchase contract" shall mean any lease purchase
8 agreement, installment sales agreement or other similar agreement
9 providing for periodic payments between a corporation, person or other
10 entity and a political subdivision which has as its purpose the financ-
11 ing of equipment, machinery, TECHNOLOGY or apparatus.
12 (c) Subject to the provisions of subdivision five of this section,
13 where the financing of equipment, machinery, TECHNOLOGY or apparatus
14 pursuant to an installment purchase contract is to be provided by agency
15 certificates of participation, the governing board of a political subdivi-
16 sion shall adopt a resolution authorizing the written contract with
17 the agency setting forth the rights and liabilities of the agency and
18 the political subdivision as provided for in section twenty-four hundred
19 thirty-five-a of the public authorities law.
20 (d) The term of such installment purchase contract, including all
21 renewals thereof, shall not exceed the period of probable usefulness
22 prescribed by section 11.00 of the local finance law for the equipment,
23 machinery, TECHNOLOGY or apparatus being financed under the installment
24 purchase contract.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (a) Installment purchase contracts for equipment, machinery, TECHNOLO-
2 GY or apparatus shall constitute purchase contracts for public bidding
3 purposes and shall be subject to public bidding requirements to the
4 extent applicable by law. For purposes of determining whether the cost
5 of the equipment, machinery, TECHNOLOGY or apparatus exceeds the mone-
6 tary threshold fixed in section one hundred three of this article, the
7 cost of the equipment, machinery, TECHNOLOGY or apparatus, exclusive of
8 the cost of financing, shall be considered. If the equipment, machinery,
9 TECHNOLOGY or apparatus is to be financed by a party other than the
10 party submitting the bid, the bid specifications may provide that the
11 political subdivision may assign its right to purchase to a third party
12 without the necessity of approval by the other party to the contract.
13 Nothing herein shall preclude a political subdivision from advertising
14 for bids in the alternative with and without financing.

15 (a) The proceeds of certificates of participation executed and deliv-
16 ered in connection with the installment purchase contract made pursuant
17 to this section, in addition to being applied towards the cost of the
18 equipment, machinery, TECHNOLOGY or apparatus, may also be used for the
19 establishment of reserve funds to secure such certificates, the cost or
20 premium of letters of credit, insurance or other credit enhancements,
21 the costs of bond counsel, a financial advisor, underwriter, trustees
22 and paying agent, and other actual and necessary expenses directly
23 related to the issuance of such certificates. The foregoing shall not be
24 construed to authorize the use of such proceeds for the payment of
25 personal service expenses of the political subdivision. Where agency
26 certificates are executed and delivered, proceeds may be used for
27 payment by the political subdivision of the expenses incurred by the
28 agency in connection with the execution and delivery and sale of such
29 certificates.

30 (a) If an authorization for the issuance of obligations to finance the
31 equipment, machinery, TECHNOLOGY or apparatus would have been required
32 by law to be subject to a permissive or mandatory referendum, then the
33 authorization to enter into an installment purchase contract shall be
34 subject to a permissive or mandatory referendum, as the case may be, in
35 the same manner as provided for such referendum on the issuance of obli-
36 gations.

37 (b) If the authorization for the issuance of obligations to finance
38 the equipment, machinery, TECHNOLOGY or apparatus would have been
39 required by law to be subject to: (i) a certain supermajority vote of
40 the governing board, (ii) a mandatory or permissive referendum, or (iii)
41 both, then the authorization to enter into an installment purchase
42 contract for equipment, machinery, TECHNOLOGY or apparatus shall be
43 subject to such vote, referendum or such referendum and vote, as the
44 case may be, in the same manner as provided for such vote and/or refer-
45 endum on the issuance of obligations.

46 (a) Installment purchase contracts made pursuant to this section,
47 together with any certificates of participation executed and delivered
48 or caused to be executed and delivered in connection therewith, shall
49 not constitute or create indebtedness of the state or a political subdivi-
50 sion for purposes of article seven or eight of the state constitution
51 or section 20.00 of the local finance law, nor shall they constitute a
52 contractual obligation in excess of the amounts appropriated therefor.
53 Neither the state nor a political subdivision has any continuing legal
54 or moral obligation to appropriate money for said payments or other
55 obligations due under the installment purchase contract. No installment
56 purchase contract shall contain any provision which, in the event of

1 non-appropriation, precludes a political subdivision from acquiring
2 equipment, machinery, TECHNOLOGY or apparatus for the same or similar
3 purpose as the equipment, machinery, TECHNOLOGY or apparatus included in
4 the installment purchase contract for a period of more than sixty days
5 from the date of expiration, termination or cancellation of such
6 contract, provided, however, that in no case shall an installment
7 purchase contract contain any provision which would preclude a political
8 subdivision from performing any statutorily or constitutionally required
9 duties or functions, or require the political subdivision to pay liqui-
10 dated damages.

11 (b) In the case of the failure to appropriate, the sole security,
12 apart from any security provided by a credit enhancement, for any
13 remaining periodic payments shall be the equipment, machinery, TECHNOLO-
14 GY or apparatus subject to the installment purchase contract, and if
15 certificates of participation are executed and delivered or caused to be
16 executed and delivered, reserve funds, if any, or any remaining proceeds
17 from certificates executed and delivered by or on behalf of the poli-
18 tical subdivision. Any installment purchase contract or any agreement
19 for the execution and delivery of certificates of participation to fund
20 an installment purchase contract may provide that the installment
21 purchase contract or certificates of participation are secured by the
22 underlying equipment, machinery, TECHNOLOGY or apparatus and that, in
23 the event the political subdivision fails to appropriate funds suffi-
24 cient for payments required under the contract, the financed equipment,
25 machinery, TECHNOLOGY or apparatus may be sold on behalf of the holders
26 of the certificates or other person entitled to receive payments under
27 the installment purchase contract, provided that any excess proceeds
28 from such a sale, after deduction for and payment of fees, expenses and
29 any taxes levied on the sale, and distribution to the holders of the
30 certificates in the amount of the face value of the certificates plus
31 accrued interest shall be paid to the political subdivision.

32 S 2. This act shall take effect on the sixtieth day after it shall
33 have become a law; provided, however, that the amendments to section
34 109-b of the general municipal law made by section one of this act shall
35 not affect the repeal of such section and shall be deemed repealed ther-
36ewith.