S T A T E O F N E W Y O R K

525

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Local Governments

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (b) of subdivision 1, paragraphs (c) and (d) of subdivision 2, paragraph (a) of subdivision 3, paragraph (a) of subdivision 4, paragraphs (a) and (b) of subdivision 5 and paragraphs (a) and (b) of subdivision 6 of section 109-b of the general municipal law, as amended by chapter 258 of the laws of 1994, are amended to read as follows:

(b) "Installment purchase contract" shall mean any lease purchase agreement, installment sales agreement or other similar agreement providing for periodic payments between a corporation, person or other entity and a political subdivision which has as its purpose the financing of equipment, machinery, TECHNOLOGY or apparatus.

(c) Subject to the provisions of subdivision five of this section, where the financing of equipment, machinery, TECHNOLOGY or apparatus pursuant to an installment purchase contract is to be provided by agency certificates of participation, the governing board of a political subdivision shall adopt a resolution authorizing the written contract with the agency setting forth the rights and liabilities of the agency and the political subdivision as provided for in section twenty-four hundred thirty-five-a of the public authorities law.

(d) The term of such installment purchase contract, including all renewals thereof, shall not exceed the period of probable usefulness prescribed by section 11.00 of the local finance law for the equipment, machinery, TECHNOLOGY or apparatus being financed under the installment purchase contract.

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

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(a) Installment purchase contracts for equipment, machinery, TECHNOLOGY or apparatus shall constitute purchase contracts for public bidding purposes and shall be subject to public bidding requirements to the extent applicable by law. For purposes of determining whether the cost of the equipment, machinery, TECHNOLOGY or apparatus exceeds the monetary threshold fixed in section one hundred three of this article, the cost of the equipment, machinery, TECHNOLOGY or apparatus, exclusive of the cost of financing, shall be considered. If the equipment, machinery, TECHNOLOGY or apparatus is to be financed by a party other than the party submitting the bid, the bid specifications may provide that the political subdivision may assign its right to purchase to a third party without the necessity of approval by the other party to the contract. Nothing herein shall preclude a political subdivision from advertising for bids in the alternative with and without financing.

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

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

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

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

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

(b) In the case of the failure to appropriate, the sole security, apart from any security provided by a credit enhancement, for any remaining periodic payments shall be the equipment, machinery, TECHNOLOGY or apparatus subject to the installment purchase contract, and if certificates of participation are executed and delivered or caused to be executed and delivered, reserve funds, if any, or any remaining proceeds from certificates executed and delivered by or on behalf of the political subdivision. Any installment purchase contract or any agreement for the execution and delivery of certificates of participation to fund an installment purchase contract may provide that the installment purchase contract or certificates of participation are secured by the underlying equipment, machinery, TECHNOLOGY or apparatus and that, in the event the political subdivision fails to appropriate funds sufficient for payments required under the contract, the financed equipment, machinery, TECHNOLOGY or apparatus may be sold on behalf of the holders of the certificates or other person entitled to receive payments under the installment purchase contract, provided that any excess proceeds from such a sale, after deduction for and payment of fees, expenses and any taxes levied on the sale, and distribution to the holders of the certificates in the amount of the face value of the certificates plus accrued interest shall be paid to the political subdivision.

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