*** § 109-b. Installment contracts.** 1. As used in this section:

(a) "Political subdivision" shall mean a municipal corporation, school district, district corporation or board of cooperative educational services.

(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 or apparatus.

(c) "Certificate of participation" shall mean a security or other instrument representing a proportionate interest or the right to receive a proportionate share in lease, rental, installment or other periodic payments made or to be made by a political subdivision or made by the agency on behalf of a political subdivision pursuant to an installment purchase contract.

(d) "Agency" shall mean the state of New York municipal bond bank agency established by section twenty-four hundred thirty-three of the public authorities law.

(e) "Agency certificates of participation" shall mean certificates of participation executed and delivered by the agency on behalf of, for the benefit of and pursuant to a written agreement with a political subdivision.

(f) Functions performed by a governing board under this section shall, in the city of New York, be performed by the mayor and comptroller, and the approvals of the mayor and the comptroller of any agreement, contract, instrument, arrangement or transaction contemplated by this section shall be the only approvals required therefor, subject to the provisions of the New York state financial emergency act for the city of New York.

2. A political subdivision may enter into an installment purchase contract subject to the following restrictions:

(a) Neither any person, partnership, corporation or other legal entity nor any political subdivision, officer, employee, agency or department nor the agency for agency certificates of participation shall execute and deliver or cause the execution and delivery of certificates of participation except in accordance with the provisions of this section

and with express written approval of the governing board of such political subdivision and with the concurrence of the agency for agency certificates of participation. The provisions of this section are hereby made a part of every installment purchase contract entered into by such a political subdivision or by the agency for agency certificates of participation. Every such contract shall contain a clause expressly reciting the provisions of this subdivision, provided, however, that the absence of such clause in such a contract shall not obviate the duty of all parties thereto to comply with the provisions of this subdivision. Neither this provision, nor any other provision of this section, shall be construed to prevent such political subdivisions from entering into installment purchase or lease purchase agreements funded without the use of certificates of participation or similar instruments, as otherwise provided in this section.

(b) Subject to the provisions of subdivision five of this section, the governing board of a political subdivision shall adopt a resolution authorizing the installment purchase contract.

(c) Subject to the provisions of subdivision five of this section, where the financing of equipment, machinery 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 or apparatus being financed under the installment purchase contract.

(e) The installment purchase contract shall separately state the principal and interest component of the periodic payments to be made thereunder. The total of all periodic payments which include both principal and interest components made by the political subdivision during each year throughout the term of the installment purchase contract shall be substantially level or falling.

(f) The installment purchase contract shall contain the following

clause: "This contract shall be deemed executory only to the extent of monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the political subdivision beyond the amount of such monies. The installment purchase contract is not a general obligation of (insert name of political subdivision(s)). Neither the full faith and credit nor the taxing power of (insert name of political subdivision(s)) are pledged to the payment of any amount due or to become due under such installment purchase contract. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract." Where agency certificates of participation are the security for such contract, such contract shall also contain the following clause: "Further no liability on account thereof shall be incurred by the state of New York municipal bond bank agency beyond the amount of such monies. It is understood that neither this contract nor any representation by any employee or officer of such agency creates any legal or moral obligation to appropriate or make state monies available for the purpose of the contract."

(g) No payment under the installment purchase contact except payment for the total amount outstanding shall be financed from the proceeds of obligations issued pursuant to the local finance law other than the proceeds of revenue anticipation notes, tax anticipation notes or budget notes.

3. (a) Installment purchase contracts for equipment, machinery 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 or apparatus exceeds the monetary threshold fixed in section one hundred three of this article, the cost of the equipment, machinery or apparatus, exclusive of the cost of financing, shall be considered. If the equipment, machinery 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.

(b) Certificates of participation caused to be executed and delivered by the political subdivision pursuant to this section, in connection with one or more installment purchase contracts entered or expected to be entered into by such political subdivision may be sold at public or private sale, either independently or in connection with a pooled or aggregate program, as determined by the governing board. The governing board may, by resolution, delegate such power to the chief fiscal officer, in which event such chief fiscal officer shall exercise such powers and perform such duties until the governing board shall, by resolution, elect to reassume the same. If certificates of participation are sold at public sale, they shall be sold to the bidder offering the lowest interest cost as computed in accordance with the net interest cost method, taking into consideration any premium or discount, or the actuarial or true interest cost method, whichever is specified in the notice of sale, not less than four nor more than fifteen days, Sundays excepted, after a notice of such sale has been circularized in accordance with any rule or order prescribed by the state comptroller, pursuant to paragraph d of section 57.00 of the local finance law, for the circularization of notices for the sale of bonds. The terms of the sale may not be changed unless a supplemental notice of sale is provided in accordance with the procedure for the sale of bonds in paragraph b of section 58.00 of the local finance law.

(c) Whenever in the judgement of the governing board, or if authorized by the governing board, the chief fiscal officer, the interest of the political subdivision will be served thereby, the governing board, or chief fiscal officer as the case may be, may authorize the sale of such certificates of participation at private sale, including such sale in connection with a pooled or aggregate program.

(d) The state comptroller shall promulgate rules in conformance with the state administrative procedure act governing the procedure which shall be adhered to when entering into installment purchase contracts or authorizing the execution and delivery of certificates of participation pursuant to this section, including guidelines for the private sale of certificates of participation. No private sale of certificates of participation shall be conducted by a political subdivision without

prior approval of the state comptroller except as provided in such rules which shall set forth the circumstances under which such approval shall not be required. The state comptroller shall annually deliver to the state division of the budget, the senate finance committee and the assembly ways and means committee a report listing all negotiated sales conducted in the previous year, including the name of the issuer and amount of the issue for each such sale.

4. (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 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.

(b) Each political subdivision shall have the power to enter into agreements providing credit enhancement with respect to the installment purchase contract and/or certificates of participation, but any reimbursement obligation of the political subdivision shall be subject to appropriation.

(c) The proceeds from certificates of participation may be invested only in obligations of the United States of America, obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, obligations of the state of New York, or special time deposit accounts in or certificates of deposit issued by a bank or trust company located and authorized to do business in the state and secured by a pledge of obligations of the United States of America, obligations of the state of New York, or obligation of any political subdivision,

school district or district corporation of the state of New York.

(d) All certificates of participation shall contain the following clause: "This certificate shall be deemed executory only to the extent of monies appropriated and available for the purpose of the installment purchase contract to which it relates, and no liability on account thereof shall be incurred by the political subdivision beyond the amount of such monies. The installment purchase contract is not a general obligation of (insert name of political subdivision(s)). Neither the full faith and credit nor the taxing power of (insert name of political subdivision(s)) are pledged to the payment of any amount due or to become due under such installment purchase contract. It is understood that neither this certificate nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract."

Agency certificates of participation shall also bear the following legend: "Further, the installment purchase contract is not a general obligation of the state of New York municipal bond bank agency. Neither the full faith and credit nor the taxing power of the state of New York are pledged to the payment of any amounts due or to become due under such installment purchase contract."

5. (a) If an authorization for the issuance of obligations to finance the equipment, machinery 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 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 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.

(c) If the authorization for the issuance of obligations would have been subject to a referendum only if the obligations had a maturity of more than five years or not less than some other minimum period, then the authorization to enter into the installment purchase contract shall be subject to referendum only if the term of the contract is equal to or more than such minimum period of maturity.

6. (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 or apparatus for the same or similar purpose as the equipment, machinery 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 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 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 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.

(c) The aggregate amount of unpaid periodic payments, excluding interest, to be made under any outstanding installment purchase contract shall be deemed to be existing indebtedness for the purpose of determining the power of any political subdivision to contract indebtedness under section 104.00 of the local finance law. No political subdivision shall enter into any installment purchase contract if the amount of unpaid periodic payments, excluding interest, proposed to be made under such installment purchase contract and those outstanding, together with the amount of outstanding indebtedness, would exceed one hundred fifteen percent of the limit prescribed by such section 104.00 or if the total amount of such payments, excluding interest, under such proposed contract and those outstanding would exceed forty percent of such limit.

7. A political subdivision shall not have the power to enter into an installment purchase contract except as authorized in this section or the education law and nothing in this section shall authorize the conveyance or lease of property owned by a political subdivision except as authorized by law.

8. Whether or not certificates of participation are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the certificates of participation are hereby made negotiable instruments within the meaning of and for all purposes of the

uniform commercial code, subject only to the provisions of the certificates of participation for registration.

9. All installment purchase contracts and certificates of participation of a political subdivision and the interest thereon, shall be exempt from taxation for municipal and state purposes.

10. Certificates of participation are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them; and are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

11. Enactment of this section shall not be constructed as invalidating any installment purchase contract for an improvement to real property entered into by a political subdivision prior to the effective date of such enactment.

12. References in this section to the agency and agency certificates of participation shall cease to have force and effect on and after July first, nineteen hundred ninety-two.

* NB Repealed July 15, 2027