

111TH CONGRESS
2D SESSION

H. R. 5189

To amend the Internal Revenue Code of 1986 to require that the issuer of a tax-exempt State or local obligation obtain a certification that the interest rate with respect to such obligation is reasonable without materially increasing the risks associated with the obligation.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2010

Mr. HINCHEY introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to require that the issuer of a tax-exempt State or local obligation obtain a certification that the interest rate with respect to such obligation is reasonable without materially increasing the risks associated with the obligation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Municipal Finance Im-
5 provements Act of 2010”.

1 **SEC. 2. CERTIFICATION OF COST OF FINANCING OF MUNIC-**
 2 **IPAL OBLIGATIONS.**

3 (a) IN GENERAL.—Section 149 of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new subsection:

6 “(h) CERTIFICATION OF COST OF FINANCING.—

7 “(1) IN GENERAL.—Section 103(a) shall not
 8 apply to any State or local bond issuance, including
 9 any private activity bond issuance, unless, with re-
 10 spect to the issue of which such bond is a part, the
 11 requirements of paragraph (2) are met.

12 “(2) OPTIMAL BOND FINANCING CERTIFI-
 13 CATION REQUIREMENT.—The requirements of this
 14 paragraph are met with respect to an issue if the
 15 issuer of such bonds has received an optimal bond
 16 financing certification not later than the date such
 17 issue is originally issued.

18 “(3) OPTIMAL BOND FINANCING CERTIFI-
 19 CATION.—For purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘optimal
 21 bond financing certification’ means a written
 22 statement by an independent qualified financial
 23 adviser which—

24 “(i) certifies that, in the opinion of an
 25 independent qualified financial adviser, the
 26 fees associated with the issuance and the

1 aggregate interest cost to such issuer with
2 respect to such bonds are reasonable com-
3 pared with fees and interest rate cost
4 available in the financial marketplace in
5 which such bonds may be sold, without
6 materially increasing the risks to the issuer
7 or bond obligors, and

8 “(ii) details the reasons supporting
9 the certification described in subparagraph
10 (A) (including the effect the selected legal
11 structure has on the aggregate interest
12 cost).

13 “(B) QUALIFIED INDEPENDENT FINAN-
14 CIAL ADVISOR.—

15 “(i) IN GENERAL.—The term ‘quali-
16 fied independent financial advisor’ means
17 an individual who—

18 “(I) has the professional quali-
19 fications required to advise the issuer
20 of such bond as to the financial cost
21 of such issue and the appropriate
22 legal structures and financing alter-
23 natives for optimization of the cost of
24 such issue, and

1 “(II) has a legal fiduciary duty to
2 the issuer (whether under common
3 law, or otherwise), which includes the
4 duty to advise without regard to the
5 financial or other interest of the indi-
6 vidual.

7 “(ii) RELATED OR INTERESTED PAR-
8 TIES EXCLUDED.—For purposes of this
9 subparagraph, an individual shall not be
10 treated as an independent qualified finan-
11 cial adviser if—

12 “(I) such adviser is, is employed
13 by, or is employed by any person who
14 is owned (directly or indirectly) by,
15 the underwriter of such bond,

16 “(II) such adviser is providing
17 any other financial advice with respect
18 to the issuance of such bond for which
19 such advisor is receiving remuneration
20 (or is employed by, or is employed by
21 any person who is owned (directly or
22 indirectly) by, such a person), or

23 “(III) the remuneration of such
24 adviser is contingent, directly or indi-
25 rectly, on the issuance of such issue.

1 “(iii) SPECIAL RULE FOR EMPLOYEES
2 OF STATE OR LOCAL GOVERNMENT.—An
3 individual shall not fail to be treated as
4 qualified independent financial advisor
5 solely by reason of being an employee of
6 the State or local government with respect
7 to which the bond is being issued.

8 “(4) OPTIMAL BOND FINANCING CERTIFI-
9 CATION.—The issuer of any State or local bond
10 issuance shall make publicly available the optimal
11 bond financing certification with respect to such
12 issuance.

13 “(5) CALLABLE BONDS.—

14 “(A) IN GENERAL.—A callable State or
15 local bond issue shall not be treated as con-
16 tinuing to meet the requirements of paragraph
17 (2) unless the issuer of such bonds has reason-
18 ably determined as of the first date on which
19 outstanding bonds may be called, and annually
20 thereafter, that exercising such right to call
21 such bonds and refunding such bonds will not
22 result in a substantial economic savings to the
23 issuer, or private activity user, of such bonds in
24 the marketplace in which such bonds would be
25 called and refunded.

1 “(B) CALLABLE STATE OR LOCAL BOND.—

2 For purposes of this paragraph, the term ‘call-
 3 able State or local bond issue’ means a bond
 4 issue which provides for a presently exercisable
 5 optional right to the issuer, or private activity
 6 user of the proceeds, of such bonds to retire all
 7 or part of such bonds at a stated date, but only
 8 if the remaining term to original maturity of
 9 such bonds is more than 23 months after the
 10 date that such optional right is first exercisable,
 11 with or without the payment of any premium to
 12 the holders of such bonds.

13 “(6) TAX CREDIT BONDS.—For purposes of
 14 this subsection, the term ‘State or local bond’ shall
 15 include any tax credit bond (as defined in section
 16 853A(e)(1)(A)).”.

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in para-
 19 graph (2), the amendments made by this section
 20 shall apply to obligations issued after the date of the
 21 enactment of this Act.

22 (2) CALLABLE BONDS.—In the case of callable
 23 obligations originally issued or refunded before the
 24 date of the enactment of this Act, the amendments
 25 made by this section shall apply to any such obliga-

1 tion that may be called, in whole or in part, before,
 2 on, or after the date of the enactment of this Act.

3 **SEC. 3. SMALL ISSUER CREDIT.**

4 (a) IN GENERAL.—Subchapter B of chapter 65 of the
 5 Internal Revenue Code of 1986 is amended by adding at
 6 the end the following new section:

7 **“SEC. 6433. SMALL ISSUER CREDIT.**

8 “(a) IN GENERAL.—In the case of bond issued by
 9 a small issuer, such issuer shall be allowed as a credit with
 10 respect to such bond an amount equal to 0.05 percent of
 11 the principle amount of such bond which shall be payable
 12 by the Secretary as provided in subsection (b).

13 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
 14 to such issuer the amount of the credit determined under
 15 subsection (a) on such date as the Secretary can reason-
 16 ably determine such issuer is a small issuer for the cal-
 17 endar year.

18 “(c) SMALL ISSUER.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘small issuer’
 20 means, with respect to any calendar year, any issuer
 21 if the aggregate face amount of all tax-exempt bonds
 22 (other than private activity bonds) issued by such
 23 issuer during such calendar year does not exceed
 24 \$50,000,000.

1 “(2) CERTAIN REFUNDING BONDS NOT TAKEN
2 INTO ACCOUNT IN DETERMINING SMALL ISSUER
3 STATUS.—There shall not be taken into account
4 under paragraph (1) any bond issued to refund
5 (other than to advance refund) any bond to the ex-
6 tent the amount of the refunding bond does not ex-
7 ceed the outstanding amount of the refunded bond.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for subchapter B of chapter 65 of such Code is amended
10 by adding at the end the following new item:

 “Sec. 6433. Small issuer credit.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to obligations issued after the date
13 of the enactment of this Act.

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