

Regular Session, 2014

SENATE BILL NO. 384

BY SENATOR LAFLEUR

BONDS. Requires issuers of state municipal securities to comply with certain continuing disclosure rules of the United States Securities and Exchange Commission. (8/1/14)

1 AN ACT

2 To enact R.S. 39:1438, relative to Louisiana municipal securities; to require that municipal  
3 securities of public entities comply with the continuing disclosure rules of the United  
4 States Securities and Exchange Commission; to provide definitions; to provide for  
5 recordkeeping and audit procedures associated with continuing disclosure; and to  
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1438 is hereby enacted to read as follows:

9 §1438. Issuers of securities; continuing disclosure requirements; audit  
10 requirements

11 A. Definitions. For purposes of this Section:

12 (1) "Auditor" means the legislative auditor or any private accounting  
13 firm which prepares the annual financial audit of a public entity under rules of  
14 the legislative auditor regarding the audit of governmental entities, quasi-  
15 governmental entities, or entities otherwise subject to public audit by the  
16 legislative auditor.

17 (2) "Continuing disclosure agreement" means any agreement entered

1 into by an obligated person which sets forth the continuing disclosure  
2 obligations of such obligated person pursuant to the SEC rule.

3 (3) "EMMA" means the Electronic Municipal Market Access system  
4 maintained by the Municipal Securities Rulemaking Board.

5 (4) "Issuer" means any "issuer of municipal securities" as defined in the  
6 SEC rule.

7 (5) "Municipal securities" means any securities which are issued by a  
8 public entity which are subject to continuing disclosure under the SEC rule.

9 (6) "Obligated person" has the meaning defined in the SEC rule.

10 (7) "Public entity" means the state, its agencies, departments, boards,  
11 commissions, parishes, municipalities, school boards, special districts, special  
12 authorities, and any other political subdivision or other entity created by any  
13 of the foregoing.

14 (8) "SEC rule" means the municipal securities continuing disclosure rule  
15 of the United States Securities and Exchange Commission codified as Section  
16 240.15c2-12 of Title 17 of the Code of Federal Regulations, together with all  
17 corresponding rules, updates, notices, and interpretations of the United States  
18 Securities and Exchange Commission and the Municipal Securities Rulemaking  
19 Board, as may be amended from time to time.

20 B. Findings and purpose. The legislature recognizes that public entities  
21 often act as issuer or obligated persons of municipal securities and therefore are  
22 often subject to the SEC rule, which was established in order to provide  
23 municipal securities investors with more timely and transparent access to  
24 financial and other material information while such securities remain  
25 outstanding. The legislature finds that the continuing disclosure requirements  
26 of the SEC rule are in the public interest, and now desires to establish  
27 procedures to provide for compliance and audit with respect to municipal  
28 securities issued in the state.

29 C. Recordkeeping. (1) Every public entity shall continuously maintain:

1                    **(a) A list of all Louisiana municipal securities for which the public entity**  
 2                    **is the issuer or an obligated person.**

3                    **(b) A copy of all continuing disclosure agreements to which the public**  
 4                    **entity is a party.**

5                    **(c) If, pursuant to a continuing disclosure agreement, the public entity**  
 6                    **is responsible for filing notices of changes in bond ratings, a list of current**  
 7                    **ratings for such securities, if any.**

8                    **(2) All records required to be kept by a public entity under this Section**  
 9                    **shall be subject to inspection by the public entity's auditor.**

10                  **D. Audit. As part of its annual financial audit of a public entity, a public**  
 11                  **entity's auditor shall:**

12                  **(1) Review the public entity's compliance with the recordkeeping**  
 13                  **requirements of this Section.**

14                  **(2) Review the public entity's filings on EMMA to determine if such**  
 15                  **filings are in compliance with the continuing disclosure agreements.**

The original instrument was prepared by Martha Hess. The following digest,  
 which does not constitute a part of the legislative instrument, was prepared  
 by Nancy Vicknair.

#### DIGEST

LaFleur (SB 384)

Present law provides for the issuance of bonds, notes, certificates, or other obligations or securities for the repayment of borrowed money, by public entities.

Proposed law retains present law but further provides procedures to provide for compliance with the municipal securities continuing disclosure rule of the United States Securities and Exchange Commission.

Proposed law provides for definitions of "auditor", "continuing disclosure agreement", "EMMA", "issuer", "municipal securities", "obligated person", "public entity", and "SEC rule".

Proposed law provides for recordkeeping by public entities by requiring them to continuously maintain:

- (1) A list of all Louisiana municipal securities for which the public entity is the issuer or an obligated person.
- (2) A copy of all continuing disclosure agreements to which the public entity is a party.
- (3) If, pursuant to a continuing disclosure agreement, the public entity is responsible for

filing notices of changes in bond ratings, a list of current ratings for such securities, if any.

Proposed law provides that all records required to be kept by a public entity under this Section shall be subject to inspection by the public entity's auditor.

Proposed law provides that as part of its annual financial audit of a public entity, a public entity's auditor shall:

- (1) Review the public entity's compliance with the recordkeeping requirements of this Section.
- (2) Review the public entity's filings on EMMA to determine if such filings are in compliance with the continuing disclosure agreements.

Effective August 1, 2014.

(Adds R.S. 39:1438)

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Defines "municipal securities" to include securities which are subject to continuing disclosure under the SEC rule.
2. Deletes the provision requiring a public entity's auditor to provide a report of its findings for each issue of securities in the public entity's annual financial audit.