

By: Mettetal, Jackson

To: Business and
Financial
InstitutionsSENATE BILL NO. 3064
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 27-105-5, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE QUALIFICATIONS FOR A FINANCIAL INSTITUTION TO QUALIFY
3 AS A PUBLIC FUNDS DEPOSITORY AND GUARANTY POOL MEMBER; TO CREATE A
4 NEW SECTION TO BE CODIFIED AS SECTION 27-105-6, MISSISSIPPI CODE
5 OF 1972, TO ESTABLISH WITHIN THE STATE TREASURY A PUBLIC FUNDS
6 GUARANTY POOL TO CONSIST OF QUALIFIED PUBLIC FUNDS DEPOSITORIES TO
7 BE ADMINISTERED BY A GUARANTY POOL BOARD AND THE STATE TREASURER;
8 TO PROVIDE FOR THE MEMBERSHIP OF THE GUARANTY POOL BOARD AND TO
9 PROVIDE FURTHER QUALIFICATIONS REQUIRED FOR FINANCIAL INSTITUTIONS
10 TO PARTICIPATE IN THE GUARANTY POOL; TO AMEND SECTION 27-105-25,
11 MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE TREASURER TO
12 PROVIDE COVERAGE OF THE REMAINING LOSS BY ASSESSMENT AGAINST THE
13 OTHER PUBLIC FUNDS GUARANTY POOL MEMBERS WHEN A LOSS TO THE PUBLIC
14 DEPOSITORS IS NOT COVERED BY DEPOSIT INSURANCE OR PROCEEDS OF A
15 SALE OF SECURITIES; TO AMEND SECTION 27-105-315, MISSISSIPPI CODE
16 OF 1972, TO PROVIDE THAT ANY FINANCIAL INSTITUTION WHOSE ACCOUNTS
17 ARE INSURED BY THE FDIC MAY QUALIFY AS A COUNTY DEPOSITORY IF SUCH
18 INSTITUTION QUALIFIES AS A PUBLIC FUNDS DEPOSITORY OR GUARANTY
19 POOL MEMBER; TO AMEND SECTION 27-105-317, MISSISSIPPI CODE OF
20 1972, TO PROVIDE THAT A COUNTY DEPOSITORY MUST BE ISSUED A
21 COMMISSION BEFORE RECEIPT OF COUNTY DEPOSITS; TO AMEND SECTIONS
22 27-105-9, 27-105-13, 27-105-35, 27-105-329, 27-105-331,
23 27-105-333, 27-105-349, 27-105-353, 27-105-355 AND 27-105-359,
24 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO REPEAL SECTION
25 27-105-319, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE FORM OF
26 THE COMMISSION FOR A COUNTY DEPOSITORY; AND FOR RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 SECTION 1. Section 27-105-5, Mississippi Code of 1972, is
29 amended as follows:[LR1]

30 27-105-5. **Qualification as public funds depository; State**
31 **Treasurer authority.**

32 (1) Any financial institution maintaining a deposit-taking
33 facility in this state whose accounts are insured by the Federal
34 Deposit Insurance Corporation or any successors to such insurance
35 corporation, may qualify as a public funds depository by
36 submitting an application to the State Treasurer as provided by
37 Section 27-105-9, if such institution has a primary capital to
38 total assets ratio of five and one-half percent (5-1/2%) or more.

39 Such ratio shall be determined not later than December 1 in each
40 calendar year by the State Treasurer on the basis of balance
41 sheets of applying institutions at June 30 of the same calendar
42 year, and an institution shall not be a qualified depository and
43 shall not receive any public funds unless its ratio has been
44 certified annually by the Treasurer as meeting the prescribed
45 requirement. Each applicant shall furnish to the State Treasurer
46 such financial statements, balance sheets or other documentation,
47 sworn to by a duly elected officer, on such date or dates and on
48 such forms as the State Treasurer may require. Any knowing or
49 willful misstatement of fact on such forms shall subject the
50 officer swearing thereto to the penalty of perjury, and the
51 financial institution of which he is an officer shall not be
52 eligible to serve as a depository for a period of one (1) year
53 commencing with the date on which the State Treasurer certifies
54 that such a misstatement has been made. When so approved by the
55 State Treasurer, such institution shall place on deposit with the
56 State Treasurer qualified bonds, notes and liquid securities in an
57 aggregate amount at least equal to one hundred five percent (105%)
58 of the average daily balance of funds on deposit in the aggregate
59 by the State of Mississippi or any agency or department thereof or
60 by any county, municipality or other governmental unit in excess
61 of that portion of accounts insured by the Federal Deposit
62 Insurance Corporation, or any successor thereto * * *.

63 (2) Any financial institution maintaining a deposit-taking
64 facility in this state whose accounts are insured by the Federal
65 Deposit Insurance Corporation or any successors to such insurance
66 corporation and which has been in existence for three (3) or more
67 years may qualify as a public funds depository and public funds
68 quaranty pool member pursuant to Section 27-105-6 by submitting an
69 application to the State Treasurer as provided by Section
70 27-105-9, if such institution has a primary capital to total
71 assets ratio of six and one-half percent (6-1/2%) or more and
72 otherwise meets the requirements of Section 27-105-6. Such ratio
73 shall be determined not later than December 1 in each calendar
74 year by the State Treasurer on the basis of balance sheets of
75 applying institutions at June 30 of the same calendar year, and an

76 institution shall not be a member of the public funds guaranty
77 pool unless its ratio has been certified annually by the Treasurer
78 as meeting the prescribed requirement. Each applicant shall
79 furnish to the State Treasurer such financial statements, balance
80 sheets or other documentation, sworn to by a duly elected officer,
81 on such date or dates and on such forms as the State Treasurer may
82 require. Any knowing or willful misstatement of fact on such
83 forms shall subject the officer swearing thereto to the penalty of
84 perjury and the financial institution of which he is an officer
85 shall not be eligible to serve as a depository for a period of one
86 (1) year commencing with the date on which the State Treasurer
87 certifies that such a misstatement has been made. When so
88 approved by the State Treasurer, such institution shall meet its
89 security requirement of one hundred five percent (105%) by placing
90 on deposit with the State Treasurer qualified bonds, notes and
91 liquid securities in an aggregate amount at least equal to
92 fifty-two and one-half percent (52-1/2%) of the average daily
93 balance of funds on deposit in the aggregate by the State of
94 Mississippi or any agency or department thereof or by any county,
95 municipality or other governmental unit in excess of that portion
96 of accounts insured by the Federal Deposit Insurance Corporation,
97 or any successor thereto, and executing a guarantee equal to the
98 balance of fifty-two and one-half percent (52-1/2%) of the average
99 daily balance of funds on deposit in the aggregate by the State of
100 Mississippi or any agency or department thereof or by any county,
101 municipality or other governmental unit in excess of that portion
102 of accounts insured by the Federal Deposit Insurance Corporation,
103 or any successor thereto.

104 (3) The term "qualified bonds, notes and liquid securities"
105 as used herein shall mean:

106 (a) All securities that are direct obligations of the
107 United States Treasury or any other obligations fully guaranteed
108 by the United States government.

109 (b) Bonds, notes and other obligations of the Federal
110 Home Loan Bank, Federal National Mortgage Association, Federal
111 Land Banks, Banks for Cooperatives, and Federal Intermediate
112 Credit Banks, the Government National Mortgage Association, the
113 Federal Housing Administration, the Farmers Home Administration,
114 the Farm Credit System Financial Assistance Corporation, the
115 United States Postal Service, the Federal Financing Bank, the
116 Student Loan Marketing Association, the Small Business
117 Administration, the General Services Administration, the
118 Washington Metropolitan Area Transit Authority, the Maritime
119 Administration, the Export-Import Bank, the International Bank for
120 Reconstruction and Development, the Inter-American Development
121 Bank, the Asian Development Bank, loan participations which carry
122 the guarantee of the Commodity Credit Corporation, an
123 instrumentality of the United States Department of Agriculture or
124 other similar agencies approved by the State Treasurer.

125 (c) Obligations of the Tennessee Valley Authority.

126 (d) Legal obligation or revenue bonds of the State of
127 Mississippi, its agencies, or any political subdivision thereof,
128 or any municipality located in the State of Mississippi, or the
129 Yazoo Mississippi Delta and the Mississippi Levee Districts, or
130 the Mississippi Higher Education Assistance Corporation or its
131 successors, or any body corporate and politic created pursuant to
132 the laws of the State of Mississippi.

133 (e) General obligations issued by any state or by a
134 county, parish or municipality of any state, the full faith and
135 credit of which are pledged to the payment of principal and
136 interest, that are rated "A" or better by any recognized national
137 rating agency engaged in the business of rating bonds.

138 (f) Surety bonds of any surety company authorized to do
139 business in the State of Mississippi.

140 (g) All bonds authorized as security for state funds
141 under items (c), (d) and (e), inclusive, shall be investment

142 quality, and any bonds under said items (c), (d), (e) and (f),
143 inclusive, which are rated substandard by any of the appropriate
144 supervisory authorities having jurisdiction over said depository
145 or by any recognized national rating agency engaged in the
146 business of rating bonds, shall not be eligible for pledging as
147 security to the State of Mississippi by any qualified state
148 depository.

149 No bonds shall be accepted as security for more than their
150 stated par value or market value, whichever is lower, except bonds
151 and obligations of the State of Mississippi and Mississippi State
152 Highway bonds or notes which may be accepted as security at par
153 value or market value, whichever is greater.

154 The bonds, notes and liquid securities to be placed on
155 deposit shall secure both deposits and the accrued interest
156 thereon.

157 Money shall be drawn from the depositories so as to leave in
158 each as near as practicable, its equitable proportion of state
159 funds.

160 The State Treasurer is authorized and empowered to:

161 (i) Deposit for safekeeping in the vaults of any
162 of the state or national banks located within this state which are
163 members of the Federal Deposit Insurance Corporation and which
164 have appropriate safekeeping facilities approved by the State
165 Depository Commission, any federal reserve bank, any federal
166 reserve branch bank, or any bank which is a member of the Federal
167 Reserve System and is located in a city where there is a federal
168 reserve bank or a federal reserve branch bank, the securities
169 placed with him by financial institutions qualifying as state
170 depositories; or

171 (ii) Accept, in lieu of the securities themselves,
172 safekeeping trust receipts issued to the State Treasurer by the
173 authorized safekeeping banks listed in subparagraph (i) above;
174 such safekeeping trust receipts to describe the securities and

175 show that such securities are held for safekeeping for the account
176 of the State Treasurer or other governmental unit. The securities
177 so deposited shall not be commingled in any manner with the assets
178 of the safekeeping bank.

179 The safekeeping banks listed in subparagraph (i) above are
180 authorized to issue to the State Treasurer their safekeeping trust
181 receipts based on safekeeping trust receipts issued to them by any
182 of their correspondent banks which are members of the Federal
183 Reserve System and are located in any federal reserve city and
184 which have physical custody of the pledged securities.

185 In no event shall the State Treasurer deposit for safekeeping
186 with any depository securities placed by said depository with the
187 State Treasurer in qualifying as a public funds depository, nor
188 shall he accept a safekeeping trust receipt by or from a
189 depository covering securities it owns in order to secure state
190 funds on deposit therewith.

191 (4) In fulfilling the requirements of this Section 27-105-5,
192 the State Treasurer shall:

193 (a) Maintain perpetual inventory of pledged collateral
194 and perform monthly market valuations and quality ratings.

195 (b) Monitor and confirm, as often as deemed necessary
196 by the Treasurer, the pledged collateral held by third party
197 custodians.

198 (c) Perfect an interest in pledged collateral by having
199 pledged securities moved into an account established in the
200 Treasurer's name. This action shall be taken at the discretion of
201 the Treasurer.

202 (d) Review the reports of each qualified public funds
203 depository for material changes in capital accounts or changes in
204 name, address or type of institution, record the average daily
205 balances of public deposits held; and monitor the
206 collateral-pledging levels and required collateral based on the
207 average daily balances.

208 (e) Compare public deposit information reported by
209 qualified public funds depositories and public depositors. Such
210 comparison shall be conducted for qualified public depositories
211 based on established financial condition criteria of record on
212 September 30.

213 (f) Verify the reports of any qualified public funds
214 depository relating to public deposits it holds when necessary to
215 protect the integrity of the public deposits program.

216 (g) Confirm public deposits, to the extent possible
217 under current law, when needed.

218 (h) Require at his or her discretion the filing of any
219 information or forms required under this chapter to be by
220 electronic data transmission. Such filings of information or
221 forms shall have the same enforceability as a signed writing.

222 (5) A qualified public funds depository shall:

223 (a) Within fifteen (15) days after the end of each
224 calendar month or when requested by the Treasurer, submit to the
225 Treasurer a written report, under oath, indicating the average
226 daily balance of all public deposits held by it during the
227 reported month, required collateral, a detailed schedule of all
228 securities pledged as collateral, selected financial information,
229 and any other information that the Treasurer determines necessary
230 to administer this chapter.

231 (b) Provide to each public depositor annually, not
232 later than thirty (30) days following such public depositor's
233 fiscal year end, the following information on all open accounts
234 identified as a "public deposit" for that public depositor as of
235 its fiscal year end, to be used for confirmation purposes: the
236 federal employer identification number of the public funds
237 depository, the name on the deposit account record, the federal
238 employer identification number on the deposit account record, and
239 the account number, account type and actual account balance on
240 deposit. Any discrepancy found in the confirmation process shall

241 be reconciled within sixty (60) days of the public depositor's
242 fiscal year end.

243 (c) Submit to the Treasurer annually, not later than
244 sixty (60) days of the public depositor's fiscal year end, a
245 report of all public deposits held for the credit of all public
246 depositors at the close of business on each public depositor's
247 fiscal year end. Such annual report shall consist of public
248 deposit information in a report format prescribed by the
249 Treasurer. The manner of required filing may be as a signed
250 writing or electronic data transmission, at the discretion of the
251 Treasurer.

252 (6) Public depositors shall comply with the following
253 requirements:

254 (a) A public depositor shall ensure that the name of
255 the public depositor and its tax identification number is on the
256 account or certificate provided to the public depositor by the
257 qualified public depository in a manner sufficient to disclose the
258 identity of the public depositor;

259 (b) Not later than thirty (30) days following its
260 fiscal year end, a public depositor shall notify the State
261 Treasurer of its official name, address, federal tax
262 identification number, and provide a listing of all accounts that
263 it had with qualified public depositories, including the deposit
264 balance in such accounts, as of its fiscal year end. A public
265 entity established during the year shall furnish its official
266 name, address and federal tax identification number to the State
267 Treasurer prior to making any public deposit.

268 (7) Any information contained in a report of a qualified
269 public funds depository required under Section 27-105-5 or
270 27-105-6 shall be considered confidential and exempt from
271 disclosure and not subject to dissemination to anyone other than
272 the Treasurer under the provisions of this chapter.

273 (8) The State Treasurer is empowered to assume

274 responsibility as successor pledgee as agent on behalf of any
275 county, municipality or other governmental unit of any and all
276 collateral pledged prior to July 1, 2001, to such county,
277 municipality or governmental unit by that public funds depository.
278 Upon assuming responsibility as successor pledgee as provided in
279 this subsection (8), the State Treasurer is empowered to sign such
280 documents on behalf of any such county, municipality or
281 governmental unit as may be required by a trustee custodian,
282 including, but not limited to any documentation necessary to
283 change the pledgee from such county, municipality or governmental
284 unit as pledgee to the State Treasurer as agent.

285 (9) As used in this section and Section 27-105-6, the
286 following terms shall have the meanings set forth below:

287 (a) The term "primary capital" means the sum of common
288 stock, perpetual preferred stock, capital surplus, undivided
289 profits, capital reserves, mandatory convertible debt (to the
290 extent of twenty percent (20%) of primary capital exclusive of
291 such debt), minority interests in consolidated subsidiaries, net
292 worth certificates issued pursuant to 12 USCS 1823(i) and the
293 allowance for loan and lease losses, and minus assets classified
294 loss and intangible assets other than mortgage servicing rights.

295 (b) The term "assets classified loss" means:

296 (i) When measured as of the date of examination of
297 the financial institution, those assets that have been determined
298 by an evaluation made by a state or federal examiner as of that
299 date to be a loss; and

300 (ii) When measured as of any other date, those
301 assets:

302 (A) That have been determined: 1. by an
303 evaluation made by a state or federal examiner at the most recent
304 examination of the financial institution to be a loss, or 2. by
305 evaluations made by the financial institution since its most
306 recent examination to be a loss; and

307 (B) That have not been charged off from the
308 financial institution's books or collected.

309 (c) The term "intangible assets" means those assets
310 that would be required to be reported in the item for intangible
311 assets in a Federal Deposit Insurance Corporation (FDIC) banking
312 institution's "Reports of Condition and Income" (Call Reports),
313 regardless of whether such institution is insured by the FDIC.

314 (d) The term "mandatory convertible debt" means a
315 subordinated debt instrument meeting the requirements of the
316 Federal Deposit Insurance Corporation which requires the issuer to
317 convert such instrument into common or perpetual preferred stock
318 by a date at or before the maturity of the debt instrument. The
319 maturity of these instruments must be twelve (12) years or less.

320 (e) The term "mortgage servicing rights" means the
321 purchased rights to perform the servicing function for a specific
322 group of mortgage loans that are owned by others. Mortgage
323 servicing rights must be amortized over a period not to exceed
324 fifteen (15) years or their estimated useful life, whichever is
325 shorter.

326 (f) The term "perpetual preferred stock" means a
327 preferred stock that does not have a stated maturity date or that
328 cannot be redeemed at the option of the holder. It includes those
329 issues of preferred stock that automatically convert into common
330 stock at a stated date. It excludes those issues, the rate on
331 which increases, or can increase, in such a manner that would
332 effectively require the issuer to redeem the issue.

333 (g) The term "total assets" means the average of total
334 assets of any financial institution which are or would be included
335 in a Federal Deposit Insurance Corporation (FDIC) banking
336 institution's "Reports of Condition and Income" (Call Reports),
337 regardless of whether such institution is insured by the FDIC,
338 plus the allowance for loan and lease losses, minus assets
339 classified loss and minus intangible assets other than mortgage

340 servicing rights.

341 (h) The term "average daily balance" means the average
342 daily balance of public deposits of each governmental unit held
343 during the reported month. The average daily balances must be
344 determined by totaling, by account, the daily balance held by the
345 depositor and then dividing the total by the number of calendar
346 days in the month. Deposit insurance is then deducted from each
347 public depositor's balance and the resulting amounts are totaled
348 to obtain the average daily balance.

349 (i) The term "public funds" means funds in which the
350 entire beneficial interest is owned by a governmental unit or
351 funds held in the name of a public official of a governmental unit
352 charged with the duty to receive or administer funds and acting in
353 such official capacity.

354 (j) The term "governmental unit" means the State of
355 Mississippi, any board, commission, department, office or other
356 agency of the State of Mississippi, any county, any incorporated
357 city, town or village, any school district, any utility district,
358 any community college, any institution of higher learning, or any
359 municipal airport authority or regional airport authority in the
360 state.

361 SECTION 2. The following provision shall be codified as
362 Section 27-105-6, Mississippi Code of 1972:

363 27-105-6. Further qualification as public funds depository
364 participating in public funds guaranty pool.

365 (1) There is hereby established within the State Treasury a
366 public funds guaranty pool to consist of qualified public funds
367 depositories commissioned pursuant to Section 27-105-5(2) to be
368 administered by a Guaranty Pool Board and the State Treasurer.

369 (2) There is hereby established a nine-member Guaranty Pool
370 Board to administer the guaranty pool and to review and recommend
371 criteria to be used by the State Treasurer in order to protect
372 public deposits and the depositories in the program.

373 (3) Any financial institution qualifying as a guaranty pool
374 member shall guarantee public fund deposits against loss caused by
375 the default or insolvency of other guaranty pool members and shall
376 execute under oath an agreement of contingent liability in
377 addition to a public deposit pledge agreement.

378 (4) In addition to maintaining the capital requirements of
379 Section 27-105-5, a guaranty pool member shall meet and maintain,
380 on a quarterly basis, at least two (2) of the following ratios:

381 (a) A ratio of loans past due ninety (90) days or more
382 to total loans of less than two percent (2%);

383 (b) An annualized return on average assets of more than
384 seventy-five one hundredths of one percent (0.75%); and

385 (c) A total loans to total assets ratio not exceeding
386 eighty percent (80%).

387 Failure of a guaranty pool member to meet the capital ratio
388 and at least two (2) of the above three (3) ratios shall subject
389 such member to subsection (9) hereof.

390 (5) In fulfilling the requirements of this section, the
391 Treasurer has the power to:

392 (a) Order discontinuance of participation in the
393 guaranty pool program by a qualified public depository upon
394 failure of such financial institution to meet the above
395 requirements of subsection (4) hereof;

396 (b) Appoint a nine-member Guaranty Pool Board;

397 (c) Establish goals and objectives and provide other
398 data as may be necessary to assist the Guaranty Pool Board
399 established under subsection (2) in developing standards for the
400 program;

401 (d) Perform financial analysis of any qualified public
402 funds depository as needed;

403 (6) The Guaranty Pool Board shall consist of:

404 (a) One (1) representative of financial institutions
405 with assets of One Billion Dollars (\$1,000,000,000.00) or more

406 chosen by the State Treasurer from a list of two (2) bankers
407 nominated by the Mississippi Bankers Association;

408 (b) One (1) representative of financial institutions
409 with assets of Three Hundred Million Dollars (\$300,000,000.00) but
410 less than One Billion Dollars (\$1,000,000,000.00) chosen by the
411 State Treasurer from a list of two (2) bankers nominated by the
412 Mississippi Bankers Association;

413 (c) One (1) representative of financial institutions
414 with assets of less than Three Hundred Million Dollars
415 (\$300,000,000.00) chosen by the State Treasurer from a list of two
416 (2) bankers nominated by the Mississippi Bankers Association;

417 (d) Two (2) representatives of banks at large chosen by
418 the State Treasurer from a list of four (4) bankers nominated by
419 the Mississippi Bankers Association;

420 (e) One (1) member chosen by the State Treasurer from a
421 list of two (2) supervisors nominated by the Mississippi
422 Supervisors Association;

423 (f) One (1) member chosen by the State Treasurer from a
424 list of two (2) municipal officials nominated by the Mississippi
425 Municipal League; and

426 (g) The Commissioner of Banking and Consumer Finance
427 and the State Treasurer.

428 The Guaranty Pool Board shall determine the effective date of
429 the public funds guaranty pool, which date shall be no earlier
430 than July 1, 2001, and so notify the State Treasurer. All
431 nominees of the Mississippi Bankers Association shall be employed
432 by a financial institution that is a member of the public funds
433 guaranty pool.

434 Initially, three (3) of the five (5) representatives of
435 financial institutions shall be appointed for a term of one (1)
436 year. The remaining members other than the Commissioner of
437 Banking and Consumer Finance and State Treasurer, who shall be
438 permanent members, shall be appointed for a term of two (2) years.

439 Upon expiration of these terms, members shall be appointed
440 thereafter for two-year terms. Any member is eligible for
441 reappointment and shall serve until a successor qualifies. If a
442 vacancy occurs in the position of any appointed member, a new
443 member shall be appointed in the same manner as such member's
444 predecessor for the remainder of the unexpired term. A member of
445 the board shall receive no compensation for service on the board.

446 The Guaranty Pool Board shall elect a chair and vice chair
447 and shall also designate a secretary who need not be a member of
448 the Guaranty Pool Board. The secretary shall keep a record of the
449 proceedings of the Guaranty Pool Board and shall be the custodian
450 of all printed materials filed with or by the advisory committee.

451 Notwithstanding the existence of vacancies on the Guaranty Pool
452 Board, a majority of the members constitutes a quorum. The
453 Guaranty Pool Board shall not take official action in the absence
454 of a quorum.

455 In addition to the requirements of subsection (4) hereof, the
456 Guaranty Pool Board by a two-thirds (2/3) supermajority vote of
457 the entire Guaranty Pool Board may establish additional criteria
458 for qualification as a guaranty pool member, including
459 promulgating additional ratios, requiring stricter ratios than
460 provided under subsection (4), or requiring additional collateral;
461 provided, however, any additional criteria shall be uniformly
462 applied to all participants, although higher collateral pledge
463 levels may be based on different financial criteria. Any
464 reduction in previously approved criteria shall likewise be
465 subject to a two-thirds (2/3) supermajority vote of the entire
466 Guaranty Pool Board. Any additional criteria will become
467 effective at the quarter next after the Guaranty Pool Board votes.

468 The Guaranty Pool Board is hereby authorized to promulgate
469 regulations in order to more fully carry out its obligations
470 hereunder.

471 (7) A public funds guaranty pool member shall submit to the

472 State Treasurer not later than the date required to be filed with
473 its primary federal regulatory agency:

474 (a) A copy of the quarterly Consolidated Reports of
475 Condition and Income, and any amended reports, required by the
476 Federal Deposit Insurance Act, 12 USC Section 1811 et seq., if
477 such depository is a bank; or

478 (b) A copy of the Thrift Financial Report, and any
479 amended reports, required to be filed with the Office of Thrift
480 Supervision if such depository is a savings and loan association.

481 (8) A public funds guaranty pool member may effect a
482 voluntary withdrawal from the guaranty pool by giving written
483 notice to the State Treasurer. Notice of withdrawal shall be
484 mailed or delivered in sufficient time to be received by the State
485 Treasurer at least one hundred eighty (180) days before the
486 effective date of withdrawal. On the effective date of
487 withdrawal, the guaranty pool member shall pledge and place on
488 deposit with the State Treasurer securities equal to one hundred
489 five percent (105%) of the outstanding balances of public funds
490 held less the amount of funds insured by the Federal Deposit
491 Insurance Corporation.

492 The contingent liability for any loss prior to the effective
493 date of withdrawal of the depository withdrawing from the guaranty
494 pool shall continue after the effective date of the withdrawal for
495 a period of six (6) months.

496 (9) A public funds guaranty pool member failing to meet the
497 requirements for membership in subsection (4) hereof or as
498 modified by the Guaranty Pool Board under its authority at
499 subsection (6) is required to withdraw from the guaranty pool.
500 The State Treasurer shall notify the public funds guaranty pool
501 member of the effective date of the withdrawal not less than
502 thirty (30) days prior to such effective date. Not later than the
503 effective date of withdrawal, the withdrawing pool member must
504 pledge and place on deposit with the State Treasurer securities

505 equal to one hundred five percent (105%) of the outstanding
506 balances of public funds held less the amount of funds insured by
507 the Federal Deposit Insurance Corporation or pay over such funds
508 to the public depositor.

509 The contingent liability for any loss prior to the effective
510 date of withdrawal of the depository withdrawing from the guaranty
511 pool shall continue for a period of one (1) year after the
512 effective date of the withdrawal.

513 SECTION 3. Section 27-105-9, Mississippi Code of 1972, is
514 amended as follows:

515 27-105-9. **Application for keeping state funds; pro rata**
516 **allocation.**

517 The State Treasure shall give notice of the provisions of
518 this article once a month to each eligible bank and financial
519 institution in the state having an amount of state funds less than
520 the amount authorized to be allocated to the bank or financial
521 institution under Section 27-105-33 and this section, and shall
522 receive such applications as they or any of them may make for the
523 privilege of keeping any part of public funds on forms to be
524 furnished by the Treasurer, and shall place the state funds with
525 the institutions applying therefor if the depository application
526 has been duly approved by the Treasurer.

527 The Treasurer, when considering the various depository
528 applications, shall review the financial statement of the applying
529 depository and become satisfied regarding its liquidity and
530 capital ratio so as to assure the safety of all public funds, and
531 likewise to give the equitable apportionment of the state funds
532 throughout the state.

533 State funds required for current operation, as determined
534 pursuant to Section 27-105-33, shall be deposited in one or more
535 demand accounts. State funds not required for current operation,
536 as determined pursuant to Section 27-105-33, shall be deposited in
537 one or more interest-bearing accounts or time certificates of

538 deposit, or otherwise invested pursuant to Section 27-105-33.
539 When any depository holding state demand accounts receives an
540 order from the Treasurer or his designee to transfer collected
541 funds out of such accounts to any interest-bearing accounts or
542 time certificates of deposit in such depository or any other
543 depository pursuant to the provisions of this chapter, the
544 transfer shall be made immediately or as soon thereafter as
545 practicable. If the Treasurer finds that any depository is not
546 transferring funds as hereinabove provided, such depository shall
547 be disqualified from holding or receiving any state demand
548 accounts for a period of time not to exceed one (1) year.

549 All funds allocated to approved depositories under the
550 provisions of subsection (b) of Section 27-105-33 shall be
551 allocated to qualified depositories of the state on a pro rata
552 basis determined as follows:

553 (a) Each qualified depository shall be assigned a
554 numerator which shall be the sum of (i) thirty-five percent (35%)
555 of that portion of its Mississippi-based deposits that does not
556 exceed Two Hundred Fifty Million Dollars (\$250,000,000.00), plus
557 (ii) twenty-five percent (25%) of that portion of its
558 Mississippi-based deposits that exceed Two Hundred Fifty Million
559 Dollars (\$250,000,000.00) but does not exceed Five Hundred Million
560 Dollars (\$500,000,000.00), plus (iii) fifteen percent (15%) of
561 that portion of its Mississippi-based deposits that exceeds Five
562 Hundred Million Dollars (\$500,000,000.00).

563 (b) Each such numerator shall be divided by a
564 denominator, which shall be the sum of (i) thirty-five percent
565 (35%) of the first Two Hundred Fifty Million Dollars
566 (\$250,000,000.00) or portion thereof of the Mississippi-based
567 deposits of each qualified depository, plus (ii) twenty-five
568 percent (25%) of the next Two Hundred Fifty Million Dollars
569 (\$250,000,000.00) or portion thereof of the Mississippi-based
570 deposits of each qualified depository, plus (iii) fifteen percent

571 (15%) of the Mississippi-based deposits of each qualified
572 depository in excess of Five Hundred Million Dollars
573 (\$500,000,000.00), being the sum of the numerators of all
574 depositories. The resulting percentage shall be the pro rata
575 share of such depository in funds allocated under Section
576 27-105-33(b).

577 (c) All such computations shall be determined annually by
578 December 1 on the basis of the deposits held by the depositories
579 at deposit facilities located in the State of Mississippi as
580 reported in the Federal Deposit Insurance Corporation's Market
581 Share Report -- Deposits of All FDIC-Insured Institutions
582 Operating in Mississippi on June 30 of each year. For the
583 purposes of this section, "Mississippi-based deposits" means the
584 total deposits held at deposit facilities located in the State of
585 Mississippi on June 30 as reported annually by the Federal Deposit
586 Insurance Corporation in the above-referenced report.

587 State funds allocated to each approved depository shall not
588 be more than four percent (4%) of the depository's
589 Mississippi-based deposits. Interest-bearing time certificates of
590 deposit and other interest-bearing deposits, either general or
591 special, made pursuant to Section 27-105-33, may be treated as not
592 coming within this percentage if, in the discretion of the
593 Treasurer, the best interest of the state can be served to
594 increase its earnings and decrease its expenses in the handling of
595 the state funds; however, any and all depositories must first
596 qualify and be approved by the Treasurer to receive demand
597 deposits subject to withdrawal or transfer by check of the
598 Treasurer when properly presented and so demanded. For the
599 purposes of this section, the term "paid-in and earned capital
600 funds" means the sum of common stock, perpetual preferred stock,
601 surplus, undivided profits and capital reserves as these amounts
602 are or would be reflected in a Federal Deposit Insurance
603 Corporation (FDIC) banking institution's "Reports of Condition and

604 Income" (Call Reports), regardless of whether such institution is
605 insured by the FDIC.

606 The state depository contract shall be for one (1) year, but
607 may be renewed from year to year upon proper review and approval
608 of the Treasurer. Each applicant shall furnish to the Treasurer a
609 financial statement sworn to by a duly elected officer, and on
610 such date or dates as the Treasurer may provide.

611 SECTION 4. Section 27-105-13, Mississippi Code of 1972, is
612 amended as follows:[LR2]

613 27-105-13. **Commission form.**

614 The state depository commission shall design and stipulate
615 the wording of the form of commission to be issued to each and
616 every duly approved depository for public funds and the said form
617 of commission, when so approved, shall be spread on the minutes of
618 the state depository commission showing its approval, and the said
619 form of commission shall recite the terms and conditions of the
620 depository contract based on the law and the regulations. The
621 state depository commission is hereby authorized to amend and/or
622 rewrite the form of commission to be used from time to time as the
623 need arises. The form of commission, when issued to a duly
624 qualified and approved depository, shall be signed by the
625 Secretary of the State Depository Commission and a copy of said
626 approvals shall be kept for a period of three years before being
627 destroyed.

628 SECTION 5. Section 27-105-25, Mississippi Code of 1972, is
629 amended as follows:[LR3]

630 27-105-25. **Failure to pay treasurer's check.**

631 (1) In the event of the failure of any public funds
632 depository to pay any check lawfully issued by the State of
633 Mississippi or any agency or department thereof or any county,
634 municipality or other governmental unit on any funds on deposit
635 belonging to the State of Mississippi or any agency or department
636 thereof or any county, municipality or other governmental unit in

637 such depository, the State Treasurer is hereby empowered to sell
638 such securities as are placed with him by such depository, or so
639 much thereof as is necessary to cover back into the * * * Treasury
640 of the State of Mississippi or any agency or department thereof or
641 any county, municipality or other governmental unit the amount of
642 state funds on deposit with such depository with accrued interest
643 thereon in excess of applicable deposit insurance, and the sale of
644 such security shall be made by the State Treasurer at the best
645 price that he can obtain at either public or private sale, and in
646 the event of the failure of such depository to pay any * * * check
647 when such depository has placed as security surety bonds, the
648 Treasurer shall notify the Attorney General and that officer shall
649 take such immediate action as he may deem most expedient for
650 covering back into the Treasury of the State of Mississippi or any
651 agency or department thereof or any county, municipality or other
652 governmental unit all state money on deposit in such depository.
653 And the Attorney General is authorized to employ counsel, if
654 necessary, to more speedily enforce the payment and expense of
655 such collection, including counsel fees, to be charged against
656 such depository, and, in addition thereto, said depository will be
657 liable for damages at the rate of one percent (1%) per month for
658 any delay in paying over any state funds when demanded, and the
659 bond of any depository shall be liable for said expenses and
660 damages.

661 (2) If the loss to the State of Mississippi or any agency or
662 department thereof or any county, municipality or other
663 governmental unit (hereinafter "public depositories") of such
664 depository that is also a public funds guaranty pool member is not
665 covered by deposit insurance or the proceeds of such sale of
666 securities, the State Treasurer shall provide coverage of the
667 remaining loss by assessment against the other public funds
668 guaranty pool members. Such assessment shall be determined by
669 multiplying the total amount of the loss to all public depositories

670 by a percentage which represents the share of public fund deposits
671 held by such depository divided by the total public deposits held
672 by all public funds guaranty pool members, excluding the public
673 deposits of the defaulting depository, as determined by the State
674 Treasurer from the average of the six (6) most recent month-end
675 reports of the public funds guaranty pool members provided under
676 Section 27-105-6. Each public funds guaranty pool member shall
677 pay its assessment to the State Treasurer within seven (7)
678 business days after it receives notice of the assessment. If a
679 public funds guaranty pool member fails to pay its assessment when
680 due, the State Treasurer shall satisfy the assessment by selling
681 securities pledged by any depository failing to pay the
682 assessment.

683 (3) The State Treasurer shall distribute the funds to the
684 public depositors of such public funds depository in default
685 according to their validated claims.

686 (4) Public depositors receiving payment under the provisions
687 of this section shall assign to the State Treasurer any interest
688 they may have in funds that may subsequently be made available to
689 such depository in default, if such depository in default or its
690 receiver provides funds to the State Treasurer, the State
691 Treasurer shall distribute the funds, plus all accrued interest
692 which has accumulated from the investment of the funds, if any, to
693 the public funds guaranty pool members which paid assessments on
694 the same pro rata basis as the assessments were paid.

695 SECTION 6. Section 27-105-35, Mississippi Code of 1972, is
696 amended as follows:[LR4]

697 27-105-35. **Commission meetings and duties.**

698 The state depository commission, composed of the Governor,
699 Attorney General, and State Treasurer, shall meet annually in the
700 month of February, and more often, if necessary, on call of any
701 member of said commission. The commission shall keep a full and
702 correct record of its proceedings, and is hereby authorized and

703 required to:

704 (a) Approve, upon proper application, the depositories
705 for the State of Mississippi that are qualified to receive and
706 hold, subject to demand, the public funds of the state or any
707 subdivision thereof;

708 (b) Approve the bonds and securities pledged by the
709 depositories to secure public funds deposits and to approve the
710 exchange or substitution of bonds and securities pledged in lieu
711 of the bonds and securities formerly pledged. Provided, always,
712 that the bonds and securities so pledged and held shall be such as
713 are specifically authorized by law for security of public funds
714 deposits;

715 (c) Approve and fix the margin of security to be
716 maintained by public funds depositories, but in no instance shall
717 the security be less than is specifically required by law;

718 (d) Approve surety bonds, issued by solvent insurance
719 companies authorized to do business in Mississippi, filed by the
720 depositories to secure public funds deposits, and to approve
721 lawful substitutions in lieu thereof; and

722 (e) Approve the return and release of excess bonds and
723 securities or surety bonds, due to the withdrawal of public funds
724 from the depositories.

725 The State Treasurer may be authorized by the commission
726 to:

727 (i) Receive, transfer, exchange and/or substitute
728 bonds and securities pledged by the depositories to secure public
729 funds deposits; and to accept bonds and securities pledged by the
730 depositories as security for public funds deposits in lieu of any
731 surety bond so held by the commission. Provided, however, that no
732 bond or security shall be received or accepted as security for
733 public funds deposits unless specifically authorized by law and
734 the marginal requirements of the State Depository Commission.

735 (ii) Return and release excess bonds and securities

736 and/or surety bonds, which are excess over the marginal
737 requirements due to withdrawal of public funds deposits; and

738 (iii) Make a detailed report of all matters and
739 transactions relating to the depository bonds and securities at
740 such times and as often as may be required by the State Depository
741 Commission, and provided that exchanges and substitutions of bonds
742 and securities shall not be made but once for each depository
743 during any consecutive three-month period; except, however, that
744 called or matured bonds and securities may be exchanged,
745 substituted or released if marginal requirements are maintained,
746 at the pleasure of the State Treasurer and the depository.

747 SECTION 7. Section 27-105-315, Mississippi Code of 1972, is
748 amended as follows:[LR5]

749 27-105-315. **Qualification as depository * * *.**

750 (1) Any financial institution in a county, or in an
751 adjoining county where there is no financial institution in the
752 county qualifying, whose accounts are insured by the Federal
753 Deposit Insurance Corporation or any successors to such insurance
754 corporation may qualify as a county depository, if such
755 institution qualifies as a public funds depository pursuant to
756 Section 27-105-5 or a public funds guaranty pool member pursuant
757 to Sections 27-105-5 and 27-105-6. Such qualified financial
758 institution shall secure such deposits by placing qualified
759 securities on deposit with the State Treasurer as provided in
760 Section 27-105-5.

761 * * *

762 (2) Notwithstanding the foregoing, any financial institution
763 not meeting the prescribed ratio requirement whose accounts are
764 insured by the Federal Deposit Insurance Corporation * * * or any
765 successors to such insurance corporations, may receive county
766 funds in an amount not exceeding the amount which is insured by
767 such insurance corporations and may qualify as a county depository
768 to the extent of such insurance.

769 SECTION 8. Section 27-105-317, Mississippi Code of 1972, is
770 amended as follows:[LR6]

771 27-105-317. **Commission of depository * * ***.

772 A county depository must be issued a commission pursuant to
773 Section 27-105-11 before receipt of county deposits.

774 SECTION 9. Section 27-105-329, Mississippi Code of 1972, is
775 amended as follows:[LR7]

776 27-105-329. **Failure to pay county warrants * * ***.

777 In the event of the failure of any county depository to pay
778 any county warrant lawfully issued on any funds on deposit
779 belonging to the county in such depository, the county is hereby
780 empowered to order the State Treasurer to sell such securities as
781 are placed with the State Treasurer by such depository, or call on
782 the public funds guaranty pool if such depository is a member, or
783 so much thereof as may be necessary to cover back into the county
784 treasury the amount of county funds on deposit with such
785 depository, with accrued interest thereon, as provided in Section
786 27-105-25. In the event of the failure of the county depository
787 to pay any warrant when such depository has placed as security
788 surety bonds, the clerk or holder of the warrant shall notify the
789 president of the board of supervisors and he shall take such
790 immediate action as he may deem best and most expedient for
791 covering back into the Treasury all county money on deposit in
792 such depository, and the board of supervisors is authorized to
793 employ counsel, if necessary, to more speedily enforce the
794 payment. The expenses of such collection, including the counsel
795 fee, shall be charged against such depository, and, in addition
796 thereto, said depository shall be liable for damages at the rate
797 of one per cent per month for any delay in paying over any county
798 funds when lawfully demanded, and the bond of any depository shall
799 be liable for said expenses and damages.

800 SECTION 10. Section 27-105-331, Mississippi Code of 1972, is
801 amended as follows:[LR8]

802 27-105-331. **Acquisition of closed depository securities.**

803 The State Treasurer on behalf of any county in the State of
804 Mississippi, which has acquired bonds or other securities as the
805 result of the closing of the depository or depositories thereof,
806 is hereby authorized and empowered in their discretion to sell,
807 trade, refinance or agree to the refinancing of any or all of such
808 bonds now held or owned by it and by any subdivision or taxing
809 district thereof. The State Treasurer is further authorized and
810 empowered, in his discretion, in refinancing any of said bonds, to
811 agree to a reduction of the principal sum and likewise to agree to
812 a reduction of the interest rate thereon. The State Treasurer is
813 authorized and empowered, in his discretion, to sell any of such
814 bonds at or for the best price obtainable, or to trade said bonds
815 for other bonds, when in the judgment of the State Treasurer the
816 best interests of the county would be advanced thereby, and he is
817 further authorized to handle and negotiate any matured interest
818 coupons on any of said bonds in the same manner as he is
819 authorized herein to deal with said bonds.

820 All of the proceeds of the sale, refinancing, trading, or
821 collection of any of said bonds shall be accounted for by said
822 State Treasurer and placed to the credit of the subdivisions or
823 funds of said counties entitled thereto.

824 SECTION 11. Section 27-105-333, Mississippi Code of 1972, is
825 amended as follows:[LR9]

826 27-105-333. **Alternative method of selecting depositories.**

827 In any county in this state where no depository or
828 depositories were selected and qualified, as provided by law, on
829 or before the first Monday of January 1932, or in which such
830 depository or depositories are not selected and qualified annually
831 thereafter on or before the first Monday in January, the board of
832 supervisors of such county shall, at the January meeting of the
833 board or any regular meeting or special meeting thereafter called
834 for said purpose, select and designate a depository or

835 depositories into which the tax collector or tax collectors of
836 said county shall deposit all tax collections and other public
837 funds collected after the first Monday in January 1932, when
838 collected, and in which the same shall thereafter be distributed,
839 at the time and in the manner as now required by law, to the
840 several funds or accounts in which the same properly belong, as
841 provided by law herein.

842 Any depository so selected by the board of supervisors shall
843 be within the State of Mississippi and may hold said deposits at
844 such rate of interest as may be agreed upon with the board of
845 supervisors or, in the discretion of the board of supervisors,
846 without liability for interest unless it is required to be paid
847 under the provisions of Section 27-105-303, but the said
848 depository shall secure the said deposits by pledging with the
849 State Treasurer such securities in such amounts and upon such
850 conditions as are now required by law of depositories which
851 qualify as such by bidding therefor.

852 SECTION 12. Section 27-105-349, Mississippi Code of 1972, is
853 amended as follows:[LR10]

854 27-105-349. **County withdrawal of bonds pledged or filed as**
855 **security.**

856 The State Treasurer is authorized and empowered * * * to
857 allow county depositories of county funds or county district funds
858 of every kind and character to withdraw any bonds pledged or filed
859 or deposited as security for such deposits:

860 (a) When in the opinion of the State Treasurer such
861 deposits become reduced to such an extent as to justify such
862 withdrawal;

863 (b) Or to withdraw any such bonds or corporate surety
864 bonds, and substitute in lieu thereof other bonds or corporate
865 surety bonds, as the case may be.

866 Provided always that all such bonds shall be such as are
867 authorized by law to be pledged or filed as security for such

868 deposits, or if a corporate surety bond, it must be made by a
869 surety company authorized to do business in this state; and
870 provided further, that all such deposits shall be fully secured
871 and covered as required by Section 27-105-5.

872 SECTION 13. Section 27-105-353, Mississippi Code of 1972, is
873 amended as follows:[LR11]

874 27-105-353. * * * **Method of selecting municipal**
875 **depositories**.

876 The board of mayor and aldermen or other municipal
877 authorities of each and every city, town or village in the state
878 are hereby required to select a depository in the manner provided
879 by law for the selection of county depositories. Before being
880 selected, a depository must be certified by the State Treasurer as
881 meeting the capital ratio requirement specified in Section
882 27-105-5 or 27-105-6 * * *. An institution shall not be a
883 qualified depository and shall not receive any municipal funds
884 unless its ratio has been certified annually by the State
885 Treasurer as meeting the prescribed requirement. Notwithstanding
886 the foregoing, any financial institution not meeting the
887 prescribed ratio requirement whose accounts are insured by the
888 Federal Deposit Insurance Corporation or * * * or any successors
889 to such insurance corporation may receive municipal funds in an
890 amount not exceeding the amount which is insured by such insurance
891 corporations and may qualify as a municipal depository to the
892 extent of such insurance.

893 SECTION 14. Section 27-105-355, Mississippi Code of 1972, is
894 amended as follows:[LR12]

895 27-105-355. **Security on bond**.

896 Each depository shall enter into bond, or deposit securities
897 with the State Treasurer as required of county depositories; such
898 bond or security to be approved by the State Treasurer.

899 SECTION 15. Section 27-105-359, Mississippi Code of 1972, is
900 amended as follows:[LR13]

901 27-105-359. **Municipal withdrawal of bonds pledged or filed**
902 **as security.**

903 The State Treasurer is hereby authorized and empowered * * *
904 to allow municipal depositories of municipal funds of every kind
905 and character to withdraw any bonds, including corporate surety
906 bonds, pledged or filed or deposited as security for such
907 deposits:

908 (a) When in the opinion of the State Treasurer such
909 deposits become reduced to such an extent as to justify such
910 withdrawal;

911 (b) Or to withdraw any such bonds or corporate surety
912 bonds, and substitute in lieu thereof other bonds or corporate
913 surety bonds, as the case may be.

914 Provided, always, that all such bonds shall be such as are
915 authorized by law to be pledged or filed as security for such
916 deposits, or if a corporate surety bond, it must be made by a
917 surety company authorized to do business in this state; and
918 provided further, that all such deposits shall be fully secured
919 and covered as required by Section 27-105-5.

920 SECTION 16. Section 27-105-319, which provides the form of
921 the commission for a county depository, is hereby repealed.

922 SECTION 17. Section 1 and Sections 3 through 16 of this act
923 shall take effect and be in force from and after July 1, 2001.
924 Section 2 of this act shall take effect and be in force from and
925 after its passage.