

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 751

1 AN ACT TO AMEND SECTION 27-105-5, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF "GOVERNMENTAL UNIT" TO CLARIFY WHICH  
3 ENTITIES SHOULD BE INCLUDED IN PUBLIC FUNDS COLLATERALIZATION FOR  
4 STATE DEPOSITORIES; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 27-105-5, Mississippi Code of 1972, is  
7 amended as follows:

8 27-105-5. (1) Any financial institution maintaining a  
9 deposit-taking facility in this state whose accounts are insured  
10 by the Federal Deposit Insurance Corporation or any successors to  
11 that insurance corporation, may qualify as a public funds  
12 depository by submitting an application to the State Treasurer as  
13 provided by Section 27-105-9, if the institution has a primary  
14 capital to total assets ratio of five and one-half percent  
15 (5-1/2%) or more. That ratio shall be determined not later than  
16 December 1 in each calendar year by the State Treasurer on the  
17 basis of balance sheets of applying institutions at June 30 of the  
18 same calendar year, and an institution shall not be a qualified  
19 depository and shall not receive any public funds unless its ratio  
20 has been certified annually by the Treasurer as meeting the  
21 prescribed requirement. Each applicant shall furnish to the State  
22 Treasurer such financial statements, balance sheets or other  
23 documentation, sworn to by a duly elected officer, on such date or  
24 dates and on such forms as the State Treasurer may require. Any  
25 knowing or willful misstatement of fact on those forms shall  
26 subject the officer swearing to them to the penalty of perjury,  
27 and the financial institution of which he is an officer shall not  
28 be eligible to serve as a depository for a period of one (1) year



29 beginning with the date on which the State Treasurer certifies  
30 that such a misstatement has been made. When so approved by the  
31 State Treasurer, the institution shall place on deposit with the  
32 State Treasurer qualified bonds, notes and liquid securities in an  
33 aggregate amount at least equal to one hundred five percent (105%)  
34 of the average daily balance of funds on deposit in the aggregate  
35 by the State of Mississippi or any agency or department of the  
36 state or by any county, municipality or other governmental unit in  
37 excess of that portion of accounts insured by the Federal Deposit  
38 Insurance Corporation, or any successor thereto.

39 (2) Any financial institution maintaining a deposit-taking  
40 facility in this state whose accounts are insured by the Federal  
41 Deposit Insurance Corporation or any successors to that insurance  
42 corporation and which has been in existence for three (3) or more  
43 years may qualify as a public funds depository and public funds  
44 guaranty pool member under Section 27-105-6 by submitting an  
45 application to the State Treasurer as provided by Section  
46 27-105-9, if the institution has a primary capital to total assets  
47 ratio of six and one-half percent (6-1/2%) or more and otherwise  
48 meets the requirements of Section 27-105-6. That ratio shall be  
49 determined not later than December 1 in each calendar year by the  
50 State Treasurer on the basis of balance sheets of applying  
51 institutions at June 30 of the same calendar year, and an  
52 institution shall not be a member of the public funds guaranty  
53 pool unless its ratio has been certified annually by the Treasurer  
54 as meeting the prescribed requirement. Each applicant shall  
55 furnish to the State Treasurer such financial statements, balance  
56 sheets or other documentation, sworn to by a duly elected officer,  
57 on such date or dates and on such forms as the State Treasurer may  
58 require. Any knowing or willful misstatement of fact on those  
59 forms shall subject the officer swearing to them to the penalty of  
60 perjury and the financial institution of which he is an officer  
61 shall not be eligible to serve as a depository for a period of one



62 (1) year beginning with the date on which the State Treasurer  
63 certifies that such a misstatement has been made. When so  
64 approved by the State Treasurer, the institution shall meet its  
65 security requirement of one hundred five percent (105%) by placing  
66 on deposit with the State Treasurer qualified bonds, notes and  
67 liquid securities in an aggregate amount at least equal to  
68 fifty-two and one-half percent (52-1/2%) of the average daily  
69 balance of funds on deposit in the aggregate by the State of  
70 Mississippi or any agency or department of the state or by any  
71 county, municipality or other governmental unit in excess of that  
72 portion of accounts insured by the Federal Deposit Insurance  
73 Corporation, or any successor thereto, and executing a guarantee  
74 equal to the balance of fifty-two and one-half percent (52-1/2%)  
75 of the average daily balance of funds on deposit in the aggregate  
76 by the State of Mississippi or any agency or department of the  
77 state or by any county, municipality or other governmental unit in  
78 excess of that portion of accounts insured by the Federal Deposit  
79 Insurance Corporation, or any successor thereto.

80 (3) The term "qualified bonds, notes and liquid securities"  
81 as used in this section shall mean:

82 (a) All securities that are direct obligations of the  
83 United States Treasury or any other obligations fully guaranteed  
84 by the United States government.

85 (b) Bonds, notes and other obligations of the Federal  
86 Home Loan Bank, Federal National Mortgage Association, Federal  
87 Land Banks, Banks for Cooperatives, and Federal Intermediate  
88 Credit Banks, the Government National Mortgage Association, the  
89 Federal Housing Administration, the Farmers Home Administration,  
90 the Farm Credit System Financial Assistance Corporation, the  
91 United States Postal Service, the Federal Financing Bank, the  
92 Student Loan Marketing Association, the Small Business  
93 Administration, the General Services Administration, the  
94 Washington Metropolitan Area Transit Authority, the Maritime



95 Administration, the Export-Import Bank, the International Bank for  
96 Reconstruction and Development, the Inter-American Development  
97 Bank, the Asian Development Bank, loan participations that carry  
98 the guarantee of the Commodity Credit Corporation, an  
99 instrumentality of the United States Department of Agriculture or  
100 other similar agencies approved by the State Treasurer.

101 (c) Obligations of the Tennessee Valley Authority.

102 (d) Legal obligation or revenue bonds of the State of  
103 Mississippi, its agencies, or any political subdivision of the  
104 state, or any municipality located in the State of Mississippi, or  
105 the Yazoo Mississippi Delta and the Mississippi Levee Districts,  
106 or the Mississippi Higher Education Assistance Corporation or its  
107 successors, or any body corporate and politic created under the  
108 laws of the State of Mississippi.

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

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

116 (g) All bonds authorized as security for state funds  
117 under items (c), (d) and (e), inclusive, shall be investment  
118 quality, and any bonds under items (c), (d), (e) and (f),  
119 inclusive, which are rated substandard by any of the appropriate  
120 supervisory authorities having jurisdiction over the depository or  
121 by any recognized national rating agency engaged in the business  
122 of rating bonds, shall not be eligible for pledging as security to  
123 the State of Mississippi by any qualified state depository.

124 No bonds shall be accepted as security for more than their  
125 stated par value or market value, whichever is lower, except bonds  
126 and obligations of the State of Mississippi and Mississippi State



127 Highway bonds or notes, which may be accepted as security at par  
128 value or market value, whichever is greater.

129 The bonds, notes and liquid securities to be placed on  
130 deposit shall secure both deposits and the accrued interest  
131 thereon.

132 Money shall be drawn from the depositories so as to leave in  
133 each as near as practicable, its equitable proportion of state  
134 funds.

135 The State Treasurer is authorized and empowered to:

136 (i) Deposit for safekeeping in the vaults of any  
137 of the state or national banks located within this state that are  
138 members of the Federal Deposit Insurance Corporation and that have  
139 appropriate safekeeping facilities approved by the State  
140 Depository Commission, any federal reserve bank, any federal  
141 reserve branch bank, or any bank that is a member of the Federal  
142 Reserve System and is located in a city where there is a federal  
143 reserve bank or a federal reserve branch bank, the securities  
144 placed with him by financial institutions qualifying as state  
145 depositories; or

146 (ii) Accept, in lieu of the securities themselves,  
147 safekeeping trust receipts issued to the State Treasurer by the  
148 authorized safekeeping banks listed in subparagraph (i) above; the  
149 safekeeping trust receipts shall describe the securities and show  
150 that the securities are held for safekeeping for the account of  
151 the State Treasurer or other governmental unit. The securities so  
152 deposited shall not be commingled in any manner with the assets of  
153 the safekeeping bank.

154 The safekeeping banks listed in subparagraph (i) above are  
155 authorized to issue to the State Treasurer their safekeeping trust  
156 receipts based on safekeeping trust receipts issued to them by any  
157 of their correspondent banks that are members of the Federal  
158 Reserve System and are located in any federal reserve city and  
159 that have physical custody of the pledged securities.



160 In no event shall the State Treasurer deposit for safekeeping  
161 with any depository securities placed by the depository with the  
162 State Treasurer in qualifying as a public funds depository, nor  
163 shall he accept a safekeeping trust receipt by or from a  
164 depository covering securities it owns in order to secure state  
165 funds on deposit with it.

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

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

170 (b) Monitor and confirm, as often as deemed necessary  
171 by the Treasurer, the pledged collateral held by third party  
172 custodians.

173 (c) Perfect an interest in pledged collateral by having  
174 pledged securities moved into an account established in the  
175 Treasurer's name. This action shall be taken at the discretion of  
176 the Treasurer.

177 (d) Review the reports of each qualified public funds  
178 depository for material changes in capital accounts or changes in  
179 name, address or type of institution, record the average daily  
180 balances of public deposits held; and monitor the  
181 collateral-pledging levels and required collateral based on the  
182 average daily balances.

183 (e) Compare public deposit information reported by  
184 qualified public funds depositories and public depositors. That  
185 comparison shall be conducted for qualified public depositories  
186 based on established financial condition criteria of record on  
187 September 30.

188 (f) Verify the reports of any qualified public funds  
189 depository relating to public deposits it holds when necessary to  
190 protect the integrity of the public deposits program.

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



193           (h) Require at his or her discretion the filing of any  
194 information or forms required under this chapter to be by  
195 electronic data transmission. Those filings of information or  
196 forms shall have the same enforceability as a signed writing.

197           (5) A qualified public funds depository shall:

198           (a) Within fifteen (15) days after the end of each  
199 calendar month or when requested by the Treasurer, submit to the  
200 Treasurer a written report, under oath, indicating the average  
201 daily balance of all public deposits held by it during the  
202 reported month, required collateral, a detailed schedule of all  
203 securities pledged as collateral, selected financial information,  
204 and any other information that the Treasurer determines necessary  
205 to administer this chapter.

206           (b) Provide to each public depositor annually, not  
207 later than thirty (30) days following the public depositor's  
208 fiscal year end, the following information on all open accounts  
209 identified as a "public deposit" for that public depositor as of  
210 its fiscal year end, to be used for confirmation purposes: the  
211 federal employer identification number of the public funds  
212 depository, the name on the deposit account record, the federal  
213 employer identification number on the deposit account record, and  
214 the account number, account type and actual account balance on  
215 deposit. Any discrepancy found in the confirmation process shall  
216 be reconciled within sixty (60) days of the public depositor's  
217 fiscal year end.

218           (c) Submit to the Treasurer annually, not later than  
219 sixty (60) days of the public depositor's fiscal year end, a  
220 report of all public deposits held for the credit of all public  
221 depositors at the close of business on each public depositor's  
222 fiscal year end. The annual report shall consist of public  
223 deposit information in a report format prescribed by the  
224 Treasurer. The manner of required filing may be as a signed



225 writing or electronic data transmission, at the discretion of the  
226 Treasurer.

227 (6) Public depositors shall comply with the following  
228 requirements:

229 (a) A public depositor shall ensure that the name of  
230 the public depositor and its tax identification number are on the  
231 account or certificate provided to the public depositor by the  
232 qualified public depository in a manner sufficient to disclose the  
233 identity of the public depositor;

234 (b) Not later than thirty (30) days following its  
235 fiscal year end, a public depositor shall notify the State  
236 Treasurer of its official name, address, federal tax  
237 identification number, and provide a listing of all accounts that  
238 it had with qualified public depositories, including the deposit  
239 balance in those accounts, as of its fiscal year end. A public  
240 entity established during the year shall furnish its official  
241 name, address and federal tax identification number to the State  
242 Treasurer before making any public deposit.

243 (7) Any information contained in a report of a qualified  
244 public funds depository required under Section 27-105-5 or  
245 27-105-6 shall be considered confidential and exempt from  
246 disclosure and not subject to dissemination to anyone other than  
247 the State Treasurer and the State Auditor under the provisions of  
248 this chapter.

249 (8) The State Treasurer is empowered to assume  
250 responsibility as successor pledgee as agent on behalf of any  
251 county, municipality or other governmental unit of any and all  
252 collateral pledged before July 1, 2001, to that county,  
253 municipality or governmental unit by that public funds depository.  
254 Upon assuming responsibility as successor pledgee as provided in  
255 this subsection (8), the State Treasurer is empowered to sign such  
256 documents on behalf of any such county, municipality or  
257 governmental unit as may be required by a trustee custodian,





258 including, but not limited to any documentation necessary to  
259 change the pledgee from the county, municipality or governmental  
260 unit as pledgee to the State Treasurer as agent.

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

263 (a) The term "primary capital" means the sum of common  
264 stockholders' equity capital, including common stock and related  
265 surplus, undivided profits, disclosed capital reserves that  
266 represent a segregation of undivided profits, and foreign currency  
267 translation adjustments, less net unrealized holding losses on  
268 profits, and foreign currency translation adjustments, less net  
269 unrealized holding losses on available-for-sale equity securities  
270 with readily determinable fair values; noncumulative perpetual  
271 preferred stock, including any related surplus; and minority  
272 interests in the equity capital accounts of consolidated  
273 subsidiaries; the allowance for loan and lease losses; cumulative  
274 perpetual preferred stock, long-term preferred stock (original  
275 maturity of at least twenty (20) years) and any related surplus;  
276 perpetual preferred stock (and any related surplus) where the  
277 dividend is reset periodically based, in whole or in part, on the  
278 bank's current credit standing, regardless of whether the  
279 dividends are cumulative or noncumulative; hybrid capital  
280 instruments, including mandatory convertible debt securities; term  
281 subordinated debt and intermediate-term preferred stock (original  
282 average maturity of five (5) years or more) and any related  
283 surplus; and net unrealized holding gains on equity securities.

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

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

289 (ii) When measured as of any other date, those  
290 assets:



291 (A) That have been determined: 1. by an  
292 evaluation made by a state or federal examiner at the most recent  
293 examination of the financial institution to be a loss, or 2. by  
294 evaluations made by the financial institution since its most  
295 recent examination to be a loss; and

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

298 (c) The term "intangible assets" means those assets  
299 that would be required to be reported in the item for intangible  
300 assets in a Federal Deposit Insurance Corporation (FDIC) banking  
301 institution's "Reports of Condition and Income" (Call Reports),  
302 regardless of whether the institution is insured by the FDIC.

303 (d) The term "mandatory convertible debt" means a  
304 subordinated debt instrument meeting the requirements of the  
305 Federal Deposit Insurance Corporation that requires the issuer to  
306 convert the instrument into common or perpetual preferred stock by  
307 a date at or before the maturity of the debt instrument. The  
308 maturity of these instruments must be twelve (12) years or less.

309 (e) The term "mortgage servicing rights" means those  
310 assets (net of any related valuation allowances) that result from  
311 contracts to service loans secured by real estate (that have been  
312 securitized or are owned by others) for which the benefits of  
313 servicing are expected to more than adequately compensate the  
314 servicer for performing the servicing.

315 (f) The term "perpetual preferred stock" means a  
316 preferred stock that does not have a stated maturity date or that  
317 cannot be redeemed at the option of the holder and that has no  
318 other provisions that will require future redemption of the issue.  
319 It includes those issues of preferred stock that automatically  
320 convert into common stock at a stated date. It excludes those  
321 issues, the rate on which increases, or can increase, in such a  
322 manner that would effectively require the issuer to redeem the  
323 issue.



324 (g) The term "total assets" means the average of total  
325 assets of any financial institution that are or would be included  
326 in a Federal Deposit Insurance Corporation (FDIC) banking  
327 institution's "Reports of Condition and Income" (Call Reports),  
328 regardless of whether the institution is insured by the FDIC, plus  
329 the allowance for loan and lease losses, minus assets classified  
330 loss and minus intangible assets other than mortgage servicing  
331 rights.

332 (h) The term "average daily balance" means the average  
333 daily balance of public deposits of each governmental unit held  
334 during the reported month. The average daily balances must be  
335 determined by totaling, by account, the daily balance held by the  
336 depositor and then dividing the total by the number of calendar  
337 days in the month. Deposit insurance is then deducted from each  
338 public depositor's balance and the resulting amounts are totaled  
339 to obtain the average daily balance.

340 (i) The term "public funds" means funds in which the  
341 entire beneficial interest is owned by a governmental unit or  
342 funds held in the name of a public official of a governmental unit  
343 charged with the duty to receive or administer funds and acting in  
344 such official capacity.

345 (j) The term "governmental unit" means the State of  
346 Mississippi and any office, department, agency, division, bureau,  
347 commission, board, institution, hospital, college, university,  
348 airport authority or other instrumentality thereof, whether or not  
349 the body or instrumentality has the authority to levy taxes or to  
350 sue or be sued in its own name. In addition, the term means any  
351 body politic or body corporate other than the state that is  
352 responsible for governmental activities only in geographic areas  
353 smaller than that of the state, including, but not limited to, any  
354 county, municipality, school district, community hospital as  
355 defined in Section 41-13-10, airport authority or other  
356 instrumentality thereof, whether or not the body or



357 instrumentality has the authority to levy taxes or to sue or be  
358 sued in its own name. All political subdivisions or  
359 instrumentalities of the state are included in the definition of  
360 "governmental unit," whether specifically recited in this  
361 paragraph or not.

362         **SECTION 2.** This act shall take effect and be in force from  
363 and after July 1, 2003.

