

By: Senator(s) Chassaniol

To: Finance

SENATE BILL NO. 2887

1 AN ACT TO AMEND SECTION 27-105-33, MISSISSIPPI CODE OF 1972,  
2 TO MODIFY CERTAIN PROVISIONS CONCERNING THE DEPOSIT AND INVESTMENT  
3 OF EXCESS STATE FUNDS BY THE STATE TREASURER; TO REMOVE THE  
4 REQUIREMENT OF ALLOCATING FUNDS TO QUALIFIED PUBLIC DEPOSITORIES;  
5 TO REMOVE THE REQUIREMENT THAT AT LEAST 80% OF THE TOTAL DOLLAR  
6 AMOUNT IN ALL REPURCHASE AGREEMENTS AT ANY ONE TIME SHALL BE  
7 PURSUANT TO CONTRACTS WITH QUALIFIED STATE DEPOSITORIES; TO  
8 PROVIDE THE OPTION OF INVESTING IN CERTAIN CORPORATE BONDS AND  
9 TAXABLE MUNICIPAL BONDS; TO REMOVE THE \$500,000.00 LIMIT FOR THE  
10 AMOUNT OF FUNDS THAT MAY BE INVESTED WITH FOREIGN FINANCIAL  
11 INSTITUTIONS; TO REMOVE THE REQUIREMENT THAT A LIQUIDATING AGENT  
12 OF A DEPOSITORY IN LIQUIDATION REDEEM FROM THE STATE ANY BONDS AND  
13 SECURITIES PLEDGED TO SECURE STATE FUNDS; TO AMEND SECTION  
14 27-105-9, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION  
15 27-104-7, MISSISSIPPI CODE OF 1972, TO SPECIFY THAT CERTAIN PUBLIC  
16 PROCUREMENT REVIEW BOARD PROVISIONS DO NOT IMPAIR OR LIMIT THE  
17 AUTHORITY OF THE STATE TREASURER TO ENTER INTO ANY PERSONAL OR  
18 PROFESSIONAL SERVICES CONTRACTS INVOLVING THE MANAGEMENT OF TRUST  
19 FUNDS, AN AUTHORITY COMPARABLE TO THAT GRANTED TO THE BOARD OF  
20 TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO REMOVE A  
21 SUBSECTION THAT REPEALED ON JULY 1, 2022; TO BRING FORWARD  
22 SECTIONS 27-105-5 AND 27-105-6, MISSISSIPPI CODE OF 1972, FOR THE  
23 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 27-105-33, Mississippi Code of 1972, is  
26 amended as follows:

27 27-105-33. It shall be the duty of the State Treasurer and  
28 the Executive Director of the Department of Finance and



29 Administration on or about the tenth day of each month, and in  
30 their discretion at any other time, to analyze carefully the  
31 amount of cash in the General Fund of the state and in all special  
32 funds credited to any special purpose designated by the State  
33 Legislature or held to meet the budgets or appropriations for  
34 maintenance, improvements and services of the several  
35 institutions, boards, departments, commissions, agencies, persons  
36 or entities of the state, and to determine in their opinion when  
37 the cash in such funds is in excess of the amount required to meet  
38 the current needs and demands of no more than seven (7) business  
39 days on such funds and report their findings to the Governor. It  
40 shall be the duty of the State Treasurer to provide a cash flow  
41 model for forecasting revenues and expenditures on a bimonthly  
42 basis and providing technical assistance for its operation. The  
43 Department of Finance and Administration shall use the cash flow  
44 model furnished by the State Treasurer, in analyzing the amount of  
45 funds on deposit and available for investment.

46 The State Treasurer is hereby authorized, empowered and  
47 directed to invest all such excess general and special funds of  
48 the state in the following manner:

- 49 (a) \* \* \* [Repealed]  
50 (b) \* \* \* [Repealed]  
51 (c) \* \* \* [Repealed]



52 (d) \* \* \* The Treasurer may invest such funds, together  
53 with any other funds required for current operation, as determined  
54 pursuant to this section, in the following:

55 (i) Time certificates of deposit or  
56 interest-bearing accounts with qualified state depositories. For  
57 those funds determined under prudent judgment of the State  
58 Treasurer to be made available for investment in time certificates  
59 of deposit, the rate of interest paid by the depositories shall be  
60 determined by rules and regulations adopted and promulgated by the  
61 State Treasurer which may include competitive bids. At the time  
62 of investment, the interest rate on such certificates of deposit  
63 under the provisions of this subparagraph shall be a rate not less  
64 than the bond equivalent yield on direct obligations of the United  
65 States Treasury with a similar length of maturity.

66 (ii) Direct United States Treasury obligations,  
67 the principal and interest of which are fully guaranteed by the  
68 government of the United States.

69 (iii) United States government agency, United  
70 States government instrumentality or United States government  
71 sponsored enterprise obligations, the principal and interest of  
72 which are fully guaranteed by the government of the United States,  
73 such as the Government National Mortgage Association; or United  
74 States governmental agency, United States government  
75 instrumentality or United States government sponsored enterprise  
76 obligations, the principal and interest of which are guaranteed by



77 any United States government agency, United States government  
78 instrumentality or United States government sponsored enterprise  
79 contained in a list promulgated by the State Treasurer.

80 (iv) Direct security repurchase agreements and  
81 reverse direct security repurchase agreements of any federal book  
82 entry of only those securities enumerated in subparagraphs (ii)  
83 and (iii) above. "Direct security repurchase agreement" means an  
84 agreement under which the state buys, holds for a specified time,  
85 and then sells back those securities and obligations enumerated in  
86 subparagraphs (ii) and (iii) above. "Reverse direct securities  
87 repurchase agreement" means an agreement under which the state  
88 sells and after a specified time buys back any of the securities  
89 and obligations enumerated in subparagraphs (ii) and (iii)  
90 above. \* \* \*

91 (v) Bonds issued, assumed or guaranteed by the  
92 Country of Israel, provided that:

93 1. Investments in such instruments shall be  
94 denominated in United States currency;

95 2. Such bonds must be of investment grade as  
96 rated by at least one (1) nationally recognized statistical rating  
97 agency; and

98 3. The amount of funds invested in such bonds  
99 at any time shall not exceed Twenty Million Dollars  
100 (\$20,000,000.00).



101                   (vi) Corporate bonds and taxable municipal bonds;  
102 or corporate short-term obligations of corporations or of wholly  
103 owned subsidiaries of corporations, whose short-term obligations  
104 are rated A-2 or better by Standard and Poor's, rated P-2 or  
105 better by Moody's Investment Service, F-2 or better by Fitch  
106 Ratings, Ltd., or the equivalent of these ratings if assigned by  
107 another United States Securities and Exchange Commission  
108 designated Nationally Recognized Statistical Rating Organization.

109                   (e) For the purposes of this section, direct  
110 obligations issued by the United States of America shall be deemed  
111 to include securities of, or other interests in, any open-end or  
112 closed-end management type investment company or investment trust  
113 registered under the provisions of 15 USCS Section 80(a)-1 et  
114 seq., provided that the portfolio of such investment company or  
115 investment trust is limited to direct obligations issued by the  
116 United States of America, United States government agencies,  
117 United States government instrumentalities or United States  
118 government sponsored enterprises, and to repurchase agreements  
119 fully collateralized by direct obligations of the United States of  
120 America, United States government agencies, United States  
121 government instrumentalities or United States government sponsored  
122 enterprises, and the investment company or investment trust takes  
123 delivery of such collateral for the repurchase agreement, either  
124 directly or through an authorized custodian. The State Treasurer  
125 and the Executive Director of the Department of Finance and



126 Administration shall review and approve the investment companies  
127 and investment trusts in which funds invested under paragraph (d)  
128 of this section may be invested. The total dollar amount of funds  
129 invested in all open-end and closed-end management type investment  
130 companies and investment trusts at any one time shall not exceed  
131 twenty percent (20%) of the total dollar amount of funds invested  
132 under paragraph (d) of this section.

133 (f) Investments authorized by subparagraphs (ii) and  
134 (iii) of paragraph (d) shall mature on such date or dates as  
135 determined by the State Treasurer in the exercise of prudent  
136 judgment to generate a favorable return to the state and will  
137 allow the monies to be available for use at such time as the  
138 monies will be needed for state purposes. However, the maturity  
139 of securities purchased as enumerated in subparagraphs (ii) and  
140 (iii) shall not exceed ten (10) years from date of purchase.  
141 Special funds shall be considered those funds created  
142 constitutionally, statutorily or administratively which are not  
143 considered general funds. All funds invested for a period of  
144 thirty (30) days or longer under paragraph (d) shall bear a rate  
145 at least equal to the current established rate under paragraph (c)  
146 of this section.

147 (g) Any interest-bearing deposits or certificates of  
148 deposit shall not exceed at any time the amount insured by the  
149 Federal Deposit Insurance Corporation in any one (1) banking  
150 institution, the Federal Savings and Loan Insurance Corporation in



151 any one (1) savings and loan association, or other deposit  
152 insurance corporation approved by the State Treasurer, unless the  
153 uninsured portion is collateralized by the pledge of securities in  
154 the manner provided by Section 27-105-5.

155 (h) Unless otherwise provided, income from investments  
156 authorized by the provisions of this subsection shall be credited  
157 to the State General Fund.

158 (i) \* \* \* The State Treasurer may enter into price  
159 contracts for the purchase or exchange of foreign currency or  
160 other arrangements for currency exchange \* \* \* upon specific  
161 direction of the Department of Economic and Community Development.  
162 The State Treasurer shall promulgate all rules and regulations for  
163 applications, qualifications and any other necessary matters for  
164 foreign financial institutions.

165 \* \* \* The liquidating agent or receiver may pay off the  
166 state in full for its deposits and retrieve the pledged securities  
167 without regard to par or market value.

168 The State Treasurer and the Executive Director of the  
169 Department of Finance and Administration shall make monthly  
170 reports to the Legislative Budget Office containing a full and  
171 complete statement of all funds invested by virtue of the  
172 provisions of this section and the revenues derived therefrom and  
173 the expenses incurred therewith, together with all such other  
174 information as may seem to each of them as being pertinent to  
175 inform fully the Mississippi Legislature with reference thereto.



176           The State Treasurer shall not deposit any funds on demand  
177 deposit with any authorized depository, unless such depository has  
178 contracted for interest-bearing accounts or time certificates of  
179 deposit.

180           Notwithstanding the foregoing, any financial institution not  
181 meeting the prescribed ratio requirement set forth in Section  
182 27-105-5 whose accounts are insured by the Federal Deposit  
183 Insurance Corporation, or any successor to that insurance  
184 corporation, may receive state funds in an amount not exceeding  
185 the amount which is insured by such insurance corporations and may  
186 qualify as a state depository to the extent of such insurance for  
187 this purpose only. \* \* \*

188           **SECTION 2.** Section 27-105-9, Mississippi Code of 1972, is  
189 amended as follows:

190           27-105-9. The State Treasurer shall give notice of the  
191 provisions of this article once a month to each eligible bank and  
192 financial institution in the state having an amount of state funds  
193 less than the amount authorized to be allocated to the bank or  
194 financial institution under Section 27-105-33 and this section,  
195 and shall receive such applications as they or any of them may  
196 make for the privilege of keeping any part of public funds on  
197 forms to be furnished by the Treasurer, and shall place the state  
198 funds with the institutions applying for them if the depository  
199 application has been duly approved by the Treasurer.





200           The Treasurer, when considering the various depository  
201 applications, shall review the financial statement of the applying  
202 depository and become satisfied regarding its liquidity and  
203 capital ratio so as to assure the safety of all public funds, and  
204 likewise to give the equitable apportionment of the state funds  
205 throughout the state.

206           State funds required for current operation, as determined  
207 under Section 27-105-33, shall be deposited in one or more demand  
208 accounts. State funds not required for current operation, as  
209 determined under Section 27-105-33, shall be deposited in one or  
210 more interest-bearing accounts or time certificates of deposit, or  
211 otherwise invested under Section 27-105-33. When any depository  
212 holding state demand accounts receives an order from the Treasurer  
213 or his designee to transfer collected funds out of those accounts  
214 to any interest-bearing accounts or time certificates of deposit  
215 in the depository or any other depository under the provisions of  
216 this chapter, the transfer shall be made immediately or as soon  
217 thereafter as practicable. If the Treasurer finds that any  
218 depository is not transferring funds as provided above, the  
219 depository shall be disqualified from holding or receiving any  
220 state demand accounts for a period of time not to exceed one (1)  
221 year.

222           \* \* \*

223           The state depository contract shall be for one (1) year, but  
224 may be renewed from year to year upon proper review and approval



225 of the Treasurer. Each applicant shall furnish to the Treasurer a  
226 financial statement sworn to by a duly elected officer, and on  
227 such date or dates as the Treasurer may provide.

228 **SECTION 3.** Section 27-104-7, Mississippi Code of 1972, is  
229 amended as follows:

230 27-104-7. (1) (a) There is created the Public Procurement  
231 Review Board, which shall be reconstituted on January 1, 2018, and  
232 shall be composed of the following members:

233 (i) Three (3) individuals appointed by the  
234 Governor with the advice and consent of the Senate;

235 (ii) Two (2) individuals appointed by the  
236 Lieutenant Governor with the advice and consent of the Senate; and

237 (iii) The Executive Director of the Department of  
238 Finance and Administration, serving as an ex officio and nonvoting  
239 member.

240 (b) The initial terms of each appointee shall be as  
241 follows:

242 (i) One (1) member appointed by the Governor to  
243 serve for a term ending on June 30, 2019;

244 (ii) One (1) member appointed by the Governor to  
245 serve for a term ending on June 30, 2020;

246 (iii) One (1) member appointed by the Governor to  
247 serve for a term ending on June 30, 2021;

248 (iv) One (1) member appointed by the Lieutenant  
249 Governor to serve for a term ending on June 30, 2019; and



250 (v) One (1) member appointed by the Lieutenant  
251 Governor to serve for a term ending on June 30, 2020.

252 After the expiration of the initial terms, all appointed  
253 members' terms shall be for a period of four (4) years from the  
254 expiration date of the previous term, and until such time as the  
255 member's successor is duly appointed and qualified.

256 (c) When appointing members to the Public Procurement  
257 Review Board, the Governor and Lieutenant Governor shall take into  
258 consideration persons who possess at least five (5) years of  
259 management experience in general business, health care or finance  
260 for an organization, corporation or other public or private  
261 entity. Any person, or any employee or owner of a company, who  
262 receives any grants, procurements or contracts that are subject to  
263 approval under this section shall not be appointed to the Public  
264 Procurement Review Board. Any person, or any employee or owner of  
265 a company, who is a principal of the source providing a personal  
266 or professional service shall not be appointed to the Public  
267 Procurement Review Board if the principal owns or controls a  
268 greater than five percent (5%) interest or has an ownership value  
269 of One Million Dollars (\$1,000,000.00) in the source's business,  
270 whichever is smaller. No member shall be an officer or employee  
271 of the State of Mississippi while serving as a voting member on  
272 the Public Procurement Review Board.



273 (d) Members of the Public Procurement Review Board  
274 shall be entitled to per diem as authorized by Section 25-3-69 and  
275 travel reimbursement as authorized by Section 25-3-41.

276 (e) The members of the Public Procurement Review Board  
277 shall elect a chair from among the membership, and he or she shall  
278 preside over the meetings of the board. The board shall annually  
279 elect a vice chair, who shall serve in the absence of the chair.  
280 No business shall be transacted, including adoption of rules of  
281 procedure, without the presence of a quorum of the board. Three  
282 (3) members shall be a quorum. No action shall be valid unless  
283 approved by a majority of the members present and voting, entered  
284 upon the minutes of the board and signed by the chair. Necessary  
285 clerical and administrative support for the board shall be  
286 provided by the Department of Finance and Administration. Minutes  
287 shall be kept of the proceedings of each meeting, copies of which  
288 shall be filed on a monthly basis with the chairs of the  
289 Accountability, Efficiency and Transparency Committees of the  
290 Senate and House of Representatives and the chairs of the  
291 Appropriations Committees of the Senate and House of  
292 Representatives.

293 (2) The Public Procurement Review Board shall have the  
294 following powers and responsibilities:

295 (a) Approve all purchasing regulations governing the  
296 purchase or lease by any agency, as defined in Section 31-7-1, of



297 commodities and equipment, except computer equipment acquired  
298 pursuant to Sections 25-53-1 through 25-53-29;

299 (b) Adopt regulations governing the approval of  
300 contracts let for the construction and maintenance of state  
301 buildings and other state facilities as well as related contracts  
302 for architectural and engineering services.

303 The provisions of this paragraph (b) shall not apply to such  
304 contracts involving buildings and other facilities of state  
305 institutions of higher learning which are self-administered as  
306 provided under this paragraph (b) or Section 37-101-15(m);

307 (c) Adopt regulations governing any lease or rental  
308 agreement by any state agency or department, including any state  
309 agency financed entirely by federal funds, for space outside the  
310 buildings under the jurisdiction of the Department of Finance and  
311 Administration. These regulations shall require each agency  
312 requesting to lease such space to provide the following  
313 information that shall be published by the Department of Finance  
314 and Administration on its website: the agency to lease the space;  
315 the terms of the lease; the approximate square feet to be leased;  
316 the use for the space; a description of a suitable space; the  
317 general location desired for the leased space; the contact  
318 information for a person from the agency; the deadline date for  
319 the agency to have received a lease proposal; any other specific  
320 terms or conditions of the agency; and any other information  
321 deemed appropriate by the Division of Real Property Management of



322 the Department of Finance and Administration or the Public  
323 Procurement Review Board. The information shall be provided  
324 sufficiently in advance of the time the space is needed to allow  
325 the Division of Real Property Management of the Department of  
326 Finance and Administration to review and preapprove the lease  
327 before the time for advertisement begins;

328 (d) Adopt, in its discretion, regulations to set aside  
329 at least five percent (5%) of anticipated annual expenditures for  
330 the purchase of commodities from minority businesses; however, all  
331 such set-aside purchases shall comply with all purchasing  
332 regulations promulgated by the department and shall be subject to  
333 all bid requirements. Set-aside purchases for which competitive  
334 bids are required shall be made from the lowest and best minority  
335 business bidder; however, if no minority bid is available or if  
336 the minority bid is more than two percent (2%) higher than the  
337 lowest bid, then bids shall be accepted and awarded to the lowest  
338 and best bidder. However, the provisions in this paragraph shall  
339 not be construed to prohibit the rejection of a bid when only one  
340 (1) bid is received. Such rejection shall be placed in the  
341 minutes. For the purposes of this paragraph, the term "minority  
342 business" means a business which is owned by a person who is a  
343 citizen or lawful permanent resident of the United States and who  
344 is:

345 (i) Black: having origins in any of the black  
346 racial groups of Africa;



347 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
348 Central or South American, or other Spanish or Portuguese culture  
349 or origin regardless of race;

350 (iii) Asian-American: having origins in any of  
351 the original people of the Far East, Southeast Asia, the Indian  
352 subcontinent, or the Pacific Islands;

353 (iv) American Indian or Alaskan Native: having  
354 origins in any of the original people of North America; or

355 (v) Female;

356 (e) In consultation with and approval by the Chairs of  
357 the Senate and House Public Property Committees, approve leases,  
358 for a term not to exceed eighteen (18) months, entered into by  
359 state agencies for the purpose of providing parking arrangements  
360 for state employees who work in the Woolfolk Building, the Carroll  
361 Gartin Justice Building or the Walter Sillers Office Building;

362 (f) Promulgate rules and regulations governing the  
363 solicitation and selection of contractual services personnel,  
364 including personal and professional services contracts for any  
365 form of consulting, policy analysis, public relations, marketing,  
366 public affairs, legislative advocacy services or any other  
367 contract that the board deems appropriate for oversight, with the  
368 exception of any personal service contracts entered into by any  
369 agency that employs only nonstate service employees as defined in  
370 Section 25-9-107(c), any personal service contracts entered into  
371 for computer or information technology-related services governed



372 by the Mississippi Department of Information Technology Services,  
373 any personal service contracts entered into by the individual  
374 state institutions of higher learning, any personal service  
375 contracts entered into by the Mississippi Department of  
376 Transportation, any personal service contracts entered into by the  
377 Department of Human Services through June 30, 2019, which the  
378 Executive Director of the Department of Human Services determines  
379 would be useful in establishing and operating the Department of  
380 Child Protection Services, any personal service contracts entered  
381 into by the Department of Child Protection Services through June  
382 30, 2019, any contracts for entertainers and/or performers at the  
383 Mississippi State Fairgrounds entered into by the Mississippi Fair  
384 Commission, any contracts entered into by the Department of  
385 Finance and Administration when procuring aircraft maintenance,  
386 parts, equipment and/or services, any contract entered into by the  
387 Department of Public Safety for service on specialized equipment  
388 and/or software required for the operation at such specialized  
389 equipment for use by the Office of Forensics Laboratories, any  
390 personal or professional service contract entered into by the  
391 Mississippi Department of Health and/or the Department of Revenue  
392 solely in connection with their respective responsibilities under  
393 the Mississippi Medical Cannabis Act from February 2, 2022,  
394 through June 30, 2023, any contract for attorney, accountant,  
395 actuary auditor, architect, engineer, anatomical pathologist,  
396 utility rate expert services, any personal service contracts





397 approved by the Executive Director of the Department of Finance  
398 and Administration and entered into by the Coordinator of Mental  
399 Health Accessibility through June 30, 2022, any personal or  
400 professional services contract entered into by the State  
401 Department of Health in carrying out its responsibilities under  
402 the ARPA Rural Water Associations Infrastructure Grant Program  
403 through June 30, 2026, and any personal or professional services  
404 contract entered into by the Mississippi Department of  
405 Environmental Quality in carrying out its responsibilities under  
406 the Mississippi Municipality and County Water Infrastructure Grant  
407 Program Act of 2022, through June 30, 2026. Any such rules and  
408 regulations shall provide for maintaining continuous internal  
409 audit covering the activities of such agency affecting its revenue  
410 and expenditures as required under Section 7-7-3(6)(d). Any rules  
411 and regulation changes related to personal and professional  
412 services contracts that the Public Procurement Review Board may  
413 propose shall be submitted to the Chairs of the Accountability,  
414 Efficiency and Transparency Committees of the Senate and House of  
415 Representatives and the Chairs of the Appropriation Committees of  
416 the Senate and House of Representatives at least fifteen (15) days  
417 before the board votes on the proposed changes, and those rules  
418 and regulation changes, if adopted, shall be promulgated in  
419 accordance with the Mississippi Administrative Procedures Act;

420 (g) Approve all personal and professional services  
421 contracts involving the expenditures of funds in excess of



422 Seventy-five Thousand Dollars (\$75,000.00), except as provided in  
423 paragraph (f) of this subsection (2) and in subsection (8);

424           (h) Develop mandatory standards with respect to  
425 contractual services personnel that require invitations for public  
426 bid, requests for proposals, record keeping and financial  
427 responsibility of contractors. The Public Procurement Review  
428 Board shall, unless exempted under this paragraph (h) or under  
429 paragraph (i) or (o) of this subsection (2), require the agency  
430 involved to submit the procurement to a competitive procurement  
431 process, and may reserve the right to reject any or all resulting  
432 procurements;

433           (i) Prescribe certain circumstances by which agency  
434 heads may enter into contracts for personal and professional  
435 services without receiving prior approval from the Public  
436 Procurement Review Board. The Public Procurement Review Board may  
437 establish a preapproved list of providers of various personal and  
438 professional services for set prices with which state agencies may  
439 contract without bidding or prior approval from the board;

440           (i) Agency requirements may be fulfilled by  
441 procuring services performed incident to the state's own programs.  
442 The agency head shall determine in writing whether the price  
443 represents a fair market value for the services. When the  
444 procurements are made from other governmental entities, the  
445 private sector need not be solicited; however, these contracts



446 shall still be submitted for approval to the Public Procurement  
447 Review Board.

448 (ii) Contracts between two (2) state agencies,  
449 both under Public Procurement Review Board purview, shall not  
450 require Public Procurement Review Board approval. However, the  
451 contracts shall still be entered into the enterprise resource  
452 planning system;

453 (j) Provide standards for the issuance of requests for  
454 proposals, the evaluation of proposals received, consideration of  
455 costs and quality of services proposed, contract negotiations, the  
456 administrative monitoring of contract performance by the agency  
457 and successful steps in terminating a contract;

458 (k) Present recommendations for governmental  
459 privatization and to evaluate privatization proposals submitted by  
460 any state agency;

461 (l) Authorize personal and professional service  
462 contracts to be effective for more than one (1) year provided a  
463 funding condition is included in any such multiple year contract,  
464 except the State Board of Education, which shall have the  
465 authority to enter into contractual agreements for student  
466 assessment for a period up to ten (10) years. The State Board of  
467 Education shall procure these services in accordance with the  
468 Public Procurement Review Board procurement regulations;

469 (m) Request the State Auditor to conduct a performance  
470 audit on any personal or professional service contract;



471 (n) Prepare an annual report to the Legislature  
472 concerning the issuance of personal and professional services  
473 contracts during the previous year, collecting any necessary  
474 information from state agencies in making such report;

475 (o) Develop and implement the following standards and  
476 procedures for the approval of any sole source contract for  
477 personal and professional services regardless of the value of the  
478 procurement:

479 (i) For the purposes of this paragraph (o), the  
480 term "sole source" means only one (1) source is available that can  
481 provide the required personal or professional service.

482 (ii) An agency that has been issued a binding,  
483 valid court order mandating that a particular source or provider  
484 must be used for the required service must include a copy of the  
485 applicable court order in all future sole source contract reviews  
486 for the particular personal or professional service referenced in  
487 the court order.

488 (iii) Any agency alleging to have a sole source  
489 for any personal or professional service, other than those  
490 exempted under paragraph (f) of this subsection (2) and subsection  
491 (8), shall publish on the procurement portal website established  
492 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)  
493 days, the terms of the proposed contract for those services. In  
494 addition, the publication shall include, but is not limited to,  
495 the following information:



- 496                   1. The personal or professional service  
497 offered in the contract;
- 498                   2. An explanation of why the personal or  
499 professional service is the only one that can meet the needs of  
500 the agency;
- 501                   3. An explanation of why the source is the  
502 only person or entity that can provide the required personal or  
503 professional service;
- 504                   4. An explanation of why the amount to be  
505 expended for the personal or professional service is reasonable;  
506 and
- 507                   5. The efforts that the agency went through  
508 to obtain the best possible price for the personal or professional  
509 service.

510                   (iv) If any person or entity objects and proposes  
511 that the personal or professional service published under  
512 subparagraph (iii) of this paragraph (o) is not a sole source  
513 service and can be provided by another person or entity, then the  
514 objecting person or entity shall notify the Public Procurement  
515 Review Board and the agency that published the proposed sole  
516 source contract with a detailed explanation of why the personal or  
517 professional service is not a sole source service.

518                   (v) 1. If the agency determines after review that  
519 the personal or professional service in the proposed sole source  
520 contract can be provided by another person or entity, then the



521 agency must withdraw the sole source contract publication from the  
522 procurement portal website and submit the procurement of the  
523 personal or professional service to an advertised competitive bid  
524 or selection process.

525                   2. If the agency determines after review that  
526 there is only one (1) source for the required personal or  
527 professional service, then the agency may appeal to the Public  
528 Procurement Review Board. The agency has the burden of proving  
529 that the personal or professional service is only provided by one  
530 (1) source.

531                   3. If the Public Procurement Review Board has  
532 any reasonable doubt as to whether the personal or professional  
533 service can only be provided by one (1) source, then the agency  
534 must submit the procurement of the personal or professional  
535 service to an advertised competitive bid or selection process. No  
536 action taken by the Public Procurement Review Board in this appeal  
537 process shall be valid unless approved by a majority of the  
538 members of the Public Procurement Review Board present and voting.

539                   (vi) The Public Procurement Review Board shall  
540 prepare and submit a quarterly report to the House of  
541 Representatives and Senate Accountability, Efficiency and  
542 Transparency Committees that details the sole source contracts  
543 presented to the Public Procurement Review Board and the reasons  
544 that the Public Procurement Review Board approved or rejected each  
545 contract. These quarterly reports shall also include the



546 documentation and memoranda required in subsection (4) of this  
547 section. An agency that submitted a sole source contract shall be  
548 prepared to explain the sole source contract to each committee by  
549 December 15 of each year upon request by the committee;

550 (p) Assess any fines and administrative penalties  
551 provided for in Sections 31-7-401 through 31-7-423.

552 (3) All submissions shall be made sufficiently in advance of  
553 each monthly meeting of the Public Procurement Review Board as  
554 prescribed by the Public Procurement Review Board. If the Public  
555 Procurement Review Board rejects any contract submitted for review  
556 or approval, the Public Procurement Review Board shall clearly set  
557 out the reasons for its action, including, but not limited to, the  
558 policy that the agency has violated in its submitted contract and  
559 any corrective actions that the agency may take to amend the  
560 contract to comply with the rules and regulations of the Public  
561 Procurement Review Board.

562 (4) All sole source contracts for personal and professional  
563 services awarded by state agencies, other than those exempted  
564 under Section 27-104-7(2)(f) and (8), whether approved by an  
565 agency head or the Public Procurement Review Board, shall contain  
566 in the procurement file a written determination for the approval,  
567 using a request form furnished by the Public Procurement Review  
568 Board. The written determination shall document the basis for the  
569 determination, including any market analysis conducted in order to  
570 ensure that the service required was practicably available from



571 only one (1) source. A memorandum shall accompany the request  
572 form and address the following four (4) points:

573 (a) Explanation of why this service is the only service  
574 that can meet the needs of the purchasing agency;

575 (b) Explanation of why this vendor is the only  
576 practicably available source from which to obtain this service;

577 (c) Explanation of why the price is considered  
578 reasonable; and

579 (d) Description of the efforts that were made to  
580 conduct a noncompetitive negotiation to get the best possible  
581 price for the taxpayers.

582 (5) In conjunction with the State Personnel Board, the  
583 Public Procurement Review Board shall develop and promulgate rules  
584 and regulations to define the allowable legal relationship between  
585 contract employees and the contracting departments, agencies and  
586 institutions of state government under the jurisdiction of the  
587 State Personnel Board, in compliance with the applicable rules and  
588 regulations of the federal Internal Revenue Service (IRS) for  
589 federal employment tax purposes. Under these regulations, the  
590 usual common law rules are applicable to determine and require  
591 that such worker is an independent contractor and not an employee,  
592 requiring evidence of lawful behavioral control, lawful financial  
593 control and lawful relationship of the parties. Any state  
594 department, agency or institution shall only be authorized to





595 contract for personnel services in compliance with those  
596 regulations.

597 (6) No member of the Public Procurement Review Board shall  
598 use his or her official authority or influence to coerce, by  
599 threat of discharge from employment, or otherwise, the purchase of  
600 commodities, the contracting for personal or professional  
601 services, or the contracting for public construction under this  
602 chapter.

603 (7) Notwithstanding any other laws or rules to the contrary,  
604 the provisions of subsection (2) of this section shall not be  
605 applicable to the Mississippi State Port Authority at Gulfport.

606 (8) Nothing in this section shall impair or limit the  
607 authority of the Board of Trustees of the Public Employees'  
608 Retirement System to enter into any personal or professional  
609 services contracts directly related to their constitutional  
610 obligation to manage the trust funds, including, but not limited  
611 to, actuarial, custodial banks, cash management, investment  
612 consultant and investment management contracts. Nor shall this  
613 section impair or limit the authority of the State Treasurer to  
614 enter into any personal or professional services contracts  
615 involving the management of trust funds, including, but not  
616 limited to, actuarial, custodial banks, cash management,  
617 investment consultant and investment management contracts.

618 \* \* \*



619           **SECTION 4.** Section 27-105-5, Mississippi Code of 1972, is  
620 brought forward as follows:

621           27-105-5. (1) Any financial institution maintaining a  
622 deposit-taking facility in this state whose accounts are insured  
623 by the Federal Deposit Insurance Corporation or any successors to  
624 that insurance corporation, may qualify as a public funds  
625 depository by submitting an application to the State Treasurer as  
626 provided by Section 27-105-9, if the institution has a primary  
627 capital to total assets ratio of five and one-half percent  
628 (5-1/2%) or more. That ratio shall be determined not later than  
629 December 1 in each calendar year by the State Treasurer on the  
630 basis of balance sheets of applying institutions at June 30 of the  
631 same calendar year, and an institution shall not be a qualified  
632 depository and shall not receive any public funds unless its ratio  
633 has been certified annually by the Treasurer as meeting the  
634 prescribed requirement. Each applicant shall furnish to the State  
635 Treasurer such financial statements, balance sheets or other  
636 documentation, sworn to by a duly elected officer, on such date or  
637 dates and on such forms as the State Treasurer may require. Any  
638 knowing or willful misstatement of fact on those forms shall  
639 subject the officer swearing to them to the penalty of perjury,  
640 and the financial institution of which he is an officer shall not  
641 be eligible to serve as a depository for a period of one (1) year  
642 beginning with the date on which the State Treasurer certifies  
643 that such a misstatement has been made. When so approved by the



644 State Treasurer, the institution shall place on deposit with the  
645 State Treasurer qualified bonds, notes and liquid securities in an  
646 aggregate amount at least equal to one hundred five percent (105%)  
647 of the average daily balance of funds on deposit in the aggregate  
648 by the State of Mississippi or any agency or department of the  
649 state or by any county, municipality or other governmental unit in  
650 excess of that portion of accounts insured by the Federal Deposit  
651 Insurance Corporation, or any successor thereto.

652 (2) Any financial institution maintaining a deposit-taking  
653 facility in this state whose accounts are insured by the Federal  
654 Deposit Insurance Corporation or any successors to that insurance  
655 corporation and which has been in existence for three (3) or more  
656 years may qualify as a public funds depository and public funds  
657 guaranty pool member under Section 27-105-6 by submitting an  
658 application to the State Treasurer as provided by Section  
659 27-105-9, if the institution has a primary capital to total assets  
660 ratio of six and one-half percent (6-1/2%) or more and otherwise  
661 meets the requirements of Section 27-105-6. That ratio shall be  
662 determined not later than December 1 in each calendar year by the  
663 State Treasurer on the basis of balance sheets of applying  
664 institutions at June 30 of the same calendar year, and an  
665 institution shall not be a member of the public funds guaranty  
666 pool unless its ratio has been certified annually by the Treasurer  
667 as meeting the prescribed requirement. Each applicant shall  
668 furnish to the State Treasurer such financial statements, balance



669 sheets or other documentation, sworn to by a duly elected officer,  
670 on such date or dates and on such forms as the State Treasurer may  
671 require. Any knowing or willful misstatement of fact on those  
672 forms shall subject the officer swearing to them to the penalty of  
673 perjury and the financial institution of which he is an officer  
674 shall not be eligible to serve as a depository for a period of one  
675 (1) year beginning with the date on which the State Treasurer  
676 certifies that such a misstatement has been made. When so  
677 approved by the State Treasurer, the institution shall meet its  
678 security requirement of one hundred five percent (105%) by placing  
679 on deposit with the State Treasurer qualified bonds, notes and  
680 liquid securities in an aggregate amount at least equal to  
681 fifty-two and one-half percent (52-1/2%) of the average daily  
682 balance of funds on deposit in the aggregate by the State of  
683 Mississippi or any agency or department of the state or by any  
684 county, municipality or other governmental unit in excess of that  
685 portion of accounts insured by the Federal Deposit Insurance  
686 Corporation, or any successor thereto, and executing a guarantee  
687 equal to the balance of fifty-two and one-half percent (52-1/2%)  
688 of the average daily balance of funds on deposit in the aggregate  
689 by the State of Mississippi or any agency or department of the  
690 state or by any county, municipality or other governmental unit in  
691 excess of that portion of accounts insured by the Federal Deposit  
692 Insurance Corporation, or any successor thereto.



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

695 (a) All securities that are direct obligations of the  
696 United States Treasury or any other obligations fully guaranteed  
697 by the United States government.

698 (b) Bonds, notes and other obligations of the Federal  
699 Home Loan Bank, Federal National Mortgage Association, Federal  
700 Land Banks, Banks for Cooperatives, and Federal Intermediate  
701 Credit Banks, the Government National Mortgage Association, the  
702 Federal Housing Administration, the Farmers Home Administration,  
703 the Farm Credit System Financial Assistance Corporation, the  
704 United States Postal Service, the Federal Financing Bank, the  
705 Student Loan Marketing Association, the Small Business  
706 Administration, the General Services Administration, the  
707 Washington Metropolitan Area Transit Authority, the Maritime  
708 Administration, the Export-Import Bank, the International Bank for  
709 Reconstruction and Development, the Inter-American Development  
710 Bank, the Asian Development Bank, loan participations that carry  
711 the guarantee of the Commodity Credit Corporation, an  
712 instrumentality of the United States Department of Agriculture or  
713 other similar agencies approved by the State Treasurer.

714 (c) Obligations of the Tennessee Valley Authority.

715 (d) Legal obligation or revenue bonds of the State of  
716 Mississippi, its agencies, or any political subdivision of the  
717 state, or any municipality located in the State of Mississippi, or



718 the Yazoo Mississippi Delta and the Mississippi Levee Districts,  
719 or the Mississippi Higher Education Assistance Corporation or its  
720 successors, or any body corporate and politic created under the  
721 laws of the State of Mississippi.

722 (e) General obligations issued by any other state or by  
723 a county, parish or municipality of any other state, the full  
724 faith and credit of which are pledged to the payment of principal  
725 and interest, that are rated "A" or better by any recognized  
726 national rating agency engaged in the business of rating bonds.

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

729 (g) All bonds authorized as security for state funds  
730 under paragraphs (c), (d) and (e), inclusive, shall be investment  
731 quality, and any bonds under paragraphs (c), (e) and (f),  
732 inclusive, which are rated substandard by any of the appropriate  
733 supervisory authorities having jurisdiction over the depository or  
734 by any recognized national rating agency engaged in the business  
735 of rating bonds, shall not be eligible for pledging as security to  
736 the State of Mississippi by any qualified state depository. As  
737 used in this paragraph, the term "investment quality" shall mean  
738 that, at worst, the obligor of the bonds has adequate capacity to  
739 meet its financial commitments even if adverse economic conditions  
740 or changing circumstances are likely to lead to weakened capacity  
741 to do so.



742 No bonds shall be accepted as security for more than their  
743 stated par value or market value, whichever is lower, except bonds  
744 and obligations of the State of Mississippi and Mississippi State  
745 Highway bonds or notes, which may be accepted as security at par  
746 value or market value, whichever is greater.

747 The bonds, notes and liquid securities to be placed on  
748 deposit shall secure both deposits and the accrued interest  
749 thereon.

750 Money shall be drawn from the depositories so as to leave in  
751 each as near as practicable, its equitable proportion of state  
752 funds.

753 The State Treasurer is authorized and empowered to:

754 (i) Deposit for safekeeping in the vaults of any  
755 of the state or national banks located within this state that are  
756 members of the Federal Deposit Insurance Corporation and that have  
757 appropriate safekeeping facilities approved by the State  
758 Depository Commission, any federal reserve bank, any federal  
759 reserve branch bank, or any bank that is a member of the Federal  
760 Reserve System and is located in a city where there is a federal  
761 reserve bank or a federal reserve branch bank, the securities  
762 placed with him by financial institutions qualifying as state  
763 depositories; or

764 (ii) Accept, in lieu of the securities themselves,  
765 safekeeping trust receipts issued to the State Treasurer by the  
766 authorized safekeeping banks listed in subparagraph (i) above; the



767 safekeeping trust receipts shall describe the securities and show  
768 that the securities are held for safekeeping for the account of  
769 the State Treasurer or other governmental unit. The securities so  
770 deposited shall not be commingled in any manner with the assets of  
771 the safekeeping bank.

772 The safekeeping banks listed in subparagraph (i) above are  
773 authorized to issue to the State Treasurer their safekeeping trust  
774 receipts based on safekeeping trust receipts issued to them by any  
775 of their correspondent banks that are members of the Federal  
776 Reserve System and are located in any federal reserve city and  
777 that have physical custody of the pledged securities.

778 In no event shall the State Treasurer deposit for safekeeping  
779 with any depository securities placed by the depository with the  
780 State Treasurer in qualifying as a public funds depository, nor  
781 shall he accept a safekeeping trust receipt by or from a  
782 depository covering securities it owns in order to secure state  
783 funds on deposit with it.

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

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

788 (b) Monitor and confirm, as often as deemed necessary  
789 by the Treasurer, the pledged collateral held by third party  
790 custodians.





791 (c) Perfect an interest in pledged collateral by having  
792 pledged securities moved into an account established in the  
793 Treasurer's name. This action shall be taken at the discretion of  
794 the Treasurer.

795 (d) Review the reports of each qualified public funds  
796 depository for material changes in capital accounts or changes in  
797 name, address or type of institution, record the average daily  
798 balances of public deposits held; and monitor the  
799 collateral-pledging levels and required collateral based on the  
800 average daily balances.

801 (e) Compare public deposit information reported by  
802 qualified public funds depositories and public depositors. That  
803 comparison shall be conducted for qualified public depositories  
804 based on established financial condition criteria of record on  
805 September 30.

806 (f) Verify the reports of any qualified public funds  
807 depository relating to public deposits it holds when necessary to  
808 protect the integrity of the public deposits program.

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

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

815 (5) A qualified public funds depository shall:



816           (a) Within fifteen (15) days after the end of each  
817 calendar month or when requested by the Treasurer, submit to the  
818 Treasurer a written report, under oath, indicating the average  
819 daily balance of all public deposits held by it during the  
820 reported month, required collateral, a detailed schedule of all  
821 securities pledged as collateral, selected financial information,  
822 and any other information that the Treasurer determines necessary  
823 to administer this chapter.

824           (b) Provide to each public depositor annually, not  
825 later than thirty (30) days following the public depositor's  
826 fiscal year end, the following information on all open accounts  
827 identified as a "public deposit" for that public depositor as of  
828 its fiscal year end, to be used for confirmation purposes: the  
829 federal employer identification number of the public funds  
830 depository, the name on the deposit account record, the federal  
831 employer identification number on the deposit account record, and  
832 the account number, account type and actual account balance on  
833 deposit. Any discrepancy found in the confirmation process shall  
834 be reconciled within sixty (60) days of the public depositor's  
835 fiscal year end.

836           (c) Submit to the Treasurer annually, not later than  
837 sixty (60) days of the public depositor's fiscal year end, a  
838 report of all public deposits held for the credit of all public  
839 depositors at the close of business on each public depositor's  
840 fiscal year end. The annual report shall consist of public



841 deposit information in a report format prescribed by the  
842 Treasurer. The manner of required filing may be as a signed  
843 writing or electronic data transmission, at the discretion of the  
844 Treasurer.

845 (6) Public depositors shall comply with the following  
846 requirements:

847 (a) A public depositor shall ensure that the name of  
848 the public depositor and its tax identification number are on the  
849 account or certificate provided to the public depositor by the  
850 qualified public depository in a manner sufficient to disclose the  
851 identity of the public depositor;

852 (b) Not later than thirty (30) days following its  
853 fiscal year end, a public depositor shall notify the State  
854 Treasurer of its official name, address, federal tax  
855 identification number, and provide a listing of all accounts that  
856 it had with qualified public depositories, including the deposit  
857 balance in those accounts, as of its fiscal year end. A public  
858 entity established during the year shall furnish its official  
859 name, address and federal tax identification number to the State  
860 Treasurer before making any public deposit.

861 (7) Any information contained in a report of a qualified  
862 public funds depository required under Section 27-105-5 or  
863 27-105-6 shall be considered confidential and exempt from  
864 disclosure and not subject to dissemination to anyone other than



865 the State Treasurer and the State Auditor under the provisions of  
866 this chapter.

867 (8) The State Treasurer is empowered to assume  
868 responsibility as successor pledgee as agent on behalf of any  
869 county, municipality or other governmental unit of any and all  
870 collateral pledged before July 1, 2001, to that county,  
871 municipality or governmental unit by that public funds depository.  
872 Upon assuming responsibility as successor pledgee as provided in  
873 this subsection (8), the State Treasurer is empowered to sign such  
874 documents on behalf of any such county, municipality or  
875 governmental unit as may be required by a trustee custodian,  
876 including, but not limited to, any documentation necessary to  
877 change the pledgee from the county, municipality or governmental  
878 unit as pledgee to the State Treasurer as agent.

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

881 (a) The term "primary capital" means the sum of common  
882 stockholders' equity capital, including common stock and related  
883 surplus, undivided profits, disclosed capital reserves that  
884 represent a segregation of undivided profits, and foreign currency  
885 translation adjustments, less net unrealized holding losses on  
886 profits, and foreign currency translation adjustments, less net  
887 unrealized holding losses on available-for-sale equity securities  
888 with readily determinable fair values; noncumulative perpetual  
889 preferred stock, including any related surplus; and minority



890 interests in the equity capital accounts of consolidated  
891 subsidiaries; the allowance for loan and lease losses; cumulative  
892 perpetual preferred stock, long-term preferred stock (original  
893 maturity of at least twenty (20) years) and any related surplus;  
894 perpetual preferred stock (and any related surplus) where the  
895 dividend is reset periodically based, in whole or in part, on the  
896 bank's current credit standing, regardless of whether the  
897 dividends are cumulative or noncumulative; hybrid capital  
898 instruments, including mandatory convertible debt securities; term  
899 subordinated debt and intermediate-term preferred stock (original  
900 average maturity of five (5) years or more) and any related  
901 surplus; and net unrealized holding gains on equity securities.

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

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

907 (ii) When measured as of any other date, those  
908 assets:

909 (A) That have been determined: 1. by an  
910 evaluation made by a state or federal examiner at the most recent  
911 examination of the financial institution to be a loss, or 2. by  
912 evaluations made by the financial institution since its most  
913 recent examination to be a loss; and



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

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

921 (d) The term "mandatory convertible debt" means a  
922 subordinated debt instrument meeting the requirements of the  
923 Federal Deposit Insurance Corporation that requires the issuer to  
924 convert the instrument into common or perpetual preferred stock by  
925 a date at or before the maturity of the debt instrument. The  
926 maturity of these instruments must be twelve (12) years or less.

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

933 (f) The term "perpetual preferred stock" means a  
934 preferred stock that does not have a stated maturity date or that  
935 cannot be redeemed at the option of the holder and that has no  
936 other provisions that will require future redemption of the issue.  
937 It includes those issues of preferred stock that automatically  
938 convert into common stock at a stated date. It excludes those



939 issues, the rate on which increases, or can increase, in such a  
940 manner that would effectively require the issuer to redeem the  
941 issue.

942 (g) The term "total assets" means the average of total  
943 assets of any financial institution that are or would be included  
944 in a Federal Deposit Insurance Corporation (FDIC) banking  
945 institution's "Reports of Condition and Income" (Call Reports),  
946 regardless of whether the institution is insured by the FDIC, plus  
947 the allowance for loan and lease losses, minus assets classified  
948 loss and minus intangible assets other than mortgage servicing  
949 rights.

950 (h) The term "average daily balance" means the average  
951 daily balance of public deposits of each governmental unit held  
952 during the reported month. The average daily balances must be  
953 determined by totaling, by account, the daily balance held by the  
954 depositor and then dividing the total by the number of calendar  
955 days in the month. Deposit insurance is then deducted from each  
956 public depositor's balance and the resulting amounts are totaled  
957 to obtain the average daily balance.

958 (i) The term "public funds" means funds in which the  
959 entire beneficial interest is owned by a governmental unit or  
960 funds held in the name of a public official of a governmental unit  
961 charged with the duty to receive or administer funds and acting in  
962 such official capacity.



963           (j) The term "governmental unit" means the State of  
964 Mississippi, and any office, department, agency, division, bureau,  
965 commission, board, institution, hospital, college, university,  
966 airport authority or other instrumentality thereof, whether or not  
967 such body or instrumentality has the authority to levy taxes or to  
968 sue or be sued in its own name. Further, it shall mean any body  
969 politic or body corporate other than the state responsible for  
970 governmental activities only in geographic areas smaller than that  
971 of the state, including, but not limited to, any county,  
972 municipality, school district, community hospital as defined in  
973 Section 41-13-10, airport authority or other instrumentality  
974 thereof, whether or not such body or instrumentality has the  
975 authority to levy taxes or to sue or be sued in its own name. It  
976 is the intent to include all state and political subdivisions or  
977 instrumentalities thereof whether specifically recited herein or  
978 not.

979           **SECTION 5.** Section 27-105-6, Mississippi Code of 1972, is  
980 brought forward as follows:

981           27-105-6. (1) There is established within the State  
982 Treasury a public funds guaranty pool to consist of qualified  
983 public funds depositories commissioned under Section 27-105-5(2)  
984 to be administered by a Guaranty Pool Board and the State  
985 Treasurer.

986           (2) There is established a nine-member Guaranty Pool Board  
987 to administer the guaranty pool and to review and recommend





988 criteria to be used by the State Treasurer in order to protect  
989 public deposits and the depositories in the program.

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

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

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

1000 (b) An annualized return on average assets of more than  
1001 seventy-five one hundredths of one percent (0.75%); and

1002 (c) A total loans to total assets ratio not exceeding  
1003 eighty percent (80%).

1004 Failure of a guaranty pool member to meet the capital ratio  
1005 and at least two (2) of the above three (3) ratios shall subject  
1006 the member to subsection (9) of this section.

1007 (5) In fulfilling the requirements of this section, the  
1008 Treasurer has the power to:

1009 (a) Order discontinuance of participation in the  
1010 guaranty pool program by a qualified public depository upon  
1011 failure of the financial institution to meet the above  
1012 requirements of subsection (4) of this section;



1013 (b) Appoint a nine-member Guaranty Pool Board;

1014 (c) Establish goals and objectives and provide other  
1015 data as may be necessary to assist the Guaranty Pool Board  
1016 established under subsection (2) in developing standards for the  
1017 program;

1018 (d) Perform financial analysis of any qualified public  
1019 funds depository as needed.

1020 (6) The Guaranty Pool Board shall consist of:

1021 (a) One (1) representative of financial institutions  
1022 with assets of One Billion Dollars (\$1,000,000,000.00) or more  
1023 chosen by the State Treasurer from a list of two (2) bankers  
1024 nominated by the Mississippi Bankers Association;

1025 (b) One (1) representative of financial institutions  
1026 with assets of Three Hundred Million Dollars (\$300,000,000.00) but  
1027 less than One Billion Dollars (\$1,000,000,000.00) chosen by the  
1028 State Treasurer from a list of two (2) bankers nominated by the  
1029 Mississippi Bankers Association;

1030 (c) One (1) representative of financial institutions  
1031 with assets of less than Three Hundred Million Dollars  
1032 (\$300,000,000.00) chosen by the State Treasurer from a list of two  
1033 (2) bankers nominated by the Mississippi Bankers Association;

1034 (d) Two (2) representatives of banks at large chosen by  
1035 the State Treasurer from a list of four (4) bankers nominated by  
1036 the Mississippi Bankers Association;



1037 (e) One (1) member chosen by the State Treasurer from a  
1038 list of two (2) supervisors nominated by the Mississippi  
1039 Supervisors Association;

1040 (f) One (1) member chosen by the State Treasurer from a  
1041 list of two (2) municipal officials nominated by the Mississippi  
1042 Municipal League; and

1043 (g) The Commissioner of Banking and Consumer Finance  
1044 and the State Treasurer.

1045 The Guaranty Pool Board shall determine the effective date of  
1046 the public funds guaranty pool, which date shall be no earlier  
1047 than July 1, 2001, and so notify the State Treasurer. All  
1048 nominees of the Mississippi Bankers Association shall be employed  
1049 by a financial institution that is a member of the public funds  
1050 guaranty pool.

1051 Initially, three (3) of the five (5) representatives of  
1052 financial institutions shall be appointed for a term of one (1)  
1053 year. The remaining members other than the Commissioner of  
1054 Banking and Consumer Finance and State Treasurer, who shall be  
1055 permanent members, shall be appointed for a term of two (2) years.  
1056 Upon expiration of these terms, members shall be appointed  
1057 thereafter for two-year terms. Any member is eligible for  
1058 reappointment and shall serve until a successor qualifies. If a  
1059 vacancy occurs in the position of any appointed member, a new  
1060 member shall be appointed in the same manner as the member's



1061 predecessor for the remainder of the unexpired term. A member of  
1062 the board shall receive no compensation for service on the board.

1063 The Guaranty Pool Board shall elect a chair and vice chair  
1064 and shall also designate a secretary who need not be a member of  
1065 the Guaranty Pool Board. The secretary shall keep a record of the  
1066 proceedings of the Guaranty Pool Board and shall be the custodian  
1067 of all printed materials filed with or by the advisory committee.  
1068 Notwithstanding the existence of vacancies on the Guaranty Pool  
1069 Board, a majority of the members constitutes a quorum. The  
1070 Guaranty Pool Board shall not take official action in the absence  
1071 of a quorum.

1072 In addition to the requirements of subsection (4) of this  
1073 section, the Guaranty Pool Board, by a two-thirds ( $\frac{2}{3}$ )  
1074 supermajority vote of the entire Guaranty Pool Board, may  
1075 establish additional criteria for qualification as a guaranty pool  
1076 member, including promulgating additional ratios, requiring  
1077 stricter ratios than provided under subsection (4), or requiring  
1078 additional collateral; however, any additional criteria shall be  
1079 uniformly applied to all participants, although higher collateral  
1080 pledge levels may be based on different financial criteria. Any  
1081 reduction in previously approved criteria shall likewise be  
1082 subject to a two-thirds ( $\frac{2}{3}$ ) supermajority vote of the entire  
1083 Guaranty Pool Board. Any additional criteria will become  
1084 effective at the quarter next after the Guaranty Pool Board votes.  
1085 The Guaranty Pool Board is authorized to promulgate regulations in



1086 order to more fully carry out its obligations under this  
1087 paragraph.

1088 (7) A public funds guaranty pool member shall submit to the  
1089 State Treasurer not later than the date required to be filed with  
1090 its primary federal regulatory agency:

1091 (a) A copy of the quarterly Consolidated Reports of  
1092 Condition and Income, and any amended reports, required by the  
1093 Federal Deposit Insurance Act, 12 USCS Section 1811 et seq., if  
1094 the depository is a bank; or

1095 (b) A copy of the Thrift Financial Report, and any  
1096 amended reports, required to be filed with the Office of Thrift  
1097 Supervision if the depository is a savings and loan association.

1098 (8) A public funds guaranty pool member may effect a  
1099 voluntary withdrawal from the guaranty pool by giving written  
1100 notice to the State Treasurer. Notice of withdrawal shall be  
1101 mailed or delivered in sufficient time to be received by the State  
1102 Treasurer at least one hundred eighty (180) days before the  
1103 effective date of withdrawal. On the effective date of  
1104 withdrawal, the guaranty pool member shall pledge and place on  
1105 deposit with the State Treasurer securities equal to one hundred  
1106 five percent (105%) of the outstanding balances of public funds  
1107 held less the amount of funds insured by the Federal Deposit  
1108 Insurance Corporation.

1109 The contingent liability for any loss before the effective  
1110 date of withdrawal of the depository withdrawing from the guaranty



1111 pool shall continue after the effective date of the withdrawal for  
1112 a period of six (6) months.

1113 (9) A public funds guaranty pool member failing to meet the  
1114 requirements for membership in subsection (4) of this section or  
1115 as modified by the Guaranty Pool Board under its authority at  
1116 subsection (6) is required to withdraw from the guaranty pool.  
1117 The State Treasurer shall notify the public funds guaranty pool  
1118 member of the effective date of the withdrawal not less than  
1119 thirty (30) days before that effective date. Not later than the  
1120 effective date of withdrawal, the withdrawing pool member must  
1121 pledge and place on deposit with the State Treasurer securities  
1122 equal to one hundred five percent (105%) of the outstanding  
1123 balances of public funds held less the amount of funds insured by  
1124 the Federal Deposit Insurance Corporation or pay over those funds  
1125 to the public depositor.

1126 The contingent liability for any loss before the effective  
1127 date of withdrawal of the depository withdrawing from the guaranty  
1128 pool shall continue for a period of one (1) year after the  
1129 effective date of the withdrawal.

1130 **SECTION 6.** This act shall take effect and be in force from  
1131 and after July 1, 2023.

