

By: Guice

To: Banks and Banking

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1381

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

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

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

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

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

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

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

institution shall not be a member of the public funds guaranty pool unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall meet its security requirement of one hundred five percent (105%) by placing on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to fifty-two and one-half percent (52-1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto, and executing a guarantee equal to the balance of fifty-two and one-half percent (52-1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

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

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

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

(c) Obligations of the Tennessee Valley Authority.

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

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

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

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

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

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

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

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

The State Treasurer is authorized and empowered to:

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

(ii) Accept, in lieu of the securities themselves, safekeeping trust receipts issued to the State Treasurer by the authorized safekeeping banks listed in subparagraph (i) above; the safekeeping trust receipts shall describe the securities and show that the securities are held for safekeeping for the account of

the State Treasurer or other governmental unit. The securities so deposited shall not be commingled in any manner with the assets of the safekeeping bank.

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

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

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

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

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

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

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

(e) Compare public deposit information reported by

qualified public funds depositories and public depositors. That
comparison shall be conducted for qualified public depositories
based on established financial condition criteria of record on
September 30.

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

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

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

(5) A qualified public funds depository shall:

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

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

241 fiscal year end.

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

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

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

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

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

272 (8) The State Treasurer is empowered to assume
273 responsibility as successor pledgee as agent on behalf of any

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

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

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

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

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

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

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

(B) That have not been charged off from the

307 financial institution's books or collected.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any financial institution qualifying as a guaranty pool

member shall guarantee public fund deposits against loss caused by the default or insolvency of other guaranty pool members and shall execute under oath an agreement of contingent liability in addition to a public deposit pledge agreement.

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

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

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

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

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

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

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

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

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

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

(6) The Guaranty Pool Board shall consist of:

(a) One (1) representative of financial institutions with assets of One Billion Dollars (\$1,000,000,000.00) or more chosen by the State Treasurer from a list of two (2) bankers

406 nominated by the Mississippi Bankers Association;

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

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

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

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

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

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

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

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

thereafter for two-year terms. Any member is eligible for reappointment and shall serve until a successor qualifies. If a vacancy occurs in the position of any appointed member, a new member shall be appointed in the same manner as the member's predecessor for the remainder of the unexpired term. A member of the board shall receive no compensation for service on the board.

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

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

In addition to the requirements of subsection (4) of this section, the Guaranty Pool Board, by a two-thirds supermajority vote of the entire Guaranty Pool Board, may establish additional criteria for qualification as a guaranty pool member, including promulgating additional ratios, requiring stricter ratios than provided under subsection (4), or requiring additional collateral; however, any additional criteria shall be uniformly applied to all participants, although higher collateral pledge levels may be based on different financial criteria. Any reduction in previously approved criteria shall likewise be subject to a two-thirds supermajority vote of the entire Guaranty Pool Board. Any additional criteria will become effective at the quarter next after the Guaranty Pool Board votes. The Guaranty Pool Board may promulgate regulations in order to more fully carry out its obligations under this paragraph.

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

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

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

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

The contingent liability for any loss before the effective date of withdrawal of the depository withdrawing from the guaranty pool shall continue after the effective date of the withdrawal for a period of six (6) months.

(9) A public funds guaranty pool member failing to meet the requirements for membership in subsection (4) of this section or as modified by the Guaranty Pool Board under its authority at subsection (6) is required to withdraw from the guaranty pool. The State Treasurer shall notify the public funds guaranty pool member of the effective date of the withdrawal not less than thirty (30) days before that such effective date. Not later than the effective date of withdrawal, the withdrawing pool member must pledge and place on deposit with the State Treasurer securities equal to one hundred five percent (105%) of the outstanding balances of public funds held less the amount of funds insured by

505 the Federal Deposit Insurance Corporation or pay over those funds
506 to the public depositor.

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

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

513 27-105-9. **Application for keeping state funds; pro rata**
514 **allocation.**

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

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

531 State funds required for current operation, as determined
532 under Section 27-105-33, shall be deposited in one or more demand
533 accounts. State funds not required for current operation, as
534 determined under Section 27-105-33, shall be deposited in one or
535 more interest-bearing accounts or time certificates of deposit, or
536 otherwise invested under Section 27-105-33. When any depository
537 holding state demand accounts receives an order from the Treasurer

or his designee to transfer collected funds out of those accounts to any interest-bearing accounts or time certificates of deposit in the depository or any other depository under the provisions of this chapter, the transfer shall be made immediately or as soon thereafter as practicable. If the Treasurer finds that any depository is not transferring funds as * * * provided above, the depository shall be disqualified from holding or receiving any state demand accounts for a period of time not to exceed one (1) year.

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

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

(b) Each such numerator shall be divided by a denominator, which shall be the sum of (i) thirty-five percent (35%) of the first Two Hundred Fifty Million Dollars (\$250,000,000.00) or portion thereof of the Mississippi-based deposits of each qualified depository, plus (ii) twenty-five percent (25%) of the next Two Hundred Fifty Million Dollars (\$250,000,000.00) or portion thereof of the Mississippi-based deposits of each qualified depository, plus (iii) fifteen percent (15%) of the Mississippi-based deposits of each qualified depository in excess of Five Hundred Million Dollars

571 (\$500,000,000.00), being the sum of the numerators of all
572 depositories. The resulting percentage shall be the pro rata
573 share of the depository in funds allocated under Section
574 27-105-33(b).

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

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

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

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

27-105-13. Commission form.

The State Depository Commission shall design and stipulate the wording of the form of commission to be issued to each and every duly approved depository for public funds and the * * * form of commission, when so approved, shall be spread on the minutes of the State Depository Commission showing its approval, and the * * * form of commission shall recite the terms and conditions of the depository contract based on the law and the regulations. The State Depository Commission is * * * authorized to amend and/or rewrite the form of commission to be used from time to time as the need arises. The form of commission, when issued to a duly qualified and approved depository, shall be signed by the Secretary of the State Depository Commission and a copy of the approvals shall be kept for a period of three (3) years before being destroyed.

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

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

(1) In the event of the failure of any public funds depository to pay any check lawfully issued by the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit on any funds on deposit belonging to the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit in the depository, the State Treasurer is * * * empowered to sell such securities as are placed with him by the

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

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

by all public funds guaranty pool members, excluding the public deposits of the defaulting depository, as determined by the State Treasurer from the average of the six (6) most recent month-end reports of the public funds guaranty pool members provided under Section 27-105-6. Each public funds guaranty pool member shall pay its assessment to the State Treasurer within seven (7) business days after it receives notice of the assessment. If a public funds guaranty pool member fails to pay its assessment when due, the State Treasurer shall satisfy the assessment by selling securities pledged by any depository failing to pay the assessment.

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

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

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

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

The State Depository Commission, composed of the Governor, Attorney General, and State Treasurer, shall meet annually in the month of February, and more often, if necessary, on call of any member of the commission. The commission shall keep a full and correct record of its proceedings, and is * * * authorized and required to:

(a) Approve, upon proper application, the depositories

for the State of Mississippi that are qualified to receive and hold, subject to demand, the public funds of the state or any subdivision of the state;

(b) Approve the bonds and securities pledged by the depositories to secure public funds deposits and to approve the exchange or substitution of bonds and securities pledged in lieu of the bonds and securities formerly pledged. * * * The bonds and securities so pledged and held shall be such as are specifically authorized by law for security of public funds deposits;

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

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

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

The State Treasurer may be authorized by the commission to:

(i) Receive, transfer, exchange and/or substitute bonds and securities pledged by the depositories to secure public funds deposits; and to accept bonds and securities pledged by the depositories as security for public funds deposits in lieu of any surety bond so held by the commission. * * * However, * * * no bond or security shall be received or accepted as security for public funds deposits unless specifically authorized by law and the marginal requirements of the State Depository Commission.

(ii) Return and release excess bonds and securities and/or surety bonds that are excess over the marginal requirements due to withdrawal of public funds deposits; and

(iii) Make a detailed report of all matters and transactions relating to the depository bonds and securities at

736 such times and as often as may be required by the State Depository
737 Commission: exchanges and substitutions of bonds and securities
738 shall not be made but once for each depository during any
739 consecutive three-month period, except, however, that called or
740 matured bonds and securities may be exchanged, substituted or
741 released if marginal requirements are maintained, at the pleasure
742 of the State Treasurer and the depository.

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

745 27-105-315. **Qualification as depository * * *.**

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

756 * * *

757 (2) Notwithstanding the foregoing, any financial institution
758 not meeting the prescribed ratio requirement whose accounts are
759 insured by the Federal Deposit Insurance Corporation * * * or any
760 successors to that insurance corporation, may receive county funds
761 in an amount not exceeding the amount that is insured by that
762 insurance corporation and may qualify as a county depository to
763 the extent of that insurance.

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

766 27-105-317. **Commission of depository * * *.**

767 A county depository must be issued a commission under Section
768 27-105-11 before receipt of county deposits.

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

771 27-105-329. **Failure to pay county warrants * * *.**

772 In the event of the failure of any county depository to pay
773 any county warrant lawfully issued on any funds on deposit
774 belonging to the county in the depository, the county is * * *
775 empowered to order the State Treasurer to sell such securities as
776 are placed with the State Treasurer by the depository, or call on
777 the public funds guaranty pool if the depository is a member, or
778 so much of them as may be necessary to cover back into the county
779 treasury the amount of county funds on deposit with the
780 depository, with accrued interest thereon, as provided in Section
781 27-105-25. In the event of the failure of the county depository
782 to pay any warrant when the depository has placed as security
783 surety bonds, the clerk or holder of the warrant shall notify the
784 president of the board of supervisors and he shall take such
785 immediate action as he may deem best and most expedient for
786 covering back into the Treasury all county money on deposit in the
787 depository, and the board of supervisors is authorized to employ
788 counsel, if necessary, to more speedily enforce the payment. The
789 expenses of the collection, including the counsel fee, shall be
790 charged against the depository, and, in addition thereto, the
791 depository shall be liable for damages at the rate of one percent
792 (1%) per month for any delay in paying over any county funds when
793 lawfully demanded, and the bond of any depository shall be liable
794 for those expenses and damages.

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

797 27-105-331. **Acquisition of closed depository securities.**

798 The State Treasurer, on behalf of any county in the State of
799 Mississippi that has acquired bonds or other securities as the
800 result of the closing of the depository or depositories of the
801 county, is authorized and empowered in his discretion to sell,

trade, refinance or agree to the refinancing of any or all of
those bonds now held or owned by it and by any subdivision or
taxing district of the county. The State Treasurer is further
authorized and empowered, in his discretion, in refinancing any of
those bonds, to agree to a reduction of the principal sum and
likewise to agree to a reduction of the interest rate thereon.
The State Treasurer is authorized and empowered, in his
discretion, to sell any of those bonds at or for the best price
obtainable, or to trade those bonds for other bonds, when in the
judgment of the State Treasurer the best interests of the county
would be advanced thereby, and he is further authorized to handle
and negotiate any matured interest coupons on any of those bonds
in the same manner as he is authorized in this section to deal
with the bonds.

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

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

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

In any county in this state where no depository or
depositories were selected and qualified, as provided by law, on
or before the first Monday of January 1932, or in which the
depository or depositories are not selected and qualified annually
thereafter on or before the first Monday in January, the board of
supervisors of the county shall, at the January meeting of the
board or any regular meeting or special meeting thereafter called
for that purpose, select and designate a depository or
depositories into which the tax collector or tax collectors of the
county shall deposit all tax collections and other public funds
collected after the first Monday in January 1932, when collected,
and in which the same shall thereafter be distributed, at the time

and in the manner as now required by law, to the several funds or accounts in which the same properly belong, as provided by law herein.

Any depository so selected by the board of supervisors shall be within the State of Mississippi and may hold the deposits at such rate of interest as may be agreed upon with the board of supervisors or, in the discretion of the board of supervisors, without liability for interest unless it is required to be paid under the provisions of Section 27-105-303, but the * * * depository shall secure the * * * deposits by pledging with the State Treasurer such securities in such amounts and upon such conditions as are now required by law of depositories that qualify as such by bidding for them.

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

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

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

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

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

* * * All such bonds shall be such as are authorized by law to be pledged or filed as security for those deposits, or if a corporate surety bond, it must be made by a surety company authorized to do business in this state; and in addition, all such deposits shall be fully secured and covered as required by Section 27-105-5.

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

870 27-105-353. * * * **Method of selecting municipal**
871 **depositories.**

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

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

891 27-105-355. **Security on bond.**

892 Each depository shall enter into bond, or deposit securities
893 with the State Treasurer as required of county depositories; the
894 bond or security to be approved by the State Treasurer.

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

897 27-105-359. **Municipal withdrawal of bonds pledged or filed**
898 **as security.**

899 The State Treasurer is authorized and empowered * * * to
900 allow municipal depositories of municipal funds of every kind and

character to withdraw any bonds, including corporate surety bonds,
pledged or filed or deposited as security for those deposits:

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

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

* * * All such bonds shall be such as are authorized by law
to be pledged or filed as security for those deposits, or if a
corporate surety bond, it must be made by a surety company
authorized to do business in this state; and in addition, that all
such deposits shall be fully secured and covered as required by
Section 27-105-5.

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

SECTION 17. This act shall take effect and be in force from
and after July 1, 2001, except that Section 2 of this act shall
take effect and be in force from and after the passage of this
act.