

By: Guice

To: Banks and Banking

## 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 SUCH  
18 INSTITUTION QUALIFIES AS A PUBLIC FUNDS DEPOSITORY OR GUARANTY  
19 POOL MEMBER; TO AMEND SECTION 27-105-317, MISSISSIPPI CODE OF  
20 1972, TO PROVIDE THAT A COUNTY DEPOSITORY MUST BE ISSUED A  
21 COMMISSION BEFORE RECEIPT OF COUNTY DEPOSITS; TO AMEND SECTIONS  
22 27-105-9, 27-105-13, 27-105-35, 27-105-329, 27-105-331,  
23 27-105-333, 27-105-349, 27-105-353, 27-105-355 AND 27-105-359,  
24 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO REPEAL SECTION  
25 27-105-319, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE FORM OF  
26 THE COMMISSION FOR A COUNTY DEPOSITORY; AND FOR RELATED PURPOSES.

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

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

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

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

Such ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a qualified depository and shall not receive any public funds 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 such forms shall subject the officer swearing thereto 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 commencing with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, such institution shall place on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to one hundred five percent (105%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department thereof 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.

(2) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to such insurance corporation and which has been in existence for three (3) or more years may qualify as a public funds depository and public funds guaranty pool member pursuant to Section 27-105-6 by submitting an application to the State Treasurer as provided by Section 27-105-9, if such institution has a primary capital to total assets ratio of six and one-half percent (6-1/2%) or more and otherwise meets the requirements of Section 27-105-6. Such ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying 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 such forms shall subject the officer swearing thereto 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 commencing with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, such 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 thereof 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 thereof 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 herein 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 which 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 thereof, 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 pursuant to 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 which are members of the Federal Deposit Insurance Corporation and which have appropriate safekeeping facilities approved by the State Depository Commission, any federal reserve bank, any federal reserve branch bank, or any bank which 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; such safekeeping trust receipts to describe the securities and show that such 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 which are members of the Federal Reserve System and are located in any federal reserve city and which 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 therewith.

(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. Such 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. Such 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 October 30, the following information on all open accounts identified as a "public deposit" for that public depositor as of September 30, 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 before November 30.

(c) Submit to the Treasurer annually, not later than

241 November 30, a report of all public deposits held for the credit  
242 of all public depositors at the close of business on September 30.  
243 Such annual report shall consist of public deposit information in  
244 a report format prescribed by the Treasurer. The manner of  
245 required filing may be as a signed writing or electronic data  
246 transmission, at the discretion of the Treasurer.

247 (6) Public depositors shall comply with the following  
248 requirements:

249 (a) A public depositor shall ensure that the name of  
250 the public depositor is on the account or certificate provided to  
251 the public depositor by the qualified public depository in a  
252 manner sufficient to disclose the identify of the public  
253 depositor;

254 (b) Not later than October 30 of each year, a public  
255 depositor shall notify the State Treasurer of its official name,  
256 address, federal tax identification number, and provide a listing  
257 of all accounts that it had with qualified public depositories,  
258 including the deposit balance in such accounts, as of September  
259 30. A public entity established during the year shall furnish its  
260 official name, address and federal tax identification number to  
261 the State Treasurer prior to making any public deposit.

262 (7) Any information contained in a report of a qualified  
263 public funds depository required under Section 27-105-5 or  
264 27-105-6 shall be considered confidential and exempt from  
265 disclosure and not subject to dissemination to anyone other than  
266 the Treasurer under the provisions of this chapter.

267 (8) The State Treasurer is empowered to assume  
268 responsibility as successor pledgee as agent on behalf of any  
269 county, municipality or other governmental unit of any and all  
270 collateral pledged prior to July 1, 2000, to such county,  
271 municipality or governmental unit by that public funds depository.  
272 Upon assuming responsibility as successor pledgee as provided in  
273 this subsection (8), the State Treasurer is empowered to sign such



274 documents on behalf of any such county, municipality or  
275 governmental unit as may be required by a trustee custodian,  
276 including, but not limited to, any documentation necessary to  
277 change the pledgee from such county, municipality or governmental  
278 unit as pledgee to the State Treasurer as agent.

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

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

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

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

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

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

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

303               (c) The term "intangible assets" means those assets  
304 that would be required to be reported in the item for intangible  
305 assets in a Federal Deposit Insurance Corporation (FDIC) banking  
306 institution's "Reports of Condition and Income" (Call Reports),

307 regardless of whether such institution is insured by the FDIC.

308 (d) The term "mandatory convertible debt" means a  
309 subordinated debt instrument meeting the requirements of the  
310 Federal Deposit Insurance Corporation which requires the issuer to  
311 convert such instrument into common or perpetual preferred stock  
312 by a date at or before the maturity of the debt instrument. The  
313 maturity of these instruments must be twelve (12) years or less.

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

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

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

335 (h) The term "average daily balance" means the average  
336 daily balance of public deposits held during the reported month.  
337 The average daily balances must be determined by totaling, by  
338 account, the daily balance held by the depositor and then dividing  
339 the total by the number of calendar days in the month. Deposit

insurance is then deducted from each account 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 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 pursuant to 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

373 to total loans of less than two percent (2%);

374 (b) An annualized return on average assets of more than  
375 seventy-five percent (75%); and

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

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

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

383 (a) Order discontinuance of participation in the  
384 guaranty pool program by a qualified public depository upon  
385 failure of such financial institution to meet the above  
386 requirements of subsection (4) hereof;

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

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

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

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

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

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

404 (c) One (1) representative of financial institutions  
405 with assets of less than Three Hundred Million Dollars

(\$300,000,000.00) chosen by the State Treasurer from a list of two (2) bankers nominated by the Mississippi Bankers Association;

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

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

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

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

The Guaranty Pool Board shall determine the effective date of the public funds guaranty pool and so notify the State Treasurer.

All nominees of the Mississippi Bankers Association shall be employed by a financial institution that is a member of the public funds guaranty pool.

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

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 such 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.

The Guaranty Pool Board may establish criteria in its sole discretion as may be necessary, in addition to the requirements of subsection (4) of this section, for qualification as a guaranty pool member including the promulgation of additional ratios, 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, commencing at the quarter next after promulgation and, in addition, an increase in the collateral pledge level shall be made only by a two-thirds (2/3) supermajority vote of the entire Guaranty Pool Board. The Guaranty Pool Board is authorized to promulgate regulation in order to more fully carry out its obligations herewith.

(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 such 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 such 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 prior to 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 prior to 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 the Federal Deposit Insurance Corporation or pay over such funds to the public depositor.

The contingent liability for any loss prior to the effective date of withdrawal of the depository withdrawing from the guaranty pool shall continue after the effective date of the withdrawal.

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

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

The State Treasurer shall give notice of the provisions of this article once a month to each eligible bank and financial

institution in the state having an amount of state funds less than the amount authorized to be allocated to the bank or financial institution under Section 27-105-33 and this section, and shall receive such applications as they or any of them may make for the privilege of keeping any part of public funds on forms to be furnished by the Treasurer, and shall place the state funds with the institutions applying therefor if the depository application has been duly approved by the Treasurer.

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

State funds required for current operation, as determined pursuant to Section 27-105-33, shall be deposited in one or more demand accounts. State funds not required for current operation, as determined pursuant to Section 27-105-33, shall be deposited in one or more interest-bearing accounts or time certificates of deposit, or otherwise invested pursuant to Section 27-105-33. When any depository holding state demand accounts receives an order from the Treasurer or his designee to transfer collected funds out of such accounts to any interest-bearing accounts or time certificates of deposit in such depository or any other depository pursuant to 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 hereinabove provided, such 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 (\$500,000,000.00), being the sum of the numerators of all depositories. The resulting percentage shall be the pro rata share of such depository in funds allocated under Section 27-105-33(b).

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

Mississippi on June 30 as reported annually by the Federal Deposit Insurance Corporation in the above-referenced report.

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

604 the State Depository Commission showing its approval, and  
605 the \* \* \* form of commission shall recite the terms and conditions  
606 of the depository contract based on the law and the regulations.  
607 The State Depository Commission is \* \* \* authorized to amend  
608 and/or rewrite the form of commission to be used from time to time  
609 as the need arises. The form of commission, when issued to a duly  
610 qualified and approved depository, shall be signed by the  
611 Secretary of the State Depository Commission and a copy of the  
612 approvals shall be kept for a period of three (3) years before  
613 being destroyed.

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

616 27-105-25. **Failure to pay treasurer's check.**

617 (1) In the event of the failure of any public funds  
618 depository to pay any check lawfully issued by the State of  
619 Mississippi or any agency or department thereof or any county,  
620 municipality or other governmental unit on any funds on deposit  
621 belonging to the State of Mississippi or any agency or department  
622 thereof or any county, municipality or other governmental unit in  
623 such depository, the State Treasurer is \* \* \* empowered to sell  
624 such securities as are placed with him by such depository, or so  
625 much thereof as is necessary to cover back into the \* \* \* Treasury  
626 of the State of Mississippi or any agency or department thereof or  
627 any county, municipality or other governmental unit the amount of  
628 state funds on deposit with such depository with accrued interest  
629 thereon in excess of applicable deposit insurance, and the sale of  
630 such security shall be made by the State Treasurer at the best  
631 price that he can obtain at either public or private sale, and in  
632 the event of the failure of such depository to pay any \* \* \* check  
633 when such depository has placed as security surety bonds, the  
634 Treasurer shall notify the Attorney General and that officer shall  
635 take such immediate action as he may deem most expedient for  
636 covering back into the Treasury of the State of Mississippi or any

637 agency or department thereof or any county, municipality or other  
638 governmental unit all state money on deposit in such depository.  
639 In addition, the Attorney General is authorized to employ counsel,  
640 if necessary, to more speedily enforce the payment and expense of  
641 such collection, including counsel fees, to be charged against  
642 such depository, and, in addition thereto, the depository will be  
643 liable for damages at the rate of one percent (1%) per month for  
644 any delay in paying over any state funds when demanded, and the  
645 bond of any depository shall be liable for those expenses and  
646 damages.

647 (2) If the loss to the State of Mississippi or any agency or  
648 department thereof or any county, municipality or other  
649 governmental unit (hereinafter "public depositors") of such  
650 depository that is also a public funds guaranty pool member is not  
651 covered by deposit insurance or the proceeds of such sale of  
652 securities, the State Treasurer shall provide coverage of the  
653 remaining loss by assessment against the other public funds  
654 guaranty pool members. Such assessment shall be determined by  
655 multiplying the total amount of the loss to all public depositors  
656 by a percentage which represents the share of public fund deposits  
657 held by such depository divided by the total public deposits held  
658 by all public funds guaranty pool members, excluding the public  
659 deposits of the defaulting depository, as determined by the State  
660 Treasurer from the latest month-end reports of the public funds  
661 guaranty pool members provided under Section 27-105-6. Each  
662 public funds guaranty pool member shall pay its assessment to the  
663 State Treasurer within seven (7) business days after it receives  
664 notice of the assessment. If a public funds guaranty pool member  
665 fails to pay its assessment when due, the State Treasurer shall  
666 satisfy the assessment by selling securities pledged by any  
667 depository failing to pay the assessment.

668 (3) The State Treasurer shall distribute the funds to the  
669 public depositors of such public funds depository in default

670 according to their validated claims.

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

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

682 27-105-35. **Commission meetings and duties.**

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

689 (a) Approve, upon proper application, the depositories  
690 for the State of Mississippi that are qualified to receive and  
691 hold, subject to demand, the public funds of the state or any  
692 subdivision thereof;

693 (b) Approve the bonds and securities pledged by the  
694 depositories to secure public funds deposits and to approve the  
695 exchange or substitution of bonds and securities pledged in lieu  
696 of the bonds and securities formerly pledged. Provided, always,  
697 that the bonds and securities so pledged and held shall be such as  
698 are specifically authorized by law for security of public funds  
699 deposits;

700 (c) Approve and fix the margin of security to be  
701 maintained by public funds depositories, but in no instance shall  
702 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, which 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 such times and as often as may be required by the State Depository Commission, and provided that exchanges and substitutions of bonds and securities shall not be made but once for each depository during any consecutive three-month period; except, however, that called or matured bonds and securities may be exchanged, substituted or released if marginal requirements are maintained, at the pleasure of the State Treasurer and the depository.

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

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

(1) Any financial institution in a county, or in an adjoining county where there is no financial institution in the

county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to such insurance corporation may qualify as a county depository, if such institution qualifies as a public funds depository pursuant to Section 27-105-5 or a public funds guaranty pool member pursuant to Sections 27-105-5 and 27-105-6. Such qualified financial institution shall secure such deposits by placing qualified securities on deposit with the State Treasurer as provided in Section 27-105-5.

\* \* \*

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

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

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

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

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

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

In the event of the failure of any county depository to pay any county warrant lawfully issued on any funds on deposit belonging to the county in such depository, the county is \* \* \* empowered to order the State Treasurer to sell such securities as are placed with the State Treasurer by such depository, or call on the public funds guaranty pool if such depository is a member, or so much thereof as may be necessary to cover back into the county treasury the amount of county funds on deposit with such

depository, with accrued interest thereon, as provided in Section 27-105-25. In the event of the failure of the county depository to pay any warrant when such depository has placed as security surety bonds, the clerk or holder of the warrant shall notify the president of the board of supervisors and he shall take such immediate action as he may deem best and most expedient for covering back into the Treasury all county money on deposit in such depository, and the board of supervisors is authorized to employ counsel, if necessary, to more speedily enforce the payment. The expenses of such collection, including the counsel fee, shall be charged against such depository, and, in addition thereto, the depository shall be liable for damages at the rate of one percent (1%) per month for any delay in paying over any county funds when lawfully demanded, and the bond of any depository shall be liable for those expenses and damages.

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

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

The State Treasurer on behalf of any county in the State of Mississippi, which has acquired bonds or other securities as the result of the closing of the depository or depositories thereof, is authorized and empowered in his discretion to sell, trade, refinance or agree to the refinancing of any or all of such bonds now held or owned by it and by any subdivision or taxing district thereof. 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 such 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



802 coupons on any of those bonds in the same manner as he is  
803 authorized herein to deal with the bonds.

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

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

810 27-105-333. **Alternative method of selecting depositories.**

811 In any county in this state where no depository or  
812 depositories were selected and qualified, as provided by law, on  
813 or before the first Monday of January 1932, or in which such  
814 depository or depositories are not selected and qualified annually  
815 thereafter on or before the first Monday in January, the board of  
816 supervisors of such county shall, at the January meeting of the  
817 board or any regular meeting or special meeting thereafter called  
818 for that purpose, select and designate a depository or  
819 depositories into which the tax collector or tax collectors of the  
820 county shall deposit all tax collections and other public funds  
821 collected after the first Monday in January 1932, when collected,  
822 and in which the same shall thereafter be distributed, at the time  
823 and in the manner as now required by law, to the several funds or  
824 accounts in which the same properly belong, as provided by law  
825 herein.

826 Any depository so selected by the board of supervisors shall  
827 be within the State of Mississippi and may hold the deposits at  
828 such rate of interest as may be agreed upon with the board of  
829 supervisors or, in the discretion of the board of supervisors,  
830 without liability for interest unless it is required to be paid  
831 under the provisions of Section 27-105-303, but the \* \* \*  
832 depository shall secure the \* \* \* deposits by pledging with the  
833 State Treasurer such securities in such amounts and upon such  
834 conditions as are now required by law of depositories which

835 qualify as such by bidding therefor.

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

838 27-105-349. County withdrawal of bonds pledged or filed as  
839 security.

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

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

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

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

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

858 27-105-353. \* \* \* Method of selecting municipal  
859 depositories.

860 The board of mayor and aldermen or other municipal  
861 authorities of each and every city, town or village in the state  
862 are \* \* \* required to select a depository in the manner provided  
863 by law for the selection of county depositories. Before being  
864 selected, a depository must be certified by the State Treasurer as  
865 meeting the capital ratio requirement specified in Section  
866 27-105-5 or 27-105-6. An institution shall not be a qualified  
867 depository and shall not receive any municipal funds unless its

868 ratio has been certified annually by the State Treasurer as  
869 meeting the prescribed requirement. Notwithstanding the  
870 foregoing, any financial institution not meeting the prescribed  
871 ratio requirement whose accounts are insured by the Federal  
872 Deposit Insurance Corporation or \* \* \* or any successors to such  
873 insurance corporation may receive municipal funds in an amount not  
874 exceeding the amount which is insured by such insurance  
875 corporations and may qualify as a municipal depository to the  
876 extent of such insurance.

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

879 27-105-355. **Security on bond.**

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

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

885 27-105-359. **Municipal withdrawal of bonds pledged or filed**  
886 **as security.**

887 The State Treasurer is authorized and empowered \* \* \* to  
888 allow municipal depositories of municipal funds of every kind and  
889 character to withdraw any bonds, including corporate surety bonds,  
890 pledged or filed or deposited as security for such deposits:

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

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

897 Provided, always, that all such bonds shall be such as are  
898 authorized by law to be pledged or filed as security for such  
899 deposits, or if a corporate surety bond, it must be made by a  
900 surety company authorized to do business in this state; and

901 provided further, that all such deposits shall be fully secured  
902 and covered as required by Section 27-105-5.

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

905 SECTION 17. This act shall take effect and be in force from  
906 and after its passage.