

By: Guice

To: Banks and Banking

HOUSE BILL NO. 1381
(As Passed the House)

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

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

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

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

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

125 (c) Obligations of the Tennessee Valley Authority.

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

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

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

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

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

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

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

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

159 The State Treasurer is authorized and empowered to:

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

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

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

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

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

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

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

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

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

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

207 (e) Compare public deposit information reported by

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

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

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

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

221 (5) A qualified public funds depository shall:

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

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

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

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

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

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

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

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

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

306 (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.

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

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

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

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

362 27-105-6. Further qualification as public funds depository
363 **participating in public funds guaranty pool.**

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

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

372 (3) Any financial institution qualifying as a guaranty pool

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

494 (9) A public funds guaranty pool member failing to meet the
495 requirements for membership in subsection (4) of this section or
496 as modified by the Guaranty Pool Board under its authority at
497 subsection (6) is required to withdraw from the guaranty pool.
498 The State Treasurer shall notify the public funds guaranty pool
499 member of the effective date of the withdrawal not less than
500 thirty (30) days before that such effective date. Not later than
501 the effective date of withdrawal, the withdrawing pool member must
502 pledge and place on deposit with the State Treasurer securities
503 equal to one hundred five percent (105%) of the outstanding
504 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

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

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

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

561 (b) Each such numerator shall be divided by a
562 denominator, which shall be the sum of (i) thirty-five percent
563 (35%) of the first Two Hundred Fifty Million Dollars
564 (\$250,000,000.00) or portion thereof of the Mississippi-based
565 deposits of each qualified depository, plus (ii) twenty-five
566 percent (25%) of the next Two Hundred Fifty Million Dollars
567 (\$250,000,000.00) or portion thereof of the Mississippi-based
568 deposits of each qualified depository, plus (iii) fifteen percent
569 (15%) of the Mississippi-based deposits of each qualified
570 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.

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

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

611 27-105-13. **Commission form.**

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

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

628 27-105-25. **Failure to pay treasurer's check.**

629 (1) In the event of the failure of any public funds
630 depository to pay any check lawfully issued by the State of
631 Mississippi or any agency or department of the state or any
632 county, municipality or other governmental unit on any funds on
633 deposit belonging to the State of Mississippi or any agency or
634 department of the state or any county, municipality or other
635 governmental unit in the depository, the State Treasurer is * * *
636 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 depositors") 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 depositors
668 by a percentage that represents the share of public fund deposits
669 held by the depository divided by the total public deposits held

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

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

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

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

695 27-105-35. **Commission meetings and duties.**

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

702 (a) Approve, upon proper application, the depositories

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

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

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

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

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

722 The State Treasurer may be authorized by the commission to:

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

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

734 (iii) Make a detailed report of all matters and
735 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,

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

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

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

822 27-105-333. **Alternative method of selecting depositories.**

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

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

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

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

850 27-105-349. **County withdrawal of bonds pledged or filed as**
851 **security.**

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

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

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

862 * * * All such bonds shall be such as are authorized by law
863 to be pledged or filed as security for those deposits, or if a
864 corporate surety bond, it must be made by a surety company
865 authorized to do business in this state; and in addition, all such
866 deposits shall be fully secured and covered as required by Section
867 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

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

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

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

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

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

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