

By: Mettetal, Jackson

To: Business and
Financial
Institutions

SENATE BILL NO. 3064

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.

39 Such 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 such forms shall subject the
50 officer swearing thereto 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 commencing 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, such 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 thereof or
60 by any county, municipality or other governmental unit in excess
61 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 such 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 quaranty pool member pursuant to Section 27-105-6 by submitting an
69 application to the State Treasurer as provided by Section
70 27-105-9, if such institution has a primary capital to total
71 assets ratio of six and one-half percent (6-1/2%) or more and
72 otherwise meets the requirements of Section 27-105-6. Such ratio
73 shall be determined not later than December 1 in each calendar
74 year by the State Treasurer on the basis of balance sheets of
75 applying 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 such
83 forms shall subject the officer swearing thereto 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 commencing 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, such 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 thereof or by any county,
95 municipality or other governmental unit in excess of that portion
96 of accounts insured by the Federal Deposit Insurance Corporation,
97 or any successor thereto, and executing a guarantee equal to the
98 balance of fifty-two and one-half percent (52-1/2%) of the average
99 daily balance of funds on deposit in the aggregate by the State of
100 Mississippi or any agency or department thereof or by any county,
101 municipality or other governmental unit in excess of that portion
102 of accounts insured by the Federal Deposit Insurance Corporation,
103 or any successor thereto.

104 (3) The term "qualified bonds, notes and liquid securities"
105 as used herein 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 which 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 thereof,
128 or any municipality located in the State of Mississippi, or the
129 Yazoo Mississippi Delta and the Mississippi Levee Districts, or
130 the Mississippi Higher Education Assistance Corporation or its
131 successors, or any body corporate and politic created pursuant to
132 the 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 said items (c), (d), (e) and (f),
143 inclusive, which are rated substandard by any of the appropriate
144 supervisory authorities having jurisdiction over said depository
145 or by any recognized national rating agency engaged in the
146 business of rating bonds, shall not be eligible for pledging as
147 security to the State of Mississippi by any qualified state
148 depository.

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

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

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

160 The State Treasurer is authorized and empowered to:

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

171 (ii) Accept, in lieu of the securities themselves,
172 safekeeping trust receipts issued to the State Treasurer by the
173 authorized safekeeping banks listed in subparagraph (i) above;
174 such safekeeping trust receipts to describe the securities and

175 show that such securities are held for safekeeping for the account
176 of the State Treasurer or other governmental unit. The securities
177 so deposited shall not be commingled in any manner with the assets
178 of the safekeeping bank.

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

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

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

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

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

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

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

208 (e) Compare public deposit information reported by
209 qualified public funds depositories and public depositors. Such
210 comparison shall be conducted for qualified public depositories
211 based on established financial condition criteria of record on
212 September 30.

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

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

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

222 (5) A qualified public funds depository shall:

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

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

241 (c) Submit to the Treasurer annually, not later than
242 November 30, a report of all public deposits held for the credit
243 of all public depositors at the close of business on September 30.
244 Such annual report shall consist of public deposit information in
245 a report format prescribed by the Treasurer. The manner of
246 required filing may be as a signed writing or electronic data
247 transmission, at the discretion of the Treasurer.

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

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

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

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

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

274 this subsection (8), the State Treasurer is empowered to sign such
275 documents on behalf of any such county, municipality or
276 governmental unit as may be required by a trustee custodian,
277 including, but not limited to any documentation necessary to
278 change the pledgee from such county, municipality or governmental
279 unit as pledgee to the State Treasurer as agent.

280 (9) As used in this section and Section 271-105-6, the
281 following terms shall have the meanings set forth below:

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

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

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

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

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

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

304 (c) The term "intangible assets" means those assets
305 that would be required to be reported in the item for intangible
306 assets in a Federal Deposit Insurance Corporation (FDIC) banking

307 institution's "Reports of Condition and Income" (Call Reports),
308 regardless of whether such institution is insured by the FDIC.

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

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

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

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

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

340 the total by the number of calendar days in the month. Deposit
341 insurance is then deducted from each account balance and the
342 resulting amounts are totaled to obtain the average daily balance.

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

348 (j) The term "governmental unit" means the State of
349 Mississippi, any count, any incorporated city, town or village,
350 any school district, any utility district, any community college,
351 any institution of higher learning, or any municipal airport
352 authority or regional airport authority in the state.

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

355 27-105-6. Further qualification as public funds depository
356 participating in public funds guaranty pool.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

405 (c) One (1) representative of financial institutions

406 with assets of less than Three Hundred Million Dollars
407 (\$300,000,000.00) chosen by the State Treasurer from a list of two
408 (2) bankers nominated by the Mississippi Bankers Association;

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

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

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

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

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

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

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

430 Upon expiration of these terms, members shall be appointed
431 thereafter for two-year terms. Any member is eligible for
432 reappointment and shall serve until a successor qualifies. If a
433 vacancy occurs in the position of any appointed member, a new
434 member shall be appointed in the same manner as such member's
435 predecessor for the remainder of the unexpired term. A member of
436 the board shall receive no compensation for service on the board.

437 The Guaranty Pool Board shall elect a chair and vice chair
438 and shall also designate a secretary who need not be a member of

439 the Guaranty Pool Board. The secretary shall keep a record of the
440 proceedings of the Guaranty Pool Board and shall be the custodian
441 of all printed materials filed with or by the advisory committee.
442 Notwithstanding the existence of vacancies on the Guaranty Pool
443 Board, a majority of the members constitutes a quorum. The
444 Guaranty Pool Board shall not take official action in the absence
445 of a quorum.

446 The Guaranty Pool Board may establish criteria in its sole
447 discretion as may be necessary, in addition to the requirements of
448 subsection (4) hereof, for qualification as a guaranty pool member
449 including the promulgation of additional ratios, requiring
450 additional collateral; provided, however, any additional criteria
451 shall be uniformly applied to all participants, although higher
452 collateral pledge levels may be based on different financial
453 criteria, commencing at the quarter next after promulgation and,
454 provided further, however, that an increase in the collateral
455 pledge level shall be made only by a two-thirds (2/3)
456 supermajority vote of the entire Guaranty Pool Board. The
457 Guaranty Pool Board is hereby authorized to promulgate regulation
458 in order to more fully carry out its obligations herewith.

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

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

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

469 (8) A public funds guaranty pool member may effect a
470 voluntary withdrawal from the guaranty pool by giving written
471 notice to the State Treasurer. Notice of withdrawal shall be

472 mailed or delivered in sufficient time to be received by the State
473 Treasurer at least one hundred eighty (180) days before the
474 effective date of withdrawal. On the effective date of
475 withdrawal, the guaranty pool member shall pledge and place on
476 deposit with the State Treasurer securities equal to one hundred
477 five percent (105%) of the outstanding balances of public funds
478 held less the amount of funds insured by the Federal Deposit
479 Insurance Corporation.

480 The contingent liability for any loss prior to the effective
481 date of withdrawal of the depository withdrawing from the guaranty
482 pool shall continue after the effective date of the withdrawal for
483 a period of six (6) months.

484 (9) A public funds guaranty pool member failing to meet the
485 requirements for membership in subsection (4) hereof or as
486 modified by the Guaranty Pool Board under its authority at
487 subsection (6) is required to withdraw from the guaranty pool.
488 The State Treasurer shall notify the public funds guaranty pool
489 member of the effective date of the withdrawal not less than
490 thirty (30) days prior to such effective date. Not later than the
491 effective date of withdrawal, the withdrawing pool member must
492 pledge and place on deposit with the State Treasurer securities
493 equal to one hundred five percent (105%) of the outstanding
494 balances of public funds held less the amount of funds insured by
495 the Federal Deposit Insurance Corporation or pay over such funds
496 to the public depositor.

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

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

502 27-105-9. **Application for keeping state funds; pro rata**
503 **allocation.**

504 The State Treasure shall give notice of the provisions of

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

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

520 State funds required for current operation, as determined
521 pursuant to Section 27-105-33, shall be deposited in one or more
522 demand accounts. State funds not required for current operation,
523 as determined pursuant to Section 27-105-33, shall be deposited in
524 one or more interest-bearing accounts or time certificates of
525 deposit, or otherwise invested pursuant to Section 27-105-33.
526 When any depository holding state demand accounts receives an
527 order from the Treasurer or his designee to transfer collected
528 funds out of such accounts to any interest-bearing accounts or
529 time certificates of deposit in such depository or any other
530 depository pursuant to the provisions of this chapter, the
531 transfer shall be made immediately or as soon thereafter as
532 practicable. If the Treasurer finds that any depository is not
533 transferring funds as hereinabove provided, such depository shall
534 be disqualified from holding or receiving any state demand
535 accounts for a period of time not to exceed one (1) year.

536 All funds allocated to approved depositories under the
537 provisions of subsection (b) of Section 27-105-33 shall be

538 allocated to qualified depositories of the state on a pro rata
539 basis determined as follows:

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

550 (b) Each such numerator shall be divided by a
551 denominator, which shall be the sum of (i) thirty-five percent
552 (35%) of the first Two Hundred Fifty Million Dollars
553 (\$250,000,000.00) or portion thereof of the Mississippi-based
554 deposits of each qualified depository, plus (ii) twenty-five
555 percent (25%) of the next Two Hundred Fifty Million Dollars
556 (\$250,000,000.00) or portion thereof of the Mississippi-based
557 deposits of each qualified depository, plus (iii) fifteen percent
558 (15%) of the Mississippi-based deposits of each qualified
559 depository in excess of Five Hundred Million Dollars
560 (\$500,000,000.00), being the sum of the numerators of all
561 depositories. The resulting percentage shall be the pro rata
562 share of such depository in funds allocated under Section
563 27-105-33(b).

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

571 total deposits held at deposit facilities located in the State of
572 Mississippi on June 30 as reported annually by the Federal Deposit
573 Insurance Corporation in the above-referenced report.

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

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

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

600 27-105-13. **Commission form.**

601 The state depository commission shall design and stipulate
602 the wording of the form of commission to be issued to each and
603 every duly approved depository for public funds and the said form

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

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

617 27-105-25. **Failure to pay treasurer's check.**

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

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

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

669 (3) The State Treasurer shall distribute the funds to the

670 public depositories of such public funds depository in default
671 according to their validated claims.

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

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

683 27-105-35. **Commission meetings and duties.**

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

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

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

701 (c) Approve and fix the margin of security to be
702 maintained by public funds depositories, but in no instance shall

703 the security be less than is specifically required by law;

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

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

711 The State Treasurer may be authorized by the commission
712 to:

713 (i) Receive, transfer, exchange and/or substitute
714 bonds and securities pledged by the depositories to secure public
715 funds deposits; and to accept bonds and securities pledged by the
716 depositories as security for public funds deposits in lieu of any
717 surety bond so held by the commission. Provided, however, that no
718 bond or security shall be received or accepted as security for
719 public funds deposits unless specifically authorized by law and
720 the marginal requirements of the State Depository Commission.

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

724 (iii) Make a detailed report of all matters and
725 transactions relating to the depository bonds and securities at
726 such times and as often as may be required by the State Depository
727 Commission, and provided that exchanges and substitutions of bonds
728 and securities shall not be made but once for each depository
729 during any consecutive three-month period; except, however, that
730 called or matured bonds and securities may be exchanged,
731 substituted or released if marginal requirements are maintained,
732 at the pleasure of the State Treasurer and the depository.

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

735 27-105-315. **Qualification as depository * * *.**

736 (1) Any financial institution in a county, or in an
737 adjoining county where there is no financial institution in the
738 county qualifying, whose accounts are insured by the Federal
739 Deposit Insurance Corporation or any successors to such insurance
740 corporation may qualify as a county depository, if such
741 institution qualifies as a public funds depository pursuant to
742 Section 27-105-5 or a public funds guaranty pool member pursuant
743 to Sections 27-105-5 and 27-105-6. Such qualified financial
744 institution shall secure such deposits by placing qualified
745 securities on deposit with the State Treasurer as provided in
746 Section 27-105-5.

747 * * *

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

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

757 27-105-317. **Commission of depository * * *.**

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

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

762 27-105-329. **Failure to pay county warrants * * *.**

763 In the event of the failure of any county depository to pay
764 any county warrant lawfully issued on any funds on deposit
765 belonging to the county in such depository, the county is hereby
766 empowered to order the State Treasurer to sell such securities as
767 are placed with the State Treasurer by such depository, or call on
768 the public funds guaranty pool if such depository is a member, or

769 so much thereof as may be necessary to cover back into the county
770 treasury the amount of county funds on deposit with such
771 depository, with accrued interest thereon, as provided in Section
772 27-105-25. In the event of the failure of the county depository
773 to pay any warrant when such depository has placed as security
774 surety bonds, the clerk or holder of the warrant shall notify the
775 president of the board of supervisors and he shall take such
776 immediate action as he may deem best and most expedient for
777 covering back into the Treasury all county money on deposit in
778 such depository, and the board of supervisors is authorized to
779 employ counsel, if necessary, to more speedily enforce the
780 payment. The expenses of such collection, including the counsel
781 fee, shall be charged against such depository, and, in addition
782 thereto, said depository shall be liable for damages at the rate
783 of one per cent per month for any delay in paying over any county
784 funds when lawfully demanded, and the bond of any depository shall
785 be liable for said expenses and damages.

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

788 27-105-331. **Acquisition of closed depository securities.**

789 The State Treasurer on behalf of any county in the State of
790 Mississippi, which has acquired bonds or other securities as the
791 result of the closing of the depository or depositories thereof,
792 is hereby authorized and empowered in their discretion to sell,
793 trade, refinance or agree to the refinancing of any or all of such
794 bonds now held or owned by it and by any subdivision or taxing
795 district thereof. The State Treasurer is further authorized and
796 empowered, in his discretion, in refinancing any of said bonds, to
797 agree to a reduction of the principal sum and likewise to agree to
798 a reduction of the interest rate thereon. The State Treasurer is
799 authorized and empowered, in his discretion, to sell any of such
800 bonds at or for the best price obtainable, or to trade said bonds
801 for other bonds, when in the judgment of the State Treasurer the

802 best interests of the county would be advanced thereby, and he is
803 further authorized to handle and negotiate any matured interest
804 coupons on any of said bonds in the same manner as he is
805 authorized herein to deal with said bonds.

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

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

812 27-105-333. **Alternative method of selecting depositories.**

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

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

835 State Treasurer such securities in such amounts and upon such
836 conditions as are now required by law of depositories which
837 qualify as such by bidding therefor.

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

840 27-105-349. **County withdrawal of bonds pledged or filed as**
841 **security.**

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

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

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

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

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

860 27-105-353. * * * **Method of selecting municipal**
861 **depositories.**

862 The board of mayor and aldermen or other municipal
863 authorities of each and every city, town or village in the state
864 are hereby required to select a depository in the manner provided
865 by law for the selection of county depositories. Before being
866 selected, a depository must be certified by the State Treasurer as
867 meeting the capital ratio requirement specified in Section

868 27-105-5 or 27-105-6 * * *. An institution shall not be a
869 qualified depository and shall not receive any municipal funds
870 unless its ratio has been certified annually by the State
871 Treasurer as meeting the prescribed requirement. Notwithstanding
872 the foregoing, any financial institution not meeting the
873 prescribed ratio requirement whose accounts are insured by the
874 Federal Deposit Insurance Corporation or * * * or any successors
875 to such insurance corporation may receive municipal funds in an
876 amount not exceeding the amount which is insured by such insurance
877 corporations and may qualify as a municipal depository to the
878 extent of such insurance.

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

881 27-105-355. **Security on bond.**

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

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

887 27-105-359. **Municipal withdrawal of bonds pledged or filed**
888 **as security.**

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

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

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

900 Provided, always, that all such bonds shall be such as are

901 authorized by law to be pledged or filed as security for such
902 deposits, or if a corporate surety bond, it must be made by a
903 surety company authorized to do business in this state; and
904 provided further, that all such deposits shall be fully secured
905 and covered as required by Section 27-105-5.

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

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