

By: Mettetal, Jackson

To: Business and
Financial
InstitutionsSENATE BILL NO. 3064
(As Sent to Governor)

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 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 quaranty 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 this Section 27-105-5,
191 the 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 of 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 State Treasurer and the State Auditor under the provisions of
272 this chapter.

273 (8) The State Treasurer is empowered to assume

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

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

287 (a) The term "primary capital" means the sum of common
288 stockholders' equity capital, including common stock and related
289 surplus, undivided profits, disclosed capital reserves that
290 represent a segregation of undivided profits, and foreign currency
291 translation adjustments, less net unrealized holding losses on
292 profits, and foreign currency translation adjustments, less net
293 unrealized holding losses on available-for-sale equity securities
294 with readily determinable fair values; noncumulative perpetual
295 preferred stock, including any related surplus; and minority
296 interests in the equity capital accounts of consolidated
297 subsidiaries; the allowance for loan and lease losses; cumulative
298 perpetual preferred stock, long-term preferred stock (original
299 maturity of at least twenty (20) years) and any related surplus;
300 perpetual preferred stock (and any related surplus) where the
301 dividend is reset periodically based, in whole or in part, on the
302 bank's current credit standing, regardless of whether the
303 dividends are cumulative or noncumulative; hybrid capital
304 instruments, including mandatory convertible debt securities; term
305 subordinated debt and intermediate-term preferred stock (original
306 average maturity of five (5) years or more) and any related

307 surplus; and net unrealized holding gains on equity securities.

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

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

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

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

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

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

327 (d) The term "mandatory convertible debt" means a
328 subordinated debt instrument meeting the requirements of the
329 Federal Deposit Insurance Corporation that requires the issuer to
330 convert the instrument into common or perpetual preferred stock by
331 a date at or before the maturity of the debt instrument. The
332 maturity of these instruments must be twelve (12) years or less.

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

339 (f) The term "perpetual preferred stock" means a

340 preferred stock that does not have a stated maturity date or that
341 cannot be redeemed at the option of the holder and that has no
342 other provisions that will require future redemption of the issue.

343 It includes those issues of preferred stock that automatically
344 convert into common stock at a stated date. It excludes those
345 issues, the rate on which increases, or can increase, in such a
346 manner that would effectively require the issuer to redeem the
347 issue.

348 (g) The term "total assets" means the average of total
349 assets of any financial institution that are or would be included
350 in a Federal Deposit Insurance Corporation (FDIC) banking
351 institution's "Reports of Condition and Income" (Call Reports),
352 regardless of whether the institution is insured by the FDIC, plus
353 the allowance for loan and lease losses, minus assets classified
354 loss and minus intangible assets other than mortgage servicing
355 rights.

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

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

369 (j) The term "governmental unit" means the State of
370 Mississippi, any board, commission, department, office or other
371 agency of the State of Mississippi, any county, any incorporated
372 city, town or village, any school district, any utility district,

373 any community college, any institution of higher learning, or any
374 municipal airport authority or regional airport authority in the
375 state.

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

378 27-105-6. Further qualification as public funds depository
379 participating in public funds guaranty pool.

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

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

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

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

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

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

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

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

405 (5) In fulfilling the requirements of this section, the

406 Treasurer has the power to:

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

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

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

416 (d) Perform financial analysis of any qualified public
417 funds depository as needed.

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

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

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

428 (c) One (1) representative of financial institutions
429 with assets of less than Three Hundred Million Dollars
430 (\$300,000,000.00) chosen by the State Treasurer from a list of two
431 (2) bankers nominated by the Mississippi Bankers Association;

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

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

438 (f) One (1) member chosen by the State Treasurer from a

439 list of two (2) municipal officials nominated by the Mississippi
440 Municipal League; and

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

443 The Guaranty Pool Board shall determine the effective date of
444 the public funds guaranty pool, which date shall be no earlier
445 than July 1, 2001, and so notify the State Treasurer. All
446 nominees of the Mississippi Bankers Association shall be employed
447 by a financial institution that is a member of the public funds
448 guaranty pool.

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

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

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

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

470 In addition to the requirements of subsection (4) of this
471 section, the Guaranty Pool Board, by a two-thirds (2/3)

472 supermajority vote of the entire Guaranty Pool Board, may
473 establish additional criteria for qualification as a guaranty pool
474 member, including promulgating additional ratios, requiring
475 stricter ratios than provided under subsection (4), or requiring
476 additional collateral; however, any additional criteria shall be
477 uniformly applied to all participants, although higher collateral
478 pledge levels may be based on different financial criteria. Any
479 reduction in previously approved criteria shall likewise be
480 subject to a two-thirds (2/3) supermajority vote of the entire
481 Guaranty Pool Board. Any additional criteria will become
482 effective at the quarter next after the Guaranty Pool Board votes.

483 The Guaranty Pool Board is authorized to promulgate regulations
484 in order to more fully carry out its obligations under this
485 paragraph.

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

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

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

496 (8) A public funds guaranty pool member may effect a
497 voluntary withdrawal from the guaranty pool by giving written
498 notice to the State Treasurer. Notice of withdrawal shall be
499 mailed or delivered in sufficient time to be received by the State
500 Treasurer at least one hundred eighty (180) days before the
501 effective date of withdrawal. On the effective date of
502 withdrawal, the guaranty pool member shall pledge and place on
503 deposit with the State Treasurer securities equal to one hundred
504 five percent (105%) of the outstanding balances of public funds

505 held less the amount of funds insured by the Federal Deposit
506 Insurance Corporation.

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 after the effective date of the withdrawal for
510 a period of six (6) months.

511 (9) A public funds guaranty pool member failing to meet the
512 requirements for membership in subsection (4) of this section or
513 as modified by the Guaranty Pool Board under its authority at
514 subsection (6) is required to withdraw from the guaranty pool.
515 The State Treasurer shall notify the public funds guaranty pool
516 member of the effective date of the withdrawal not less than
517 thirty (30) days before that effective date. Not later than the
518 effective date of withdrawal, the withdrawing pool member must
519 pledge and place on deposit with the State Treasurer securities
520 equal to one hundred five percent (105%) of the outstanding
521 balances of public funds held less the amount of funds insured by
522 the Federal Deposit Insurance Corporation or pay over those funds
523 to the public depositor.

524 The contingent liability for any loss before the effective
525 date of withdrawal of the depository withdrawing from the guaranty
526 pool shall continue for a period of one (1) year after the
527 effective date of the withdrawal.

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

530 27-105-9. **Application for keeping state funds; pro rata**
531 **allocation.**

532 The State Treasurer shall give notice of the provisions of
533 this article once a month to each eligible bank and financial
534 institution in the state having an amount of state funds less than
535 the amount authorized to be allocated to the bank or financial
536 institution under Section 27-105-33 and this section, and shall
537 receive such applications as they or any of them may make for the

538 privilege of keeping any part of public funds on forms to be
539 furnished by the Treasurer, and shall place the state funds with
540 the institutions applying for them if the depository application
541 has been duly approved by the Treasurer.

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

548 State funds required for current operation, as determined
549 under Section 27-105-33, shall be deposited in one or more demand
550 accounts. State funds not required for current operation, as
551 determined under Section 27-105-33, shall be deposited in one or
552 more interest-bearing accounts or time certificates of deposit, or
553 otherwise invested under Section 27-105-33. When any depository
554 holding state demand accounts receives an order from the Treasurer
555 or his designee to transfer collected funds out of those accounts
556 to any interest-bearing accounts or time certificates of deposit
557 in the depository or any other depository under the provisions of
558 this chapter, the transfer shall be made immediately or as soon
559 thereafter as practicable. If the Treasurer finds that any
560 depository is not transferring funds as * * * provided above, the
561 depository shall be disqualified from holding or receiving any
562 state demand accounts for a period of time not to exceed one (1)
563 year.

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

568 (a) Each qualified depository shall be assigned a
569 numerator, which shall be the sum of (i) thirty-five percent (35%)
570 of that portion of its Mississippi-based deposits that does not

571 exceed Two Hundred Fifty Million Dollars (\$250,000,000.00), plus
572 (ii) twenty-five percent (25%) of that portion of its
573 Mississippi-based deposits that exceed Two Hundred Fifty Million
574 Dollars (\$250,000,000.00) but does not exceed Five Hundred Million
575 Dollars (\$500,000,000.00), plus (iii) fifteen percent (15%) of
576 that portion of its Mississippi-based deposits that exceeds Five
577 Hundred Million Dollars (\$500,000,000.00).

578 (b) Each such numerator shall be divided by a
579 denominator, which shall be the sum of (i) thirty-five percent
580 (35%) of the first Two Hundred Fifty Million Dollars
581 (\$250,000,000.00) or portion thereof of the Mississippi-based
582 deposits of each qualified depository, plus (ii) twenty-five
583 percent (25%) of the next Two Hundred Fifty Million Dollars
584 (\$250,000,000.00) or portion thereof of the Mississippi-based
585 deposits of each qualified depository, plus (iii) fifteen percent
586 (15%) of the Mississippi-based deposits of each qualified
587 depository in excess of Five Hundred Million Dollars
588 (\$500,000,000.00), being the sum of the numerators of all
589 depositories. The resulting percentage shall be the pro rata
590 share of the depository in funds allocated under Section
591 27-105-33(b).

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

602 State funds allocated to each approved depository shall not
603 be more than four percent (4%) of the depository's

604 Mississippi-based deposits. Interest-bearing time certificates of
605 deposit and other interest-bearing deposits, either general or
606 special, made under Section 27-105-33, may be treated as not
607 coming within this percentage if, in the discretion of the
608 Treasurer, the best interest of the state can be served to
609 increase its earnings and decrease its expenses in the handling of
610 the state funds; however, any and all depositories must first
611 qualify and be approved by the Treasurer to receive demand
612 deposits subject to withdrawal or transfer by check of the
613 Treasurer when properly presented and so demanded. For the
614 purposes of this section, the term "paid-in and earned capital
615 funds" means the sum of common stock, perpetual preferred stock,
616 surplus, undivided profits and capital reserves as these amounts
617 are or would be reflected in a Federal Deposit Insurance
618 Corporation (FDIC) banking institution's "Reports of Condition and
619 Income" (Call Reports), regardless of whether the institution is
620 insured by the FDIC.

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

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

628 27-105-13. **Commission form.**

629 The State Depository Commission shall design and stipulate
630 the wording of the form of commission to be issued to each and
631 every duly approved depository for public funds and the * * * form
632 of commission, when so approved, shall be spread on the minutes of
633 the State Depository Commission showing its approval, and
634 the * * * form of commission shall recite the terms and conditions
635 of the depository contract based on the law and the regulations.
636 The State Depository Commission is * * * authorized to amend

637 and/or rewrite the form of commission to be used from time to time
638 as the need arises. The form of commission, when issued to a duly
639 qualified and approved depository, shall be signed by the
640 Secretary of the State Depository Commission and a copy of the
641 approvals shall be kept for a period of three (3) years before
642 being destroyed.

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

645 27-105-25. **Failure to pay treasurer's check.**

646 (1) In the event of the failure of any public funds
647 depository to pay any check lawfully issued by the State of
648 Mississippi or any agency or department of the state or any
649 county, municipality or other governmental unit on any funds on
650 deposit belonging to the State of Mississippi or any agency or
651 department of the state or any county, municipality or other
652 governmental unit in the depository, the State Treasurer is * * *
653 empowered to sell such securities as are placed with him by the
654 depository, or so much of them as is necessary to cover back into
655 the * * * Treasury of the State of Mississippi or any agency or
656 department of the state or any county, municipality or other
657 governmental unit the amount of state funds on deposit with the
658 depository with accrued interest thereon in excess of applicable
659 deposit insurance, and the sale of the securities shall be made by
660 the State Treasurer at the best price that he can obtain at either
661 public or private sale, and in the event of the failure of the
662 depository to pay any * * * check when the depository has placed
663 as security surety bonds, the Treasurer shall notify the Attorney
664 General and that officer shall take such immediate action as he
665 may deem most expedient for covering back into the Treasury of the
666 State of Mississippi or any agency or department of the state or
667 any county, municipality or other governmental unit all state
668 money on deposit in the depository. In addition, the Attorney
669 General is authorized to employ counsel, if necessary, to more

670 speedily enforce the payment and expense of that collection,
671 including counsel fees, to be charged against the depository, and,
672 in addition thereto, the depository will be liable for damages at
673 the rate of one percent (1%) per month for any delay in paying
674 over any state funds when demanded, and the bond of any depository
675 shall be liable for those expenses and damages.

676 (2) If the loss to the State of Mississippi or any agency or
677 department of the state or any county, municipality or other
678 governmental unit (hereinafter "public depositories") of the
679 depository that is also a public funds guaranty pool member is not
680 covered by deposit insurance or the proceeds of the sale of
681 securities, the State Treasurer shall provide coverage of the
682 remaining loss by assessment against the other public funds
683 guaranty pool members. The assessment shall be determined by
684 multiplying the total amount of the loss to all public depositories
685 by a percentage that represents the share of public fund deposits
686 held by the depository divided by the total public deposits held
687 by all public funds guaranty pool members, excluding the public
688 deposits of the defaulting depository, as determined by the State
689 Treasurer from the average of the six (6) most recent month-end
690 reports of the public funds guaranty pool members provided under
691 Section 27-105-6. Each public funds guaranty pool member shall
692 pay its assessment to the State Treasurer within seven (7)
693 business days after it receives notice of the assessment. If a
694 public funds guaranty pool member fails to pay its assessment when
695 due, the State Treasurer shall satisfy the assessment by selling
696 securities pledged by any depository failing to pay the
697 assessment.

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

701 (4) Public depositories receiving payment under the provisions
702 of this section shall assign to the State Treasurer any interest

703 they may have in funds that may subsequently be made available to
704 the depository in default, if the depository in default or its
705 receiver provides funds to the State Treasurer, the State
706 Treasurer shall distribute the funds, plus all accrued interest
707 that has accumulated from the investment of the funds, if any, to
708 the public funds guaranty pool members that paid assessments on
709 the same pro rata basis as the assessments were paid.

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

712 27-105-35. **Commission meetings and duties.**

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

719 (a) Approve, upon proper application, the depositories
720 for the State of Mississippi that are qualified to receive and
721 hold, subject to demand, the public funds of the state or any
722 subdivision of the state;

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

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

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

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

739 The State Treasurer may be authorized by the commission
740 to:

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

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

752 (iii) Make a detailed report of all matters and
753 transactions relating to the depository bonds and securities at
754 such times and as often as may be required by the State Depository
755 Commission * * *. Exchanges and substitutions of bonds and
756 securities shall not be made but once for each depository during
757 any consecutive three-month period; * * * however, * * * called or
758 matured bonds and securities may be exchanged, substituted or
759 released if marginal requirements are maintained, at the pleasure
760 of the State Treasurer and the depository.

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

763 27-105-315. **Qualification as depository * * *.**

764 (1) Any financial institution in a county, or in an
765 adjoining county where there is no financial institution in the
766 county qualifying, whose accounts are insured by the Federal
767 Deposit Insurance Corporation or any successors to that insurance
768 corporation may qualify as a county depository, if the institution

769 qualifies as a public funds depository under Section 27-105-5 or a
770 public funds guaranty pool member under Sections 27-105-5 and
771 27-105-6. The qualified financial institution shall secure those
772 deposits by placing qualified securities on deposit with the State
773 Treasurer as provided in Section 27-105-5.

774 * * *

775 (2) Notwithstanding the foregoing, any financial institution
776 not meeting the prescribed ratio requirement whose accounts are
777 insured by the Federal Deposit Insurance Corporation * * * or any
778 successors to that insurance corporation, may receive county funds
779 in an amount not exceeding the amount that is insured by that
780 insurance corporation and may qualify as a county depository to
781 the extent of that insurance.

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

784 27-105-317. **Commission of depository * * *.**

785 A county depository must be issued a commission under Section
786 27-105-11 before receipt of county deposits.

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

789 27-105-329. **Failure to pay county warrants * * *.**

790 In the event of the failure of any county depository to pay
791 any county warrant lawfully issued on any funds on deposit
792 belonging to the county in the depository, the county is * * *
793 empowered to order the State Treasurer to sell such securities as
794 are placed with the State Treasurer by the depository, or call on
795 the public funds guaranty pool if the depository is a member, or
796 so much of them as may be necessary to cover back into the county
797 treasury the amount of county funds on deposit with the
798 depository, with accrued interest thereon, as provided in Section
799 27-105-25. In the event of the failure of the county depository
800 to pay any warrant when the depository has placed as security
801 surety bonds, the clerk or holder of the warrant shall notify the

802 president of the board of supervisors and he shall take such
803 immediate action as he may deem best and most expedient for
804 covering back into the Treasury all county money on deposit in the
805 depository, and the board of supervisors is authorized to employ
806 counsel, if necessary, to more speedily enforce the payment. The
807 expenses of the collection, including the counsel fee, shall be
808 charged against the depository, and, in addition thereto, the
809 depository shall be liable for damages at the rate of one percent
810 (1%) per month for any delay in paying over any county funds when
811 lawfully demanded, and the bond of any depository shall be liable
812 for those expenses and damages.

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

815 27-105-331. **Acquisition of closed depository securities.**

816 The State Treasurer, on behalf of any county in the State of
817 Mississippi that has acquired bonds or other securities as the
818 result of the closing of the depository or depositories of the
819 county, is authorized and empowered in his discretion to sell,
820 trade, refinance or agree to the refinancing of any or all of
821 those bonds now held or owned by it and by any subdivision or
822 taxing district of the county. The State Treasurer is further
823 authorized and empowered, in his discretion, in refinancing any of
824 those bonds, to agree to a reduction of the principal sum and
825 likewise to agree to a reduction of the interest rate thereon.
826 The State Treasurer is authorized and empowered, in his
827 discretion, to sell any of those bonds at or for the best price
828 obtainable, or to trade those bonds for other bonds, when in the
829 judgment of the State Treasurer the best interests of the county
830 would be advanced thereby, and he is further authorized to handle
831 and negotiate any matured interest coupons on any of those bonds
832 in the same manner as he is authorized in this section to deal
833 with the bonds.

834 All of the proceeds of the sale, refinancing, trading, or

835 collection of any of those bonds shall be accounted for by the
836 State Treasurer and placed to the credit of the subdivisions or
837 funds of the counties entitled to those proceeds.

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

840 27-105-333. **Alternative method of selecting depositories.**

841 In any county in this state where no depository or
842 depositories were selected and qualified, as provided by law, on
843 or before the first Monday of January 1932, or in which the
844 depository or depositories are not selected and qualified annually
845 thereafter on or before the first Monday in January, the board of
846 supervisors of the county shall, at the January meeting of the
847 board or any regular meeting or special meeting thereafter called
848 for that purpose, select and designate a depository or
849 depositories into which the tax collector or tax collectors of the
850 county shall deposit all tax collections and other public funds
851 collected after the first Monday in January 1932, when collected,
852 and in which the same shall thereafter be distributed, at the time
853 and in the manner as now required by law, to the several funds or
854 accounts in which the same properly belong, as provided by law
855 herein.

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

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

868 27-105-349. County withdrawal of bonds pledged or filed as
869 security.

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

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

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

880 * * * All such bonds shall be such as are authorized by law
881 to be pledged or filed as security for those deposits, or if a
882 corporate surety bond, it must be made by a surety company
883 authorized to do business in this state; and in addition, all such
884 deposits shall be fully secured and covered as required by Section
885 27-105-5.

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

888 27-105-353. * * * Method of selecting municipal
889 depositories.

890 The board of mayor and aldermen or other municipal
891 authorities of each and every city, town or village in the state
892 are * * * required to select a depository in the manner provided
893 by law for the selection of county depositories. Before being
894 selected, a depository must be certified by the State Treasurer as
895 meeting the capital ratio requirement specified in Section
896 27-105-5 or 27-105-6 * * *. An institution shall not be a
897 qualified depository and shall not receive any municipal funds
898 unless its ratio has been certified annually by the State
899 Treasurer as meeting the prescribed requirement. Notwithstanding
900 the foregoing, any financial institution not meeting the

901 prescribed ratio requirement whose accounts are insured by the
902 Federal Deposit Insurance Corporation or * * * or any successors
903 to that insurance corporation may receive municipal funds in an
904 amount not exceeding the amount that is insured by that insurance
905 corporation and may qualify as a municipal depository to the
906 extent of that insurance.

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

909 27-105-355. **Security on bond.**

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

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

915 27-105-359. **Municipal withdrawal of bonds pledged or filed**
916 **as security.**

917 The State Treasurer is authorized and empowered * * * to
918 allow municipal depositories of municipal funds of every kind and
919 character to withdraw any bonds, including corporate surety bonds,
920 pledged or filed or deposited as security for those deposits:

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

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

927 * * * All such bonds shall be such as are authorized by law
928 to be pledged or filed as security for those deposits, or if a
929 corporate surety bond, it must be made by a surety company
930 authorized to do business in this state; and in addition, all such
931 deposits shall be fully secured and covered as required by Section
932 27-105-5.

933 SECTION 16. Section 27-105-319, which provides the form of

934 the commission for a county depository, is * * * repealed.

935 SECTION 17. Section 1 and Sections 3 through 16 of this act
936 shall take effect and be in force from and after July 1, 2001.
937 Section 2 of this act shall take effect and be in force from and
938 after the passage of this act.