

**\*\*\*Adopted\*\*\***

**AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 3064**

**By Representative(s) Committee**

28           Amend by striking all after the enacting clause and inserting  
29 in lieu thereof the following:

30

31           SECTION 1. Section 27-105-5, Mississippi Code of 1972, is  
32 amended as follows:

33           27-105-5. **Qualification as public funds depository; State**  
34 **Treasurer authority.**

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

42           That ratio shall be determined not later than December 1 in each  
43 calendar year by the State Treasurer on the basis of balance  
44 sheets of applying institutions at June 30 of the same calendar  
45 year, and an institution shall not be a qualified depository and  
46 shall not receive any public funds unless its ratio has been  
47 certified annually by the Treasurer as meeting the prescribed  
48 requirement. Each applicant shall furnish to the State Treasurer  
49 such financial statements, balance sheets or other documentation,  
50 sworn to by a duly elected officer, on such date or dates and on

51 such forms as the State Treasurer may require. Any knowing or  
52 willful misstatement of fact on those forms shall subject the  
53 officer swearing to them to the penalty of perjury, and the  
54 financial institution of which he is an officer shall not be  
55 eligible to serve as a depository for a period of one (1) year  
56 beginning with the date on which the State Treasurer certifies  
57 that such a misstatement has been made. When so approved by the  
58 State Treasurer, the institution shall place on deposit with the  
59 State Treasurer qualified bonds, notes and liquid securities in an  
60 aggregate amount at least equal to one hundred five percent (105%)  
61 of the average daily balance of funds on deposit in the aggregate  
62 by the State of Mississippi or any agency or department of the  
63 state or by any county, municipality or other governmental unit in  
64 excess of that portion of accounts insured by the Federal Deposit  
65 Insurance Corporation, or any successor thereto \* \* \*.

66 (2) Any financial institution maintaining a deposit-taking  
67 facility in this state whose accounts are insured by the Federal  
68 Deposit Insurance Corporation or any successors to that insurance  
69 corporation and which has been in existence for three (3) or more  
70 years may qualify as a public funds depository and public funds  
71 guaranty pool member under Section 27-105-6 by submitting an  
72 application to the State Treasurer as provided by Section  
73 27-105-9, if the institution has a primary capital to total assets  
74 ratio of six and one-half percent (6-1/2%) or more and otherwise  
75 meets the requirements of Section 27-105-6. That ratio shall be  
76 determined not later than December 1 in each calendar year by the  
77 State Treasurer on the basis of balance sheets of applying  
78 institutions at June 30 of the same calendar year, and an  
79 institution shall not be a member of the public funds guaranty  
80 pool unless its ratio has been certified annually by the Treasurer  
81 as meeting the prescribed requirement. Each applicant shall  
82 furnish to the State Treasurer such financial statements, balance  
83 sheets or other documentation, sworn to by a duly elected officer,  
84 on such date or dates and on such forms as the State Treasurer may  
85 require. Any knowing or willful misstatement of fact on those

86 forms shall subject the officer swearing to them to the penalty of  
87 perjury and the financial institution of which he is an officer  
88 shall not be eligible to serve as a depository for a period of one  
89 (1) year beginning with the date on which the State Treasurer  
90 certifies that such a misstatement has been made. When so  
91 approved by the State Treasurer, the institution shall meet its  
92 security requirement of one hundred five percent (105%) by placing  
93 on deposit with the State Treasurer qualified bonds, notes and  
94 liquid securities in an aggregate amount at least equal to  
95 fifty-two and one-half percent (52-1/2%) of the average daily  
96 balance of funds on deposit in the aggregate by the State of  
97 Mississippi or any agency or department of the state or by any  
98 county, municipality or other governmental unit in excess of that  
99 portion of accounts insured by the Federal Deposit Insurance  
100 Corporation, or any successor thereto, and executing a guarantee  
101 equal to the balance of fifty-two and one-half percent (52-1/2%)  
102 of the average daily balance of funds on deposit in the aggregate  
103 by the State of Mississippi or any agency or department of the  
104 state or by any county, municipality or other governmental unit in  
105 excess of that portion of accounts insured by the Federal Deposit  
106 Insurance Corporation, or any successor thereto.

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

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

112 (b) Bonds, notes and other obligations of the Federal  
113 Home Loan Bank, Federal National Mortgage Association, Federal  
114 Land Banks, Banks for Cooperatives, and Federal Intermediate  
115 Credit Banks, the Government National Mortgage Association, the  
116 Federal Housing Administration, the Farmers Home Administration,  
117 the Farm Credit System Financial Assistance Corporation, the  
118 United States Postal Service, the Federal Financing Bank, the  
119 Student Loan Marketing Association, the Small Business  
120 Administration, the General Services Administration, the

121 Washington Metropolitan Area Transit Authority, the Maritime  
122 Administration, the Export-Import Bank, the International Bank for  
123 Reconstruction and Development, the Inter-American Development  
124 Bank, the Asian Development Bank, loan participations that carry  
125 the guarantee of the Commodity Credit Corporation, an  
126 instrumentality of the United States Department of Agriculture or  
127 other similar agencies approved by the State Treasurer.

128 (c) Obligations of the Tennessee Valley Authority.

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

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

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

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

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

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

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

162           The State Treasurer is authorized and empowered to:

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

173                   (ii) Accept, in lieu of the securities themselves,  
174 safekeeping trust receipts issued to the State Treasurer by the  
175 authorized safekeeping banks listed in subparagraph (i) above; the  
176 safekeeping trust receipts shall describe the securities and show  
177 that the securities are held for safekeeping for the account of  
178 the State Treasurer or other governmental unit. The securities so  
179 deposited shall not be commingled in any manner with the assets of  
180 the safekeeping bank.

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

187           In no event shall the State Treasurer deposit for safekeeping  
188 with any depository securities placed by the depository with the  
189 State Treasurer in qualifying as a public funds depository, nor  
190 shall he accept a safekeeping trust receipt by or from a

191 depository covering securities it owns in order to secure state  
192 funds on deposit with it.

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

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

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

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

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

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

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

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

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

224 (5) A qualified public funds depository shall:

225 (a) Within fifteen (15) days after the end of each

226 calendar month or when requested by the Treasurer, submit to the  
227 Treasurer a written report, under oath, indicating the average  
228 daily balance of all public deposits held by it during the  
229 reported month, required collateral, a detailed schedule of all  
230 securities pledged as collateral, selected financial information,  
231 and any other information that the Treasurer determines necessary  
232 to administer this chapter.

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

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

254 (6) Public depositors shall comply with the following  
255 requirements:

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

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

270           (7) Any information contained in a report of a qualified  
271 public funds depository required under Section 27-105-5 or  
272 27-105-6 shall be considered confidential and exempt from  
273 disclosure and not subject to dissemination to anyone other than  
274 the State Treasurer and the State Auditor under the provisions of  
275 this chapter.

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

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

290           (a) The term "primary capital" means the sum of common  
291 stockholders' equity capital, including common stock and related  
292 surplus, undivided profits, disclosed capital reserves that  
293 represent a segregation of undivided profits, and foreign currency  
294 translation adjustments, less net unrealized holding losses on  
295 profits, and foreign currency translation adjustments, less net



296 unrealized holding losses on available-for-sale equity securities  
297 with readily determinable fair values; noncumulative perpetual  
298 preferred stock, including any related surplus; and minority  
299 interests in the equity capital accounts of consolidated  
300 subsidiaries; the allowance for loan and lease losses; cumulative  
301 perpetual preferred stock, long-term preferred stock (original  
302 maturity of at least twenty (20) years) and any related surplus;  
303 perpetual preferred stock (and any related surplus) where the  
304 dividend is reset periodically based, in whole or in part, on the  
305 bank's current credit standing, regardless of whether the  
306 dividends are cumulative or noncumulative; hybrid capital  
307 instruments, including mandatory convertible debt securities; term  
308 subordinated debt and intermediate-term preferred stock (original  
309 average maturity of five (5) years or more) and any related  
310 surplus; and net unrealized holding gains on equity securities.

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

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

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

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

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

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

330 (d) The term "mandatory convertible debt" means a

331 subordinated debt instrument meeting the requirements of the  
332 Federal Deposit Insurance Corporation that requires the issuer to  
333 convert the instrument into common or perpetual preferred stock by  
334 a date at or before the maturity of the debt instrument. The  
335 maturity of these instruments must be twelve (12) years or less.

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

342 (f) The term "perpetual preferred stock" means a  
343 preferred stock that does not have a stated maturity date or that  
344 cannot be redeemed at the option of the holder and that has no  
345 other provisions that will require future redemption of the issue.

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

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

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

366 to obtain the average daily balance.

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

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

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

381 27-105-6. Further qualification as public funds depository  
382 participating in public funds guaranty pool.

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

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

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

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

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

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

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

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

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

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

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

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

419 (d) Perform financial analysis of any qualified public  
420 funds depository as needed.

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

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

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

431 (c) One (1) representative of financial institutions  
432 with assets of less than Three Hundred Million Dollars  
433 (\$300,000,000.00) chosen by the State Treasurer from a list of two  
434 (2) bankers nominated by the Mississippi Bankers Association;

435 (d) Two (2) representatives of banks at large chosen by

436 the State Treasurer from a list of four (4) bankers nominated by  
437 the Mississippi Bankers Association;

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

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

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

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

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

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

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

469 Notwithstanding the existence of vacancies on the Guaranty Pool  
470 Board, a majority of the members constitutes a quorum. The

471 Guaranty Pool Board shall not take official action in the absence  
472 of a quorum.

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

486 The Guaranty Pool Board is authorized to promulgate regulations  
487 in order to more fully carry out its obligations under this  
488 paragraph.

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

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

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

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

506 deposit with the State Treasurer securities equal to one hundred  
507 five percent (105%) of the outstanding balances of public funds  
508 held less the amount of funds insured by the Federal Deposit  
509 Insurance Corporation.

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

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

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

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

533 27-105-9. **Application for keeping state funds; pro rata**  
534 **allocation.**

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

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

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

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

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

571             (a) Each qualified depository shall be assigned a  
572 numerator, which shall be the sum of (i) thirty-five percent (35%)  
573 of that portion of its Mississippi-based deposits that does not  
574 exceed Two Hundred Fifty Million Dollars (\$250,000,000.00), plus  
575 (ii) twenty-five percent (25%) of that portion of its



576 Mississippi-based deposits that exceed Two Hundred Fifty Million  
577 Dollars (\$250,000,000.00) but does not exceed Five Hundred Million  
578 Dollars (\$500,000,000.00), plus (iii) fifteen percent (15%) of  
579 that portion of its Mississippi-based deposits that exceeds Five  
580 Hundred Million Dollars (\$500,000,000.00).

581 (b) Each such numerator shall be divided by a  
582 denominator, which shall be the sum of (i) thirty-five percent  
583 (35%) of the first Two Hundred Fifty Million Dollars  
584 (\$250,000,000.00) or portion thereof of the Mississippi-based  
585 deposits of each qualified depository, plus (ii) twenty-five  
586 percent (25%) of the next Two Hundred Fifty Million Dollars  
587 (\$250,000,000.00) or portion thereof of the Mississippi-based  
588 deposits of each qualified depository, plus (iii) fifteen percent  
589 (15%) of the Mississippi-based deposits of each qualified  
590 depository in excess of Five Hundred Million Dollars  
591 (\$500,000,000.00), being the sum of the numerators of all  
592 depositories. The resulting percentage shall be the pro rata  
593 share of the depository in funds allocated under Section  
594 27-105-33(b).

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

605 State funds allocated to each approved depository shall not  
606 be more than four percent (4%) of the depository's  
607 Mississippi-based deposits. Interest-bearing time certificates of  
608 deposit and other interest-bearing deposits, either general or  
609 special, made under Section 27-105-33, may be treated as not  
610 coming within this percentage if, in the discretion of the

611 Treasurer, the best interest of the state can be served to  
612 increase its earnings and decrease its expenses in the handling of  
613 the state funds; however, any and all depositories must first  
614 qualify and be approved by the Treasurer to receive demand  
615 deposits subject to withdrawal or transfer by check of the  
616 Treasurer when properly presented and so demanded. For the  
617 purposes of this section, the term "paid-in and earned capital  
618 funds" means the sum of common stock, perpetual preferred stock,  
619 surplus, undivided profits and capital reserves as these amounts  
620 are or would be reflected in a Federal Deposit Insurance  
621 Corporation (FDIC) banking institution's "Reports of Condition and  
622 Income" (Call Reports), regardless of whether the institution is  
623 insured by the FDIC.

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

629 SECTION 4. Section 27-105-13, Mississippi Code of 1972, is  
630 amended as follows:

631 27-105-13. **Commission form.**

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

646 SECTION 5. Section 27-105-25, Mississippi Code of 1972, is  
647 amended as follows:

648 27-105-25. **Failure to pay treasurer's check.**

649 (1) In the event of the failure of any public funds  
650 depository to pay any check lawfully issued by the State of  
651 Mississippi or any agency or department of the state or any  
652 county, municipality or other governmental unit on any funds on  
653 deposit belonging to the State of Mississippi or any agency or  
654 department of the state or any county, municipality or other  
655 governmental unit in the depository, the State Treasurer is \* \* \*  
656 empowered to sell such securities as are placed with him by the  
657 depository, or so much of them as is necessary to cover back into  
658 the \* \* \* Treasury of the State of Mississippi or any agency or  
659 department of the state or any county, municipality or other  
660 governmental unit the amount of state funds on deposit with the  
661 depository with accrued interest thereon in excess of applicable  
662 deposit insurance, and the sale of the securities shall be made by  
663 the State Treasurer at the best price that he can obtain at either  
664 public or private sale, and in the event of the failure of the  
665 depository to pay any \* \* \* check when the depository has placed  
666 as security surety bonds, the Treasurer shall notify the Attorney  
667 General and that officer shall take such immediate action as he  
668 may deem most expedient for covering back into the Treasury of the  
669 State of Mississippi or any agency or department of the state or  
670 any county, municipality or other governmental unit all state  
671 money on deposit in the depository. In addition, the Attorney  
672 General is authorized to employ counsel, if necessary, to more  
673 speedily enforce the payment and expense of that collection,  
674 including counsel fees, to be charged against the depository, and,  
675 in addition thereto, the depository will be liable for damages at  
676 the rate of one percent (1%) per month for any delay in paying  
677 over any state funds when demanded, and the bond of any depository  
678 shall be liable for those expenses and damages.

679 (2) If the loss to the State of Mississippi or any agency or  
680 department of the state or any county, municipality or other

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

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

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

713 SECTION 6. Section 27-105-35, Mississippi Code of 1972, is  
714 amended as follows:

715 27-105-35. **Commission meetings and duties.**

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

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

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

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

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

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

742           The State Treasurer may be authorized by the commission  
743 to:

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

751 the marginal requirements of the State Depository Commission.

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

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

764 SECTION 7. Section 27-105-315, Mississippi Code of 1972, is  
765 amended as follows:

766 27-105-315. **Qualification as depository \* \* \*.**

767 (1) Any financial institution in a county, or in an  
768 adjoining county where there is no financial institution in the  
769 county qualifying, whose accounts are insured by the Federal  
770 Deposit Insurance Corporation or any successors to that insurance  
771 corporation may qualify as a county depository, if the institution  
772 qualifies as a public funds depository under Section 27-105-5 or a  
773 public funds guaranty pool member under Sections 27-105-5 and  
774 27-105-6. The qualified financial institution shall secure those  
775 deposits by placing qualified securities on deposit with the State  
776 Treasurer as provided in Section 27-105-5.

777 \* \* \*

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

785 SECTION 8. Section 27-105-317, Mississippi Code of 1972, is

786 amended as follows:

787 27-105-317. **Commission of depository \* \* \***.

788 A county depository must be issued a commission under Section  
789 27-105-11 before receipt of county deposits.

790 SECTION 9. Section 27-105-329, Mississippi Code of 1972, is  
791 amended as follows:

792 27-105-329. **Failure to pay county warrants \* \* \***.

793 In the event of the failure of any county depository to pay  
794 any county warrant lawfully issued on any funds on deposit  
795 belonging to the county in the depository, the county is \* \* \*  
796 empowered to order the State Treasurer to sell such securities as  
797 are placed with the State Treasurer by the depository, or call on  
798 the public funds guaranty pool if the depository is a member, or  
799 so much of them as may be necessary to cover back into the county  
800 treasury the amount of county funds on deposit with the  
801 depository, with accrued interest thereon, as provided in Section  
802 27-105-25. In the event of the failure of the county depository  
803 to pay any warrant when the depository has placed as security  
804 surety bonds, the clerk or holder of the warrant shall notify the  
805 president of the board of supervisors and he shall take such  
806 immediate action as he may deem best and most expedient for  
807 covering back into the Treasury all county money on deposit in the  
808 depository, and the board of supervisors is authorized to employ  
809 counsel, if necessary, to more speedily enforce the payment. The  
810 expenses of the collection, including the counsel fee, shall be  
811 charged against the depository, and, in addition thereto, the  
812 depository shall be liable for damages at the rate of one percent  
813 (1%) per month for any delay in paying over any county funds when  
814 lawfully demanded, and the bond of any depository shall be liable  
815 for those expenses and damages.

816 SECTION 10. Section 27-105-331, Mississippi Code of 1972, is  
817 amended as follows:

818 27-105-331. **Acquisition of closed depository securities.**

819 The State Treasurer, on behalf of any county in the State of  
820 Mississippi that has acquired bonds or other securities as the

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

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

841 SECTION 11. Section 27-105-333, Mississippi Code of 1972, is  
842 amended as follows:

843 27-105-333. **Alternative method of selecting depositories.**

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



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

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

869 SECTION 12. Section 27-105-349, Mississippi Code of 1972, is  
870 amended as follows:

871 27-105-349. **County withdrawal of bonds pledged or filed as**  
872 **security.**

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

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

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

883 \* \* \* All such bonds shall be such as are authorized by law  
884 to be pledged or filed as security for those deposits, or if a  
885 corporate surety bond, it must be made by a surety company  
886 authorized to do business in this state; and in addition, all such  
887 deposits shall be fully secured and covered as required by Section  
888 27-105-5.

889 SECTION 13. Section 27-105-353, Mississippi Code of 1972, is  
890 amended as follows:

891 27-105-353. \* \* \* **Method of selecting municipal**  
892 **depositories.**

893 The board of mayor and aldermen or other municipal  
894 authorities of each and every city, town or village in the state  
895 are \* \* \* required to select a depository in the manner provided  
896 by law for the selection of county depositories. Before being  
897 selected, a depository must be certified by the State Treasurer as  
898 meeting the capital ratio requirement specified in Section  
899 27-105-5 or 27-105-6 \* \* \*. An institution shall not be a  
900 qualified depository and shall not receive any municipal funds  
901 unless its ratio has been certified annually by the State  
902 Treasurer as meeting the prescribed requirement. Notwithstanding  
903 the foregoing, any financial institution not meeting the  
904 prescribed ratio requirement whose accounts are insured by the  
905 Federal Deposit Insurance Corporation or \* \* \* or any successors  
906 to that insurance corporation may receive municipal funds in an  
907 amount not exceeding the amount that is insured by that insurance  
908 corporation and may qualify as a municipal depository to the  
909 extent of that insurance.

910 SECTION 14. Section 27-105-355, Mississippi Code of 1972, is  
911 amended as follows:

912 27-105-355. **Security on bond.**

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

916 SECTION 15. Section 27-105-359, Mississippi Code of 1972, is  
917 amended as follows:

918 27-105-359. **Municipal withdrawal of bonds pledged or filed**  
919 **as security.**

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

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

926 withdrawal;

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

930           \* \* \* All such bonds shall be such as are authorized by law  
931 to be pledged or filed as security for those deposits, or if a  
932 corporate surety bond, it must be made by a surety company  
933 authorized to do business in this state; and in addition, all such  
934 deposits shall be fully secured and covered as required by Section  
935 27-105-5.

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

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