

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2377

1 AN ACT TO AMEND SECTION 27-105-5, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF "GOVERNMENTAL UNIT" AS IT RELATES TO
3 PUBLIC FUND COLLATERALIZATION; TO DECLARE LEGISLATIVE INTENT TO
4 INCLUDE ALL STATE AND POLITICAL SUBDIVISIONS OR INSTRUMENTALITIES
5 THEREOF IN SUCH DEFINITION; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 27-105-5, Mississippi Code of 1972, is
8 amended as follows:

9 27-105-5. (1) Any financial institution maintaining a
10 deposit-taking facility in this state whose accounts are insured
11 by the Federal Deposit Insurance Corporation or any successors to
12 that insurance corporation, may qualify as a public funds
13 depository by submitting an application to the State Treasurer as
14 provided by Section 27-105-9, if the institution has a primary
15 capital to total assets ratio of five and one-half percent
16 (5-1/2%) or more. That ratio shall be determined not later than
17 December 1 in each calendar year by the State Treasurer on the
18 basis of balance sheets of applying institutions at June 30 of the
19 same calendar year, and an institution shall not be a qualified
20 depository and shall not receive any public funds unless its ratio
21 has been certified annually by the Treasurer as meeting the
22 prescribed requirement. Each applicant shall furnish to the State
23 Treasurer such financial statements, balance sheets or other
24 documentation, sworn to by a duly elected officer, on such date or
25 dates and on such forms as the State Treasurer may require. Any
26 knowing or willful misstatement of fact on those forms shall
27 subject the officer swearing to them to the penalty of perjury,
28 and the financial institution of which he is an officer shall not



29 be eligible to serve as a depository for a period of one (1) year
30 beginning with the date on which the State Treasurer certifies
31 that such a misstatement has been made. When so approved by the
32 State Treasurer, the institution shall place on deposit with the
33 State Treasurer qualified bonds, notes and liquid securities in an
34 aggregate amount at least equal to one hundred five percent (105%)
35 of the average daily balance of funds on deposit in the aggregate
36 by the State of Mississippi or any agency or department of the
37 state or by any county, municipality or other governmental unit in
38 excess of that portion of accounts insured by the Federal Deposit
39 Insurance Corporation, or any successor thereto.

40 (2) Any financial institution maintaining a deposit-taking
41 facility in this state whose accounts are insured by the Federal
42 Deposit Insurance Corporation or any successors to that insurance
43 corporation and which has been in existence for three (3) or more
44 years may qualify as a public funds depository and public funds
45 guaranty pool member under Section 27-105-6 by submitting an
46 application to the State Treasurer as provided by Section
47 27-105-9, if the institution has a primary capital to total assets
48 ratio of six and one-half percent (6-1/2%) or more and otherwise
49 meets the requirements of Section 27-105-6. That ratio shall be
50 determined not later than December 1 in each calendar year by the
51 State Treasurer on the basis of balance sheets of applying
52 institutions at June 30 of the same calendar year, and an
53 institution shall not be a member of the public funds guaranty
54 pool unless its ratio has been certified annually by the Treasurer
55 as meeting the prescribed requirement. Each applicant shall
56 furnish to the State Treasurer such financial statements, balance
57 sheets or other documentation, sworn to by a duly elected officer,
58 on such date or dates and on such forms as the State Treasurer may
59 require. Any knowing or willful misstatement of fact on those
60 forms shall subject the officer swearing to them to the penalty of
61 perjury and the financial institution of which he is an officer



62 shall not be eligible to serve as a depository for a period of one
63 (1) year beginning with the date on which the State Treasurer
64 certifies that such a misstatement has been made. When so
65 approved by the State Treasurer, the institution shall meet its
66 security requirement of one hundred five percent (105%) by placing
67 on deposit with the State Treasurer qualified bonds, notes and
68 liquid securities in an aggregate amount at least equal to
69 fifty-two and one-half percent (52-1/2%) of the average daily
70 balance of funds on deposit in the aggregate by the State of
71 Mississippi or any agency or department of the state or by any
72 county, municipality or other governmental unit in excess of that
73 portion of accounts insured by the Federal Deposit Insurance
74 Corporation, or any successor thereto, and executing a guarantee
75 equal to the balance of fifty-two and one-half percent (52-1/2%)
76 of the average daily balance of funds on deposit in the aggregate
77 by the State of Mississippi or any agency or department of the
78 state or by any county, municipality or other governmental unit in
79 excess of that portion of accounts insured by the Federal Deposit
80 Insurance Corporation, or any successor thereto.

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

83 (a) All securities that are direct obligations of the
84 United States Treasury or any other obligations fully guaranteed
85 by the United States government.

86 (b) Bonds, notes and other obligations of the Federal
87 Home Loan Bank, Federal National Mortgage Association, Federal
88 Land Banks, Banks for Cooperatives, and Federal Intermediate
89 Credit Banks, the Government National Mortgage Association, the
90 Federal Housing Administration, the Farmers Home Administration,
91 the Farm Credit System Financial Assistance Corporation, the
92 United States Postal Service, the Federal Financing Bank, the
93 Student Loan Marketing Association, the Small Business
94 Administration, the General Services Administration, the



95 Washington Metropolitan Area Transit Authority, the Maritime
96 Administration, the Export-Import Bank, the International Bank for
97 Reconstruction and Development, the Inter-American Development
98 Bank, the Asian Development Bank, loan participations that carry
99 the guarantee of the Commodity Credit Corporation, an
100 instrumentality of the United States Department of Agriculture or
101 other similar agencies approved by the State Treasurer.

102 (c) Obligations of the Tennessee Valley Authority.

103 (d) Legal obligation or revenue bonds of the State of
104 Mississippi, its agencies, or any political subdivision of the
105 state, or any municipality located in the State of Mississippi, or
106 the Yazoo Mississippi Delta and the Mississippi Levee Districts,
107 or the Mississippi Higher Education Assistance Corporation or its
108 successors, or any body corporate and politic created under the
109 laws of the State of Mississippi.

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

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

117 (g) All bonds authorized as security for state funds
118 under paragraphs (c), (d) and (e), inclusive, shall be investment
119 quality, and any bonds under paragraphs (c), (d), (e) and (f),
120 inclusive, which are rated substandard by any of the appropriate
121 supervisory authorities having jurisdiction over the depository or
122 by any recognized national rating agency engaged in the business
123 of rating bonds, shall not be eligible for pledging as security to
124 the State of Mississippi by any qualified state depository.

125 No bonds shall be accepted as security for more than their
126 stated par value or market value, whichever is lower, except bonds
127 and obligations of the State of Mississippi and Mississippi State



128 Highway bonds or notes, which may be accepted as security at par
129 value or market value, whichever is greater.

130 The bonds, notes and liquid securities to be placed on
131 deposit shall secure both deposits and the accrued interest
132 thereon.

133 Money shall be drawn from the depositories so as to leave in
134 each as near as practicable, its equitable proportion of state
135 funds.

136 The State Treasurer is authorized and empowered to:

137 (i) Deposit for safekeeping in the vaults of any
138 of the state or national banks located within this state that are
139 members of the Federal Deposit Insurance Corporation and that have
140 appropriate safekeeping facilities approved by the State
141 Depository Commission, any federal reserve bank, any federal
142 reserve branch bank, or any bank that is a member of the Federal
143 Reserve System and is located in a city where there is a federal
144 reserve bank or a federal reserve branch bank, the securities
145 placed with him by financial institutions qualifying as state
146 depositories; or

147 (ii) Accept, in lieu of the securities themselves,
148 safekeeping trust receipts issued to the State Treasurer by the
149 authorized safekeeping banks listed in subparagraph (i) above; the
150 safekeeping trust receipts shall describe the securities and show
151 that the securities are held for safekeeping for the account of
152 the State Treasurer or other governmental unit. The securities so
153 deposited shall not be commingled in any manner with the assets of
154 the safekeeping bank.

155 The safekeeping banks listed in subparagraph (i) above are
156 authorized to issue to the State Treasurer their safekeeping trust
157 receipts based on safekeeping trust receipts issued to them by any
158 of their correspondent banks that are members of the Federal
159 Reserve System and are located in any federal reserve city and
160 that have physical custody of the pledged securities.



161 In no event shall the State Treasurer deposit for safekeeping
162 with any depository securities placed by the depository with the
163 State Treasurer in qualifying as a public funds depository, nor
164 shall he accept a safekeeping trust receipt by or from a
165 depository covering securities it owns in order to secure state
166 funds on deposit with it.

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

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

171 (b) Monitor and confirm, as often as deemed necessary
172 by the Treasurer, the pledged collateral held by third party
173 custodians.

174 (c) Perfect an interest in pledged collateral by having
175 pledged securities moved into an account established in the
176 Treasurer's name. This action shall be taken at the discretion of
177 the Treasurer.

178 (d) Review the reports of each qualified public funds
179 depository for material changes in capital accounts or changes in
180 name, address or type of institution, record the average daily
181 balances of public deposits held; and monitor the
182 collateral-pledging levels and required collateral based on the
183 average daily balances.

184 (e) Compare public deposit information reported by
185 qualified public funds depositories and public depositors. That
186 comparison shall be conducted for qualified public depositories
187 based on established financial condition criteria of record on
188 September 30.

189 (f) Verify the reports of any qualified public funds
190 depository relating to public deposits it holds when necessary to
191 protect the integrity of the public deposits program.

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



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

198 (5) A qualified public funds depository shall:

199 (a) Within fifteen (15) days after the end of each
200 calendar month or when requested by the Treasurer, submit to the
201 Treasurer a written report, under oath, indicating the average
202 daily balance of all public deposits held by it during the
203 reported month, required collateral, a detailed schedule of all
204 securities pledged as collateral, selected financial information,
205 and any other information that the Treasurer determines necessary
206 to administer this chapter.

207 (b) Provide to each public depositor annually, not
208 later than thirty (30) days following the public depositor's
209 fiscal year end, the following information on all open accounts
210 identified as a "public deposit" for that public depositor as of
211 its fiscal year end, to be used for confirmation purposes: the
212 federal employer identification number of the public funds
213 depository, the name on the deposit account record, the federal
214 employer identification number on the deposit account record, and
215 the account number, account type and actual account balance on
216 deposit. Any discrepancy found in the confirmation process shall
217 be reconciled within sixty (60) days of the public depositor's
218 fiscal year end.

219 (c) Submit to the Treasurer annually, not later than
220 sixty (60) days of the public depositor's fiscal year end, a
221 report of all public deposits held for the credit of all public
222 depositors at the close of business on each public depositor's
223 fiscal year end. The annual report shall consist of public
224 deposit information in a report format prescribed by the
225 Treasurer. The manner of required filing may be as a signed



226 writing or electronic data transmission, at the discretion of the
227 Treasurer.

228 (6) Public depositors shall comply with the following
229 requirements:

230 (a) A public depositor shall ensure that the name of
231 the public depositor and its tax identification number are on the
232 account or certificate provided to the public depositor by the
233 qualified public depository in a manner sufficient to disclose the
234 identity of the public depositor;

235 (b) Not later than thirty (30) days following its
236 fiscal year end, a public depositor shall notify the State
237 Treasurer of its official name, address, federal tax
238 identification number, and provide a listing of all accounts that
239 it had with qualified public depositories, including the deposit
240 balance in those accounts, as of its fiscal year end. A public
241 entity established during the year shall furnish its official
242 name, address and federal tax identification number to the State
243 Treasurer before making any public deposit.

244 (7) Any information contained in a report of a qualified
245 public funds depository required under Section 27-105-5 or
246 27-105-6 shall be considered confidential and exempt from
247 disclosure and not subject to dissemination to anyone other than
248 the State Treasurer and the State Auditor under the provisions of
249 this chapter.

250 (8) The State Treasurer is empowered to assume
251 responsibility as successor pledgee as agent on behalf of any
252 county, municipality or other governmental unit of any and all
253 collateral pledged before July 1, 2001, to that county,
254 municipality or governmental unit by that public funds depository.
255 Upon assuming responsibility as successor pledgee as provided in
256 this subsection (8), the State Treasurer is empowered to sign such
257 documents on behalf of any such county, municipality or
258 governmental unit as may be required by a trustee custodian,



259 including, but not limited to, any documentation necessary to
260 change the pledgee from the county, municipality or governmental
261 unit as pledgee to the State Treasurer as agent.

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

264 (a) The term "primary capital" means the sum of common
265 stockholders' equity capital, including common stock and related
266 surplus, undivided profits, disclosed capital reserves that
267 represent a segregation of undivided profits, and foreign currency
268 translation adjustments, less net unrealized holding losses on
269 profits, and foreign currency translation adjustments, less net
270 unrealized holding losses on available-for-sale equity securities
271 with readily determinable fair values; noncumulative perpetual
272 preferred stock, including any related surplus; and minority
273 interests in the equity capital accounts of consolidated
274 subsidiaries; the allowance for loan and lease losses; cumulative
275 perpetual preferred stock, long-term preferred stock (original
276 maturity of at least twenty (20) years) and any related surplus;
277 perpetual preferred stock (and any related surplus) where the
278 dividend is reset periodically based, in whole or in part, on the
279 bank's current credit standing, regardless of whether the
280 dividends are cumulative or noncumulative; hybrid capital
281 instruments, including mandatory convertible debt securities; term
282 subordinated debt and intermediate-term preferred stock (original
283 average maturity of five (5) years or more) and any related
284 surplus; and net unrealized holding gains on equity securities.

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

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

290 (ii) When measured as of any other date, those
291 assets:



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

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

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

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

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

316 (f) The term "perpetual preferred stock" means a
317 preferred stock that does not have a stated maturity date or that
318 cannot be redeemed at the option of the holder and that has no
319 other provisions that will require future redemption of the issue.
320 It includes those issues of preferred stock that automatically
321 convert into common stock at a stated date. It excludes those
322 issues, the rate on which increases, or can increase, in such a
323 manner that would effectively require the issuer to redeem the
324 issue.



325 (g) The term "total assets" means the average of total
326 assets of any financial institution that are or would be included
327 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, plus
330 the allowance for loan and lease losses, minus assets classified
331 loss and minus intangible assets other than mortgage servicing
332 rights.

333 (h) The term "average daily balance" means the average
334 daily balance of public deposits of each governmental unit held
335 during the reported month. The average daily balances must be
336 determined by totaling, by account, the daily balance held by the
337 depositor and then dividing the total by the number of calendar
338 days in the month. Deposit insurance is then deducted from each
339 public depositor's balance and the resulting amounts are totaled
340 to obtain the average daily balance.

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

346 (j) The term "governmental unit" means the State of
347 Mississippi, and any office, department, agency, division, bureau,
348 commission, board, institution, hospital, college, university,
349 airport authority or other instrumentality thereof, whether or not
350 such body or instrumentality has the authority to levy taxes or to
351 sue or be sued in its own name. Further, it shall mean any body
352 politic or body corporate other than the state responsible for
353 governmental activities only in geographic areas smaller than that
354 of the state, including, but not limited to any county,
355 municipality, school district, community hospital as defined in
356 Section 41-13-10, airport authority or other instrumentality
357 thereof, whether or not such body or instrumentality has the



358 authority to levy taxes or to sue or be sued in its own name. It
359 is the intent to include all state and political subdivisions or
360 instrumentalities thereof whether specifically recited herein or
361 not.

362 **SECTION 2.** This act shall take effect and be in force from
363 and after July 1, 2003.

