

By: Representative Guice

To: Banking and Financial  
Services; Appropriations

## HOUSE BILL NO. 801

1 AN ACT TO AMEND SECTION 81-1-107, MISSISSIPPI CODE OF 1972,  
 2 TO REVISE THE MANNER OF ASSESSMENT OF BANKS, TRUST COMPANIES,  
 3 SAVINGS ASSOCIATIONS, SAVINGS BANKS AND CREDIT UNIONS BY THE  
 4 DEPARTMENT OF BANKING AND CONSUMER FINANCE; TO AMEND SECTIONS  
 5 81-12-193, 81-13-17 AND 81-14-157, MISSISSIPPI CODE OF 1972, TO  
 6 CONFORM TO THE PRECEDING PROVISION; TO CREATE NEW SECTION  
 7 81-1-108, MISSISSIPPI CODE OF 1972, TO CREATE IN THE STATE  
 8 TREASURY TWO REVOLVING FUNDS FOR THE DEPARTMENT OF BANKING AND  
 9 CONSUMER FINANCE, THE BANKING FUND AND THE CONSUMER FINANCE FUND,  
 10 WHICH SHALL CONSIST OF ALL MONIES RECEIVED BY THE COMMISSIONER OF  
 11 BANKING AND CONSUMER FINANCE UNDER THE STATUTES ADMINISTERED BY  
 12 HIM; TO PROVIDE THAT THE BANKING FUND AND THE CONSUMER FINANCE  
 13 FUND SHALL BE CONTINUING FUNDS AND NOT SUBJECT TO FISCAL YEAR  
 14 LIMITATIONS; TO PROVIDE THAT ALL MONIES ACCRUING TO THESE FUNDS  
 15 ARE APPROPRIATED AND MAY BE BUDGETED AND EXPENDED ONLY BY THE  
 16 DEPARTMENT, AFTER REVIEW BY THE STATE BOARD OF BANKING REVIEW,  
 17 SOLELY AND EXCLUSIVELY FOR THE OPERATING EXPENSES OF THE  
 18 DEPARTMENT; TO PROVIDE THAT FOR THE NEXT THREE FISCAL YEARS, SEVEN  
 19 PERCENT OF ALL ANNUAL ASSESSMENTS AND FEES CREDITED TO THE BANKING  
 20 FUND AND THE CONSUMER FINANCE FUND SHALL BE DEPOSITED TO THE STATE  
 21 GENERAL FUND IN LIEU OF CHARGES TO THE BANKING FUND AND THE  
 22 CONSUMER FINANCE FUND FOR FURTHER MAINTENANCE OF THE GENERAL FUND;  
 23 TO AMEND SECTIONS 63-19-51 AND 81-1-109, MISSISSIPPI CODE OF 1972,  
 24 TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 81-1-107, Mississippi Code of 1972, is  
 27 amended as follows:

28 81-1-107. Every bank, trust company, savings association,  
 29 savings bank and credit union organized under the laws of this  
 30 state engaging in such business as allowed by its charter and  
 31 under the supervision of the Department of Banking and Consumer  
 32 Finance is assessed on each One Thousand Dollars (\$1,000.00) of  
 33 assets or fraction thereof at rates established by the  
 34 Commissioner of Banking and Consumer Finance and approved by the  
 35 State Board of Banking Review. Notwithstanding any provision of  
 36 law to the contrary, all money accruing from that assessment shall  
 37 be deposited into the Banking Fund and shall be used only for the  
 38 maintenance of the department.

39           The commissioner shall, during the month of January in each  
40 year, or as soon thereafter as practicable, prepare a statement of  
41 the assessments due under this section based upon the total assets  
42 of the preceding year of each such bank, trust company, savings  
43 association, savings bank and credit union, as shown by its last  
44 report, which shall be paid as called for by the commissioner. He  
45 shall send to each such bank, trust company, savings association,  
46 savings bank and credit union a statement of the amount due by it,  
47 which shall specify how the same shall be payable. The assessment  
48 shall be due and payable in accordance with the statement so  
49 furnished and the installments thereof shall be paid within ten  
50 (10) days after the date fixed for their payment. The assessment  
51 shall constitute a lien on the assets of each bank, trust company,  
52 savings association, savings bank and credit union until paid.  
53 Any such bank, trust company, savings association, savings bank  
54 and credit union failing to make payment within ten (10) days as  
55 provided in this section shall be liable to a penalty of ten  
56 percent (10%) of the amount in default for each day thereafter.  
57 All assessments and penalties provided in this section shall be  
58 payable to the commissioner and when collected by him, shall be  
59 delivered to the State Treasurer to be placed to the credit of the  
60 Banking Fund of the department. The commissioner shall give a  
61 receipt for all money received by him and shall take a receipt  
62 from the State Treasurer for all money delivered to him. In  
63 making any call for the assessment levied by this section, the  
64 commissioner shall estimate the cost of maintaining the  
65 department, which shall be approved by the State Board of Banking  
66 Review, for the next fiscal year. The cash balance remaining in  
67 the Banking Fund of the department at the end of any one (1)  
68 fiscal year shall be credited to and reduce the assessments of the  
69 following fiscal year on a pro rata basis.

70           Wherever the term "Maintenance Fund" appears in any statute,  
71 rule, regulation or document, when referring to the Maintenance

72 Fund of the Department of Banking and Consumer Finance, it shall  
73 be construed to mean the Banking Fund of the department.

74 **SECTION 2.** Section 81-12-193, Mississippi Code of 1972, is  
75 amended as follows:

76 81-12-193. The department shall charge and collect for:

77 (a) Filing articles of incorporation and issuing a  
78 certificate of incorporation, a minimum fee of Five Hundred  
79 Dollars (\$500.00) up to a maximum fee of Two Thousand Five Hundred  
80 Dollars (\$2,500.00) as fixed by the commissioner.

81 (b) For filing annual reports, the commissioner shall  
82 assess every association organized under the laws of this state  
83 engaging in the business of an association, and every foreign  
84 association qualified to do business in this state under the  
85 provisions of Section 81-12-187, in the amounts established under  
86 Section 81-1-107.

87 \* \* \*

88 (c) Filing articles of merger when the resulting  
89 association is a state association, a minimum fee of Five Hundred  
90 Dollars (\$500.00) up to a maximum fee of Two Thousand Five Hundred  
91 Dollars (\$2,500.00), as fixed by the commissioner.

92 (d) Filing an application for conversion from a  
93 national association to a state association, a minimum fee of Five  
94 Hundred Dollars (\$500.00) up to a maximum fee of Two Thousand Five  
95 Hundred Dollars (\$2,500.00) as fixed by the commissioner.

96 (e) Filing an application for a branch bank, branch  
97 office, or drive-in teller window, a minimum fee of Two Hundred  
98 Fifty Dollars (\$250.00) up to a maximum fee of One Thousand Five  
99 Hundred Dollars (\$1,500.00), as fixed by the commissioner.

100 The commissioner shall publish a schedule of fees applicable  
101 to all associations within his jurisdiction.

102 **SECTION 3.** Section 81-13-17, Mississippi Code of 1972, is  
103 amended as follows:

104           81-13-17. Each credit union shall be examined at least once  
105 per eighteen-month period by the Commissioner of Banking and  
106 Consumer Finance. The commissioner may conduct other examinations  
107 and the commissioner or examiners of the Department of Banking and  
108 Consumer Finance shall at all times be given free access to all  
109 the books, papers, securities and other sources of information in  
110 respect to the credit union. For that purpose he shall have the  
111 power to subpoena and examine personally or through one (1) of his  
112 deputies, or examiners, duly authorized, witnesses on oath and  
113 documents pertaining to the business of the credit union. The  
114 fees for examination shall be determined by the commissioner by  
115 assessing the association according to the cost based on the  
116 average daily cost of all examiners of the department, plus actual  
117 and necessary expenses. \* \* \*

118           If the commissioner's office, because of work load or other  
119 good sufficient cause, is unable to conduct an annual examination  
120 of a credit union as provided for in this section, the  
121 commissioner is \* \* \* authorized to accept the examination of any  
122 credit union performed by the National Credit Union Administration  
123 or by any succession thereto. However, in no case shall the  
124 commissioner be authorized to accept any such examination of any  
125 credit union performed by the NCUA or its successor for any two  
126 (2) consecutive eighteen-month periods.

127           **SECTION 4.** Section 81-14-157, Mississippi Code of 1972, is  
128 amended as follows:

129           81-14-157. (1) Every state savings bank, including savings  
130 banks in the process of voluntary liquidation, or a holding  
131 company thereof, shall pay into the office of the commissioner an  
132 annual supervisory fee and fees for various activities in the same  
133 amounts and in the same manner as charged to savings associations  
134 under Sections 81-1-107 and 81-12-193.

135           (2) All funds and revenue collected by the department under  
136 the provisions of this section and all other sections of this

137 chapter that authorize the collection of fees and other funds,  
138 except for the civil penalties provided in Sections 81-14-203 and  
139 81-14-205, shall be deposited with the State Treasurer to the  
140 credit of the department and expended solely to defray expenses  
141 incurred by the office of the commissioner in carrying out the  
142 supervisory and auditing functions. The civil penalties provided  
143 in Sections 81-14-203 and 81-14-205 shall be deposited into the  
144 State General Fund, unless the penalty is appealed to a court of  
145 competent jurisdiction as provided in Section 81-14-213, in which  
146 case the penalty shall then be deposited with the State Treasurer  
147 to the credit of the department until the appeal is resolved. If  
148 the appeal is resolved in favor of the department, then the  
149 commissioner shall notify and direct the State Treasurer to  
150 transfer the amount of the fine from the credit of the department  
151 to the credit of the State General Fund.

152 (3) Notwithstanding any of the provisions of this section,  
153 whenever the commissioner under the provisions of Section  
154 81-14-155 appoints a suitable and competent person, other than a  
155 person employed by the commissioner's office, to make an  
156 examination and investigation of the business of a state savings  
157 bank, all costs and expenses relative to the examination and  
158 investigation shall be paid by the savings bank.

159 **SECTION 5.** The following shall be codified as Section  
160 81-1-108, Mississippi Code of 1972:

161 81-1-108. (1) Notwithstanding any provision of law to the  
162 contrary, there is created in the State Treasury two (2) revolving  
163 funds for the Department of Banking and Consumer Finance, the  
164 Banking Fund and the Consumer Finance Fund. The Banking Fund  
165 shall consist of all monies received by the commissioner under the  
166 provisions of Title 81 of the Mississippi Code of 1972, which  
167 includes banks, credit unions, savings associations, savings  
168 banks, trust companies and international banks or branches. The  
169 Consumer Finance Fund shall consist of all monies received by the

170 commissioner under Sections 63-19-1 et seq., 75-15-1 et seq.,  
171 75-67-101 et seq., 75-67-201 et seq., 75-67-301 et seq., 75-67-401  
172 et seq., 75-67-501 et seq., 81-18-1 et seq., 81-19-1 et seq.,  
173 81-21-1 et seq., and 81-22-1 et seq. Wherever the term  
174 "Maintenance Fund" appears in any statute, rule, regulation or  
175 document, when referring to the Maintenance Fund of the Department  
176 of Banking and Consumer Finance, it shall be construed to mean the  
177 Banking Fund of the department.

178 (2) The Banking Fund and the Consumer Finance Fund shall be  
179 continuing funds and not subject to fiscal year limitations. All  
180 monies accruing to these funds are appropriated and may be  
181 budgeted and expended only by the department, after an exclusive  
182 review by the State Board of Banking Review, solely and  
183 exclusively for the operating expenses of the department.  
184 Expenditures from these funds, as exclusively reviewed by the  
185 State Board of Banking Review, shall be made under the laws of  
186 this state and the statutes relating to the department. The State  
187 Board of Banking Review shall send annually to the Secretary of  
188 the Senate and the Clerk of the House of Representatives a report  
189 of the revenues and expenditures that it has reviewed under this  
190 section.

191 (3) Effective July 1, 2005, and each year thereafter through  
192 June 30, 2008, seven percent (7%) of all annual assessments and  
193 fees credited to the Banking Fund and the Consumer Finance Fund  
194 shall be deposited to the State General Fund in lieu of charges to  
195 the Banking Fund and the Consumer Finance Fund for further  
196 maintenance of the General Fund. However, the amount of this  
197 deposit shall never be less than the amount of the initial deposit  
198 of July 1, 2005.

199 **SECTION 6.** Section 63-19-51, Mississippi Code of 1972, is  
200 amended as follows:

201 63-19-51. The commissioner is authorized to employ the  
202 necessary examiners and other personnel required to administer the

203 provisions of this chapter and to fix their compensation  
204 commensurate with their duties. All salaries, travel and other  
205 expenses incident to the administration of this chapter shall be  
206 paid by the commissioner \* \* \*. All salaries, travel and other  
207 expenses incident to the administration of this chapter shall be  
208 paid monthly. All travel, subsistence and other expenses shall be  
209 audited by the commissioner or his duly authorized agent. All  
210 payments made under the provisions of this section shall be paid  
211 by the State Treasurer out of the "Consumer Finance Fund" created  
212 by Section 63-19-27.

213       **SECTION 7.** Section 81-1-109, Mississippi Code of 1972, is  
214 amended as follows:

215       81-1-109. All monies paid out of the Banking Fund shall be  
216 paid by the Treasurer as directed by the commissioner \* \* \*.

217       **SECTION 8.** This act shall take effect and be in force from  
218 and after July 1, 2005.