

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

# A Bill

SENATE BILL 812

4  
5 By: Senator Faris  
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7

## For An Act To Be Entitled

9 AN ACT TO CREATE A CONSISTENT REVIEW PROCESS FOR  
10 A CONTRACT BY A STATE AGENCY THAT RESULTS IN A  
11 PARTIAL EQUITY OWNERSHIP AGREEMENT; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

14 TO CREATE A CONSISTENT REVIEW PROCESS  
15 FOR A CONTRACT BY A STATE AGENCY THAT  
16 RESULTS IN A PARTIAL EQUITY OWNERSHIP  
17 AGREEMENT.  
18  
19  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 19-11-203(5), concerning the definition of  
24 a contract under the Arkansas Procurement Law, is amended to read as follows:

25 (5)(A) "Contract" means all types of state agreements,  
26 regardless of what they may be called, for the purchase of commodities and  
27 services and for the disposal of surplus commodities and services not  
28 otherwise exempt.

29 (B)(i) "Contract" includes awards and notices of award,  
30 contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type,  
31 contracts providing for the issuance of job or task orders, leases, letter  
32 contracts, and purchase orders.

33 (ii) "Contract" also includes supplemental  
34 agreements with respect to any of these items.

35 (iii) "Contract" does not include a partial equity  
36 ownership agreement as defined under § 19-11-1301 et seq.



1  
 2 SECTION 2. Arkansas Code Title 19, Chapter 11, is amended to add an  
 3 additional subchapter to read as follows:

4 Subchapter 13 – Partial equity ownership agreement executed by a state  
 5 retirement system.

6 19-11-1301. Definition.

7 As used in this subchapter, "partial equity ownership agreement" means  
 8 an agreement with a legal entity including without limitation a partnership,  
 9 a limited partnership, a limited liability company, or similar legal entity  
 10 that:

11 (1) Includes a state retirement system as a partner, a limited  
 12 partner, or a partial owner;

13 (2) Creates an equity interest or ownership position for the  
 14 state retirement system; and

15 (3) Utilizes retirement trust funds that are not appropriated by  
 16 the General Assembly.

17  
 18 19-11-1302. Review of partial equity ownership agreements.

19 (a) A partial equity ownership agreement is subject to review by  
 20 submission of the partial equity ownership agreement to the Office of State  
 21 Procurement and the Legislative Council under this section.

22 (b) Since the partial equity ownership agreement is fundamentally and  
 23 substantially different than a state contract for commodities, goods, and  
 24 services that are reviewed under the Arkansas Procurement Law, § 19-11-201 et  
 25 seq., or other contract that is reviewed under Arkansas Code Title 19,  
 26 Chapter 11, Subchapters 1-12, and since the partial equity ownership  
 27 agreement is utilizing retirement trust funds that are not appropriated by  
 28 the General Assembly, the partial equity ownership agreement is not subject  
 29 to:

30 (1) A limitation of the term or duration of the partial equity  
 31 ownership agreement; or

32 (2) An annual renewal clause.

33 (c) When submitting a partial equity ownership agreement for review,  
 34 the state retirement system shall provide information that includes without  
 35 limitation:

36 (1) The managing parties to the partial equity ownership

1 agreement;

2 (2) The state retirement system's interest and ownership in the  
3 partial equity ownership agreement;

4 (3) The reason for the formation or entry into the partial  
5 equity ownership agreement;

6 (4) Justification that the duration of the partial equity  
7 ownership agreement is necessary to serve the best interests of the retirants  
8 under the prudent investor rule as set out in §§ 24-2-610 – 24-2-619;

9 (5) The anticipated date of implementation of the partial equity  
10 ownership;

11 (6) The anticipated termination date of the partial equity  
12 ownership agreement; and

13 (7) Other information regarding the terms of the partial equity  
14 ownership agreement that the Office of State Procurement or the Legislative  
15 Council may reasonably require for an adequate review.

16  
17 19-11-1303. Imminent need to enter into a partial equity ownership  
18 agreement.

19 (a) In lieu of a review under § 19-11-1302, a partial equity ownership  
20 agreement that necessitates immediate formation shall be reviewed by the  
21 Office of State Procurement and the Legislative Council under this section.

22 (b)(1) The board of trustees of a state retirement system may enter  
23 into a partial equity ownership agreement or substantially alter the terms of  
24 an existing partial equity ownership agreement if the board of trustees  
25 passes a resolution that:

26 (A) Determines an imminent need to immediately form or  
27 enter into the partial equity ownership agreement;

28 (B) Deems it financially appropriate to immediately form  
29 or enter into a partial equity ownership agreement; and

30 (C) Concludes that to forego the opportunity to promptly  
31 implement the board's investment directives under the prudent investor rule  
32 as set out in §§ 24-2-610 – 24-2-619 would be inconsistent with their  
33 fiduciary duty of care to the retirants.

34 (2) The board of trustees of the state retirement system shall  
35 provide the Office of State Procurement and the Legislative Council with a  
36 copy of the resolution under subsection (a) of this section within five (5)

1 business days of the passage of the resolution.

2 (c) For a partial equity ownership agreement reviewed under this  
 3 section, the retirement system shall submit information to the Office of  
 4 State Procurement and the Legislative Council within thirty (30) days of the  
 5 passage of the resolution that discloses:

6 (1) The managing parties to the partial equity ownership  
 7 agreement;

8 (2) The state retirement system's interest and ownership in the  
 9 partial equity ownership agreement;

10 (3) The reason for the immediate formation or entry into a  
 11 partial equity ownership agreement;

12 (4) Justification that the duration of the partial equity  
 13 ownership agreement is necessary to serve the best interests of the retirants  
 14 under the prudent investor rule as set out in §§ 24-2-610 – 24-2-619;

15 (5) The anticipated date of implementation;

16 (6) The anticipated termination date of the partial equity  
 17 ownership agreement; and

18 (7) Other information regarding the terms of the partial equity  
 19 ownership agreement that the Office of State Procurement or the Legislative  
 20 Council may reasonably require for an adequate review.

21 (d) As may be reasonably required by the Legislative Council, a member  
 22 of the board of trustees, the director of the respective state retirement  
 23 system, or the director's appointee shall appear at the next scheduled  
 24 meeting of the Legislative Council after the receipt of the information under  
 25 subsection (c) of this section to present the information and explain the  
 26 details of the partial equity ownership agreement.

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 28 19-11-1304. Retrospective review of a partial equity ownership  
 29 agreement to ensure disclosure.

30 (a) Before the effective date of this act, if a state retirement  
 31 system has entered into a partial equity ownership agreement that has not  
 32 been submitted previously for review under § 19-11-101 et seq, the Arkansas  
 33 Procurement Law, § 19-11-201 et seq, or § 19-11-801 et seq., then the partial  
 34 equity ownership agreement shall be reviewed retrospectively under this  
 35 section.

36 (b) The board of trustees of a state retirement system shall submit

1 information that the Office of State Procurement or the Legislative Council  
 2 may reasonably require to allow a retrospective review of a partial equity  
 3 ownership agreement under this section.

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 5 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
 6 General Assembly of the State of Arkansas that a partial equity ownership  
 7 agreement is fundamentally and substantially different than a state contract  
 8 for commodities, technical and general services, and professional and  
 9 consultant services that are procured under the Arkansas Procurement Law §  
 10 19-11-201 et seq., and other contracts currently procured under Arkansas  
 11 Code, Title 19, Chapter 11; that frugal investment practices often require a  
 12 minimum duration of ten (10) years or more for the interest to mature; that a  
 13 partial equity ownership agreement is necessary for certain size trust funds  
 14 to fulfill the requirements of the prudent investor rule; that a partial  
 15 equity ownership agreement should be subject to a procurement process that is  
 16 unique to the partial equity ownership agreement; that currently there is a  
 17 lack of clarification in the law regarding a proper review process for  
 18 partial equity ownership agreements; and that this new section will resolve  
 19 the issue with the intent to preserve the review process for a partial equity  
 20 ownership agreement and allow flexibility in the review for a narrow and  
 21 clearly defined exception. Therefore, an emergency is declared to exist and  
 22 this act being immediately necessary for the preservation of the public  
 23 peace, health, and safety shall become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,  
 26 the expiration of the period of time during which the Governor may veto the  
 27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is  
 29 overridden, the date the last house overrides the veto.