

**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.
Act 1211 of the Regular Session**

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 812

5 By: Senator Faris
6
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

15 TO CREATE A CONSISTENT REVIEW PROCESS
16 FOR A CONTRACT BY A STATE AGENCY THAT
17 RESULTS IN A PARTIAL EQUITY OWNERSHIP
18 AGREEMENT.
19
20

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



1 ownership agreement as defined under § 19-11-1301 et seq.

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

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

7 19-11-1301. Definition.

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

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

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

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

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

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

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

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

33 (2) An annual renewal clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) The board of trustees of the state retirement system shall
36 provide the Office of State Procurement and the Legislative Council with a

1 copy of the resolution under subsection (a) of this section within five (5)
2 business days of the passage of the resolution.

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

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

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

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

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

16 (5) The anticipated date of implementation;

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

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

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

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

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

1 (b) The board of trustees of a state retirement system shall submit
2 information that the Office of State Procurement or the Legislative Council
3 may reasonably require to allow a retrospective review of a partial equity
4 ownership agreement under this section.

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

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

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

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

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32 **APPROVED: 4/7/2009**