

ADMINISTRATIVE LAW

Enforcing Your Bargain: The Basics of Contract Claims Against the Commonwealth

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The American Recovery and Reinvestment Act (ARRA) will undoubtedly fund major public construction projects in Kentucky in the immediate future. Indeed, Governor Beshear recently announced through the "Kentucky at Work" program that the Commonwealth will receive \$3 Billion in federal stimulus funds over the next two years under the ARRA. Notably, a large percentage of that money has been allocated for a host of construction projects focused on improving and rebuilding Kentucky's infrastructure. Those projects, among the many others created by this considerable funding, will require substantial interaction between the state government and private businesses.

Unfortunately, the anticipated boost in business arising from this upsurge in public projects will inevitably produce an increase in disputes between those private contractors and the state government. As a consequence, basic familiarity with the special (i.e. strict) set of rules that applies to suits against the Commonwealth will become essential to protecting and enforcing your rights and enhancing your likelihood of success. This article focuses on the procedures of contract litigation against the state and provides a simple outline of some of the key considerations.

The state government enjoys this special set of rules as a result of its intrinsic attribute of "sovereign immunity," a concept inherited from the English Common Law principle that "the King can do no wrong." Under that doctrine, Kentucky may not be sued for damages unless it has either consented to such suit or unambiguously waived its sovereign immunity. In the present context, Kentucky has legislatively waived its immunity for contract claims through the General Assembly's enactment of the Kentucky Model Procurement Code, specifically KRS 45A.245 *et seq.* However, in so waiving its immunity, the General Assembly also specified a set of special rules applicable to actions for breach or enforcement of a contract against the Commonwealth. The following list contains the highlights of those rules:

- The waiver of immunity only applies to *written* contracts with the Commonwealth.
- The suit must be brought in the Franklin Circuit Court.
- The action will be tried by the court sitting *without* a jury.
- Generally, the contract claim must be brought within one year from the date of completion specified in the contract.
- For a contract with the Department of Transportation, the contract claim must be brought within one year from the time the Commonwealth issues a final pay estimate or notifies the contractor of a final adverse decision, whichever is later.
- Damages are capped at twice the amount of the original contract.

Contract claimants should give special note to the relatively short one-year limitations period applicable to these actions, particularly in light of the fact that the normal statute of limitations for claims on written contracts is fifteen years! Thus, litigants must act quickly in bringing contract claims against the Commonwealth.

The implementation of the ARRA stimulus funds through the Kentucky at Work program will foster an immediate increase in potential for work on public projects. However, contract disputes can arise in even the most benevolent of circumstances. Businesses seeking these forthcoming opportunities should, therefore, prepare themselves accordingly with a basic understanding of the rules governing contract claims against the Commonwealth.