

**350.032 Enforcement of subpoenas -- Judicial review of final orders -- Forfeiture of performance bond -- Temporary relief pending final determination.**

- (1) In case of refusal to obey a subpoena issued to any person, any Circuit Court of competent jurisdiction, upon application by any party, may issue to that person an order requiring him to appear before the cabinet, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (2) Any person aggrieved by a final order of the cabinet resulting from a hearing on the issuance of a notice of noncompliance, the issuance of an order for cessation and immediate compliance, the assessment of civil penalties, or a bond forfeiture may obtain a review of the order by filing in the Franklin Circuit Court or the Circuit Court of the county within which the mine is located, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, provided that a surety on a performance bond shall not file such petition until it has complied with subsection (3) of this section. A copy of the petition shall be forthwith served upon the cabinet, and thereupon the cabinet shall certify and file in court a copy of the record before the cabinet, including therein all pleadings, orders, documentary exhibits and the stenographic transcript of the testimony taken before the cabinet. When these have been filed, the court shall have exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the cabinet or there were reasonable grounds for failure to do so. The findings of the cabinet as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearings before the cabinet, the court may order that additional evidence be taken before the cabinet in such manner and upon such condition as the court may consider proper. The cabinet may modify its findings as to the facts, by reason of the additional evidence so taken; and it shall file any modified or new findings with the court, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of the proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the cabinet's order. An appeal may be taken from the judgment of the Circuit Court to the Court of Appeals on the same terms and conditions as an appeal is taken in any civil action.
- (3) Where the cabinet has ordered forfeiture of a performance bond, the surety shall forward to the cabinet by certified mail a cashier's check for the required amount within seven (7) business days from the effective date of the order. The cabinet shall establish an interest-bearing escrow account and shall deposit therein the full amount of the forfeiture rendered by the surety. The amount shall continue to be held by the cabinet until completion of judicial review as authorized in subsection (2) of this section. If the final decision following the review reverses the order of

the secretary of the cabinet, the cabinet shall within thirty (30) days of receipt of such order, refund to the surety the appropriate amount plus all interest accrued from the date of deposit to the date of the final order.

- (4) In the case of a proceeding to review any order or decision issued by the secretary under this chapter pertaining to surface coal mining operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:
- (a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
  - (b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
  - (c) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 178, sec. 4, effective July 15, 1994. -- Amended 1986 Ky. Acts ch. 331, sec. 47, effective July 15, 1986; and ch. 400, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 145, sec. 1, effective March 28, 1984; and ch. 257, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 192, sec. 2, effective July 15, 1982. -- Amended 1972 (1st Extra. Sess.) Ky. Acts ch. 3, sec. 62. -- Created 1962 Ky. Acts ch. 105, sec. 2 (4) and (6).