

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2742

**Introduced by ~~Assembly Member Blakeslee~~ Assembly Members
Blakeslee, Fuentes, and Solorio**

**(Coauthors: Assembly Members Arambula, Adams, Bill Berryhill,
Buchanan, Carter, DeVore, Emmerson, Fletcher, Furutani, Gaines,
Galgiani, Gilmore, Hagman, Hall, Jeffries, Knight, Ma, Miller,
Nestande, V. Manuel Perez, Silva, Smyth, Audra Strickland, and
Villines)**

(Coauthor: Senator Ashburn)

February 19, 2010

An act to amend Section ~~2770~~ of 26003 of, and to add Section 26011.7 to, the Public Resources Code, relating to ~~mining~~ energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as amended, Blakeslee. ~~Mining: surface mining operations.~~
*Energy: California Alternative Energy and Advanced Transportation
Financing Authority.*

*The California Alternative Energy and Advanced Transportation
Financing Authority Act established the California Alternative Energy
and Advanced Transportation Financing Authority. The authority is
authorized to do all things necessary and convenient to carry out the
purposes of the act. The authority is also required to establish a
renewable energy program to provide financial assistance, as defined,
to certain entities for projects to generate new and renewable energy
sources, develop clean and efficient distributed generation, and
demonstrate the economic feasibility of new technologies. Existing law
provides that the transfer of title of tangible personal property*

constituting a project under the act to the authority by a participating party or the lease or transfer of tangible personal property constituting a project under the act by the authority to a participating party pursuant to the act is not a “sale” or “purchase” for the purposes of the Sales and Use Tax Law.

This bill would include as a project, machinery or equipment that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of an alternative source product, component, or system. The bill would also expand the definition of “alternative sources” to include advanced electric distributive generation technology, as defined, and would expand the definition of “advanced transportation technologies” to include energy storage technologies and their component materials. The bill would require the authority to consider specified criteria in approving a project for which the purchase, sale, or lease of tangible personal property qualifies for the sales and use tax exclusion. The bill would require, when the sales and use tax exclusion for projects approved by the authority exceeds \$100,000,000 annually, the authority to provide a 20-day notice to the Legislature for additional project approval.

~~Existing law prohibits a person, with exceptions, from conducting surface mining operations unless a permit is obtained from, a reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation.~~

~~This bill would make technical, nonsubstantive changes to that law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 26003 of the Public Resources Code is
- 2 amended to read:
- 3 26003. As used in this division, unless the context otherwise
- 4 requires:
- 5 (a) “Authority” means the California Alternative Energy and
- 6 Advanced Transportation Financing Authority established pursuant
- 7 to Section 26004, and any board, commission, department, or
- 8 officer succeeding to the functions of the authority, or to which
- 9 the powers conferred upon the authority by this division shall be
- 10 given.

1 (b) “Cost” as applied to a project or portion of the project
2 financed under this division means all or part of the cost of
3 construction and acquisition of all lands, structures, real or personal
4 property or an interest in the real or personal property, rights,
5 rights-of-way, franchises, easements, and interests acquired or
6 used for a project; the cost of demolishing or removing any
7 buildings or structures on land so acquired, including the cost of
8 acquiring any lands to which those buildings or structures may be
9 moved; the cost of all machinery, equipment, and furnishings,
10 financing charges, interest prior to, during, and for a period after,
11 completion of construction as determined by the authority; the cost
12 of the purchase or sale of energy derived from an alternative source
13 pursuant to subdivision (g) of Section 26011; provisions for
14 working capital; reserves for principal and interest and for
15 extensions, enlargements, additions, replacements, renovations,
16 and improvements; the cost of architectural, engineering, financial,
17 accounting, auditing and legal services, plans, specifications,
18 estimates, administrative expenses, and other expenses necessary
19 or incident to determining the feasibility of constructing any project
20 or incident to the construction, acquisition, or financing of a
21 project.

22 (c) (1) “Alternative sources” means the application of
23 cogeneration technology, as defined in Section 25134; *advanced*
24 *electric distributive generation technology, as defined in Section*
25 *379.8 of the Public Utilities Code*; the conservation of energy; or
26 the use of solar, biomass, wind, geothermal, hydroelectricity under
27 30 megawatts, or any other source of energy, the efficient use of
28 which will reduce the use of fossil and nuclear fuels.

29 (2) “Alternative sources” does not include a hydroelectric facility
30 that does not meet state laws pertaining to the control,
31 appropriation, use, and distribution of water, including, but not
32 limited to, the obtaining of applicable licenses and permits.

33 (d) “Advanced transportation technologies” means emerging
34 commercially competitive transportation-related technologies
35 identified by the authority as capable of creating long-term, high
36 value-added jobs for Californians while enhancing the state’s
37 commitment to energy conservation, pollution reduction, and
38 transportation efficiency. Those technologies may include, but are
39 not limited to, any of the following:

40 (1) Intelligent vehicle highway systems.

- 1 (2) Advanced telecommunications for transportation.
2 (3) Command, control, and communications for public transit
3 vehicles and systems.
4 (4) Electric vehicles and ultralow-emission vehicles.
5 (5) High-speed rail and magnetic levitation passenger systems.
6 (6) Fuel cells.
7 (7) *Energy storage technologies and their component materials.*
8 (e) “Financial assistance” includes, but is not limited to, either,
9 or any combination, of the following:
10 (1) Loans, loan loss reserves, interest rate reductions, proceeds
11 of bonds issued by the authority, insurance, guarantees or other
12 credit enhancements or liquidity facilities, contributions of money,
13 property, labor, or other items of value, or any combination thereof,
14 as determined by, and approved by the resolution of, the ~~board~~
15 *authority*.
16 (2) Any other type of assistance the authority determines is
17 appropriate.
18 (f) “Participating party” means either of the following:
19 (1) A person or an entity or group of entities engaged in business
20 or operations in the state, whether organized for profit or not for
21 profit, that does either of the following:
22 (A) Applies for financial assistance from the authority for the
23 purpose of implementing a project in a manner prescribed by the
24 authority.
25 (B) Participates in the purchase or sale of energy derived from
26 an alternative source pursuant to subdivision (g) of Section 26011.
27 (2) A public agency or nonprofit corporation that does either of
28 the following:
29 (A) Applies for financial assistance from the authority for the
30 purpose of implementing a project in a manner prescribed by the
31 authority.
32 (B) Participates in the purchase or sale of energy derived from
33 an alternative source pursuant to subdivision (g) of Section 26011.
34 (g) “Project” means a land, building, improvement to the land
35 or building, rehabilitation, work, property, or structure, real or
36 personal, stationary or mobile, including, but not limited to,
37 machinery and equipment, whether or not in existence or under
38 construction, that utilizes, or is designed to utilize, an alternative
39 source, or that is utilized for the design, technology transfer,
40 manufacture, production, assembly, distribution, or service of

1 advanced transportation technologies, *alternative source products*,
2 *components, or systems*, or an arrangement for the purchase,
3 including prepayment, or sale of energy derived from an alternative
4 source pursuant to subdivision (g) of Section 26011.

5 (h) “Public agency” means a federal or state agency, department,
6 board, authority, state or community college, university, or
7 commission, or a county, city and county, city, regional agency,
8 public district, school district, or other political entity.

9 (i) (1) “Renewable energy” means a device or technology that
10 conserves or produces heat, processes heat, space heating, water
11 heating, steam, space cooling, refrigeration, mechanical energy,
12 electricity, or energy in any form convertible to these uses, that
13 does not expend or use conventional energy fuels, and that uses
14 any of the following electrical generation technologies:

15 (A) Biomass.

16 (B) Solar thermal.

17 (C) Photovoltaic.

18 (D) Wind.

19 (E) Geothermal.

20 (2) For purposes of this subdivision, “conventional energy fuel”
21 means any fuel derived from petroleum deposits, including, but
22 not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,
23 including liquefied natural gas, or nuclear fissionable materials.

24 (3) Notwithstanding paragraph (1), for purposes of this section,
25 “renewable energy” also means ultralow-emission equipment for
26 energy generation based on thermal energy systems such as natural
27 gas turbines and fuel cells.

28 (j) “Revenue” means all rents, receipts, purchase payments,
29 loan repayments, and all other income or receipts derived by the
30 authority from a project, or the sale, lease, or other disposition of
31 alternative source or advanced transportation technology facilities,
32 or the making of loans to finance alternative source or advanced
33 transportation technology facilities, and any income or revenue
34 derived from the investment of money in any fund or account of
35 the authority.

36 *SEC. 2. Section 26011.7 is added to the Public Resources Code,*
37 *to read:*

38 *26011.7. (a) To promote the creation of jobs and reduction of*
39 *greenhouse gases, the authority may approve a project for which*
40 *the purchase, sale, or lease of tangible personal property qualifies*

1 *for the sales and use tax exclusion pursuant to Section 6010.8 of*
2 *the Revenue and Taxation Code.*

3 *(b) In approving a project for which the purchase, sale, or lease*
4 *of tangible personal property qualifies for the sales and use tax*
5 *exclusion pursuant to Section 6010.8 of the Revenue and Taxation*
6 *Code, the authority shall consider all of the following criteria:*

7 *(1) The extent to which the anticipated benefit to the state from*
8 *the project equals or exceeds the projected benefit to the*
9 *participating party from the sales and use tax exemption exclusion.*

10 *(2) The extent to which the project will create new, permanent*
11 *jobs in California.*

12 *(3) The extent to which the project is consistent with local and*
13 *state planning.*

14 *(4) The extent to which the project will produce reductions in*
15 *the emissions of greenhouse gases as defined in subdivision (g) of*
16 *Section 38505 of the Health and Safety Code.*

17 *(5) Any other factors that the authority deems appropriate.*

18 *(c) Once exclusions pursuant to Section 6010.8 of the Revenue*
19 *and Taxation Code, for projects approved by the authority pursuant*
20 *to this section exceed one hundred million dollars (\$100,000,000)*
21 *annually, the authority shall provide a 20-day notice to the*
22 *Legislature for additional approvals made pursuant to this section.*

23 ~~SECTION 1. Section 2770 of the Public Resources Code is~~
24 ~~amended to read:~~

25 ~~2770. (a) Except as provided in this section, a person shall not~~
26 ~~conduct surface mining operations unless a permit is obtained~~
27 ~~from, a reclamation plan has been submitted to and approved by,~~
28 ~~and financial assurances for reclamation have been approved by,~~
29 ~~the lead agency for the operation pursuant to this article.~~

30 ~~(b) A person with an existing surface mining operation who has~~
31 ~~vested rights pursuant to Section 2776 and who does not have an~~
32 ~~approved reclamation plan shall submit a reclamation plan to the~~
33 ~~lead agency not later than March 31, 1988. If a reclamation plan~~
34 ~~application is not on file by March 31, 1988, the continuation of~~
35 ~~the surface mining operation is prohibited until a reclamation plan~~
36 ~~is submitted to the lead agency. For purposes of this subdivision,~~
37 ~~reclamation plans may consist of all or the appropriate sections of~~
38 ~~the plans or written agreements previously approved by the lead~~
39 ~~agency or another agency, together with the additional documents~~
40 ~~needed to substantially meet the requirements of Sections 2772~~

1 and 2773 and the lead agency surface mining ordinance adopted
2 pursuant to subdivision (a) of Section 2774, provided that all
3 documents which together were proposed to serve as the
4 reclamation plan are submitted for approval to the lead agency in
5 accordance with this chapter.

6 (e) If a person with an existing surface mining operation has
7 received lead agency approval of its financial assurances for
8 reclamation prior to January 1, 1991, the lead agency shall
9 administratively review those existing financial assurances in
10 accordance with subdivision (d) prior to January 1, 1992. The
11 review of existing financial assurances shall not be considered a
12 project for purposes of Division 13 (commencing with Section
13 21000). A person with an existing surface mining operation which
14 does not have financial assurances that received lead agency
15 approval prior to January 1, 1991, shall submit financial assurances
16 for reclamation for review in accordance with subdivision (d).

17 (d) The lead agency's review of reclamation plans submitted
18 pursuant to subdivision (b) or of financial assurances pursuant to
19 subdivision (e) is limited to whether the plan or the financial
20 assurances substantially meet the applicable requirements of
21 Sections 2772, 2773, and 2773.1, and the lead agency surface
22 mining ordinance adopted pursuant to subdivision (a) of Section
23 2774, but, in any event, the lead agency shall require that financial
24 assurances for reclamation be sufficient to perform reclamation
25 of lands remaining disturbed. Reclamation plans or financial
26 assurances determined to substantially meet these requirements
27 shall be approved by the lead agency for purposes of this chapter.
28 Reclamation plans or financial assurances determined not to
29 substantially meet these requirements shall be returned to the
30 operator within 60 days. The operator has 60 days to revise the
31 plan or financial assurances to address identified deficiencies, at
32 which time the revised plan or financial assurances shall be
33 returned to the lead agency for review and approval. Except as
34 specified in subdivision (e) or (i), unless the operator has filed on
35 or before July 1, 1990, an appeal pursuant to subdivision (e) with
36 regard to nonapproval of the reclamation plan, or has filed on or
37 before January 1, 1994, an appeal pursuant to subdivision (e) with
38 regard to nonapproval of financial assurances, and that appeal is
39 pending before the board, the continuation of the surface mining

1 operation is prohibited until a reclamation plan and financial
2 assurances for reclamation are approved by the lead agency.

3 (e) A person who, based on the evidence of the record, can
4 substantiate that a lead agency has either (1) failed to act according
5 to due process or has relied on considerations not related to the
6 specific applicable requirements of Sections 2772, 2773, and
7 2773.1, and the lead agency surface mining ordinance adopted
8 pursuant to subdivision (a) of Section 2774, in reaching a decision
9 to deny approval of a reclamation plan or financial assurances for
10 reclamation, (2) failed to act within a reasonable time of receipt
11 of a completed application, or (3) failed to review and approve
12 reclamation plans or financial assurances as required by
13 subdivisions (c) and (d), may appeal that action or inaction to the
14 board.

15 (f) The board may decline to hear an appeal if it determines that
16 the appeal raises no substantial issues related to the lead agency's
17 review pursuant to this section.

18 (g) An appeal that the board does not decline to hear shall be
19 scheduled and heard at a public hearing within 45 days of the filing
20 of the appeal, or a longer period mutually agreed upon by the board
21 and the person filing the appeal. In hearing an appeal, the board
22 shall only determine whether the reclamation plan or the financial
23 assurances substantially meet the applicable requirements of
24 Sections 2772, 2773, 2773.1, and the lead agency surface mining
25 ordinance adopted pursuant to subdivision (a) of Section 2774. A
26 reclamation plan or financial assurances determined to meet these
27 requirements shall be approved. A reclamation plan or financial
28 assurances determined not to meet these requirements shall be
29 returned to the person filing the appeal with a notice of deficiencies,
30 and the person shall be granted, once only, a period of 30 days, or
31 a longer period mutually agreed upon by the operator and the
32 board, to correct the noted deficiencies and submit the revised
33 reclamation plan or the revised financial assurances to the lead
34 agency for review and approval.

35 (h) (1) Within 90 days of a surface mining operation becoming
36 idle, as defined in Section 2727.1, the operator shall submit to the
37 lead agency for review and approval, an interim management plan.
38 The review and approval of an interim management plan shall not
39 be considered a project for purposes of Division 13 (commencing
40 with Section 21000). The approved interim management plan shall

1 be considered an amendment to the surface mining operation's
2 approved reclamation plan, for purposes of this chapter. The
3 interim management plan shall provide measures the operator will
4 implement to maintain the site in compliance with this chapter,
5 including, but not limited to, all permit conditions.

6 (2) ~~The interim management plan may remain in effect for a~~
7 ~~period not to exceed five years, at which time the lead agency shall~~
8 ~~do one of the following:~~

9 (A) ~~Renew the interim management plan for another period not~~
10 ~~to exceed five years, if the lead agency finds that the surface mining~~
11 ~~operator has complied fully with the interim management plan.~~

12 (B) ~~Require the surface mining operator to commence~~
13 ~~reclamation in accordance with its approved reclamation plan.~~

14 (3) ~~The financial assurances required by Section 2773.1 shall~~
15 ~~remain in effect during the period that the surface mining operation~~
16 ~~is idle. If the surface mining operation is still idle after the~~
17 ~~expiration of its interim management plan, the surface mining~~
18 ~~operation shall commence reclamation in accordance with its~~
19 ~~approved reclamation plan.~~

20 (4) ~~Within 60 days of the receipt of the interim management~~
21 ~~plan, or a longer period mutually agreed upon by the lead agency~~
22 ~~and the operator, the lead agency shall review and approve the~~
23 ~~plan in accordance with its ordinance adopted pursuant to~~
24 ~~subdivision (a) of Section 2774, so long as the plan satisfies the~~
25 ~~requirements of this subdivision, and so notify the operator in~~
26 ~~writing. Otherwise, the lead agency shall notify the operator in~~
27 ~~writing of any deficiencies in the plan. The operator shall have 30~~
28 ~~days, or a longer period mutually agreed upon by the operator and~~
29 ~~the lead agency, to submit a revised plan.~~

30 (5) ~~The lead agency shall approve or deny approval of the~~
31 ~~revised interim management plan within 60 days of receipt. If the~~
32 ~~lead agency denies approval of the revised interim management~~
33 ~~plan, the operator may appeal that action to the lead agency's~~
34 ~~governing body, which shall schedule a public hearing within 45~~
35 ~~days of the filing of the appeal, or a longer period mutually agreed~~
36 ~~upon by the operator and the governing body.~~

37 (6) ~~Unless review of an interim management plan is pending~~
38 ~~before the lead agency, or an appeal is pending before the lead~~
39 ~~agency's governing body, a surface mining operation that remains~~
40 ~~idle for over one year after becoming idle as defined in Section~~

1 ~~2727.1 without obtaining approval of an interim management plan~~
2 ~~shall be considered abandoned and the operator shall commence~~
3 ~~and complete reclamation in accordance with the approved~~
4 ~~reclamation plan.~~
5 (i) ~~An enforcement action that may be brought against a surface~~
6 ~~mining operation for operating without an approved reclamation~~
7 ~~plan, financial assurance, or interim management plan, shall be~~
8 ~~held in abeyance pending review pursuant to subdivision (b), (c),~~
9 ~~(d), or (h) or the resolution of an appeal filed with the board~~
10 ~~pursuant to subdivision (e), or filed with a lead agency governing~~
11 ~~body pursuant to subdivision (h).~~