

AMENDED IN SENATE APRIL 22, 2014

SENATE BILL

No. 1270

Introduced by Senator Pavley

February 21, 2014

An act to amend Sections 607, 677, 2006, 2207, 2208, 2209, 2210, 2732.5, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.3, and 2774.4 of, and to add ~~Sections~~ *Section* 2006.5 and 2717.5 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 1270, as amended, Pavley. Surface mining operations.

(1) Under existing law, the Department of Conservation, under the supervision of the Director of Conservation, is comprised of various entities, including the State Mining and Geology Board, and the work of the department is divided into divisions including the California Geological Survey and the Office of Mine Reclamation. Existing law requires the board to nominate, and the director to appoint, the State Geologist to advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the products and activities of the California Geological Survey, and requires the State Geologist to meet specific qualifications.

~~This bill would instead require an unspecified individual or entity to appoint the board to nominate at least 2 individuals for appointment, as the State Geologist and would make that individual responsible for the management of the California Geological Survey. The bill would change the qualifications for that person.~~ The bill would also designate the Office of Mine Reclamation as the Division of Mines, would require ~~an unspecified individual or entity~~ *the director* to appoint a State Mine

Inspector to be responsible for the management of the Division of Mines, and would prescribe the specific qualifications for that person.

(2) Existing law requires the owner of operator of a mining operation to forward annually to the director and the lead agency a report that provides specified information with respect to the mining operation.

This bill would require, *among other changes*, that report to be submitted to the State Mine Inspector and the lead agency. *The bill would additionally require the State Mine Inspector to submit to the board and the director an annual report relating to abandoned mines, as provided.*

(3) The Surface Mining and Reclamation Act of 1975, administered by the board, prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, *a permit, as defined, is obtained from*, a reclamation plan, as specified, is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation. Existing law provides an appeals process for decisions of the lead agency in approval or denial of approval of a reclamation plan.

This bill would instead make the ~~director~~ *lead agency or the State Mine Inspector, in certain circumstances*, responsible for reviewing and approving financial assurances in surface mining operations and would require the ~~director~~ *lead agency or the State Mine Inspector* to take specified actions in seeking forfeiture of those financial assurances. The bill would also provide an appeals process for the ~~director's~~ *State Mine Inspector's* approval or denial of approval of financial assurances. The bill would require a portion of the reclamation plan to be certified by a registered professional geologist, geophysicist, or ~~professional~~ *civil* engineer and to include a schedule with time limits for completing reclamation, as specified, and would require the lead agency *or the State Mine Inspector* to determine a time period for reclamation to be complete in certain circumstances. By imposing additional duties on lead agencies, this bill would impose a state-mandated local program. *For purposes of the act, the bill would also revise the definition of permit.*

(4) Existing law requires the lead agency to conduct an inspection of a surface mining operation ~~with~~ *within* 6 months of receipt by the lead agency of the annual report described in (2) above. Under existing law, if the lead agency or the director determines that a surface mining operation is not in compliance, the lead agency or director is required to notify the operator of that violation.

This bill would ~~instead~~ also require the ~~director~~ *State Mine Inspector*, *in certain circumstances*, to conduct an inspection of those operations ~~within one year within 6 months~~ of receipt of the report by the State Mine Inspector *and to provide notice of the inspection to the lead agency*. The bill would require the notice of violation to include, among other things, specific remedial steps to be taken to correct the noncompliance and also information on *the* time to comply.

(5) Existing law requires the board to assume the powers and duties under the act of the lead agency if, following a public hearing, as prescribed, the board finds deficiencies in the lead agency's implementation and enforcement of the act.

This bill would *require the board, in those circumstances, to assign those powers and duties to the State Mine Inspector. The bill would also* authorize a lead agency to unilaterally and voluntarily relinquish its responsibilities under the act and would require the ~~board~~ *State Mine Inspector* to assume those responsibilities. The bill would ~~also~~ authorize the lead agency to resume its relinquished role if certain requirements are met.

(6) Existing law requires the board to adopt a schedule of fees to cover the department's costs of carrying out specified provisions and to impose an annual reporting fee on each mining operation, not to exceed \$4,000 annually for any single mining operation and not to be less than \$100. Existing law requires the board to adjust the fees if the director determines the resources collected were greater to or less than the department's costs.

This bill would require that an annual reporting fee, *which would also be required to cover the board's costs, as provided*, on each mining operation not be less than \$1,000 *or more than an unspecified amount* and would require the fee to be based on a cost per acre as determined by the board. The bill would ~~authorize the board to recommend expenditures of these funds as part of the annual budget process and would~~ require the board to adjust the fees if the State Mine Inspector determines the revenues collected were greater to or less than the department's costs.

(7) ~~Existing law requires the department to quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying the status of compliance of certain surface mining operations, as specified. Existing law also prohibits a state agency from acquiring or utilizing mined material, or from~~

contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list and that meets certain requirements.

~~This bill would authorize an affected mine operator, a lead agency with jurisdiction over the operation, or an affected person to appeal to the board the department's determination regarding a mining operation's placement on, removal from, or denial of placement on or removal from, the list.~~

~~(8)~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares the following:

2 (a) Since its passage, the implementation of the Surface Mining
3 and Reclamation Act of 1975 has depended on coordinated
4 administrative efforts by local governments, the Department of
5 Conservation, and the State Mining and Geology Board. Two of
6 the major goals of the act are to encourage production and
7 conservation of minerals in California, and to ~~assure~~ ensure
8 reclamation of mined lands.

9 (b) The essential components of the act for each of the more
10 than 2,000 mines in California are annual inspections, reclamation
11 plans for mines that have ceased production, and a financial surety
12 mechanism to pay for reclamation in the event the operator is
13 unable or fails to do so.

14 (c) It is the intent of the Legislature that siting decisions for
15 mines and the approval of reclamation plans for those mines remain
16 with local governments.

17 (d) The act provides for approval procedures for financial
18 assurances and reclamation plans that depend on active inspections,
19 remediation of compliance shortfalls, and appropriate updates to
20 financial assurance commitments. Based on a review of official
21 state data, industry and government analysts agree that the goals

1 of the act are not being achieved because of multiple failures in
2 the internal processes of this important legislation. As examples:

3 (1) Twenty-five percent of mines that have closed have not
4 begun reclamation. This includes about 100 mines in the state.

5 (2) Inspection rates by counties who serve as lead agencies
6 under the act, over a multiyear period, range from 66 percent to
7 74 percent, inclusive, but 12 counties have inspection rates below
8 50 percent.

9 (3) Data on inspections by cities that serve as lead agencies
10 under the act, over the same multiyear period, indicate that 22
11 cities have inspected all of ~~its~~ *their* mines annually, 25 cities have
12 an inspection rate below 50 percent, and 14 *cities* have never
13 inspected a mine.

14 (4) Financial assurance documents that ensure the ability to pay
15 for mine reclamation are not routinely updated. The adjustment
16 rate for counties is about 27 percent, based on official data, and
17 about 20 percent for cities.

18 (e) It is the intent of the Legislature to retain the existing
19 structure of the act while improving the statutory relationships
20 between state and local government entities by strengthening the
21 interconnections between inspections, financial assurances, and
22 reclamation plans, in order to ensure improved compliance with
23 the provisions of this important law.

24 SEC. 2. Section 607 of the Public Resources Code is amended
25 to read:

26 607. The work of the department shall be divided into at least
27 the following:

28 (a) California Geological Survey.

29 (b) Division of Oil, Gas, and Geothermal Resources.

30 (c) Division of Land Resource Protection.

31 (d) Division of Mines.

32 SEC. 3. Section 677 of the Public Resources Code is amended
33 to read:

34 677. (a) ~~A~~ *The board shall nominate at least two individuals*
35 *to serve as State Geologist. The director shall appoint the State*
36 ~~Geologist shall be appointed and Geologist, who~~ shall be
37 responsible for the management of the California Geological
38 Survey. The State Geologist shall either be registered in compliance
39 with the Geologist and Geophysicist Act (Chapter 12.5
40 (commencing with Section 7800) of Division 3 of the Business

1 and Professions Code) at least one year from the date of
2 appointment, or the Board for Professional Engineers, Land
3 Surveyors, and Geologists may, upon the review of academic and
4 professional experience, grant registration. The State Geologist
5 shall possess general knowledge of mineral ~~resources and~~
6 ~~resources~~, structural ~~engineering~~ geology, seismology, ~~engineering~~
7 ~~geology~~, and related disciplines in science and engineering, and
8 the reclamation of mined lands and waters. The State Geologist
9 shall advise the director regarding technical, scientific, and
10 engineering issues, including the scientific quality of the products
11 and activities of the California Geological Survey.

12 (b) A State Mine Inspector shall be appointed *by the director*
13 and shall be responsible for the management of the Division of
14 Mines. The State Mine Inspector shall either be registered in
15 compliance with the Geologist and Geophysicist Act (Chapter 12.5
16 (commencing with Section 7800) of Division 3 of the Business
17 and Professions Code) or the Professional Engineers Act (Chapter
18 7 (commencing with Section 6700) of Division 3 of the Business
19 and Professions Code) at least one year from the date of
20 appointment, or the Board for Professional Engineers, Land
21 Surveyors, and Geologists may, upon the review of academic and
22 professional experience, grant registration. The State Mine
23 Inspector shall possess general knowledge of mining, mineral
24 resources, structural geology, seismology, engineering geology,
25 and related disciplines in science and engineering, and the
26 reclamation of mined lands and waters. The State Mine Inspector
27 shall advise the director regarding technical, scientific, and
28 engineering issues, including the scientific quality of the products
29 and activities of the Division of Mines.

30 SEC. 4. Section 2006 of the Public Resources Code is amended
31 to read:

32 2006. "State Geologist" means the individual holding the office
33 created by subdivision (a) of Section 677.

34 SEC. 5. Section 2006.5 is added to the Public Resources Code,
35 to read:

36 2006.5. "State Mine Inspector" means the individual holding
37 the office created by subdivision (b) of Section 677.

38 SEC. 6. Section 2207 of the Public Resources Code is amended
39 to read:

2207. (a) The owner or the operator of a mining operation within the state shall forward to the State Mine Inspector annually, not later than a date established by the State Mine Inspector, upon forms approved by the board from time to time, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, State Mine Inspector, or court.

(3) The location of the mining operation, its name, its mine number as issued by the State Mine Inspector, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

~~(8) Proof of annual inspection by the lead agency. inspection.~~
All annual inspections conducted on or after July 1, 2015, shall be certified by a registered professional geologist, geophysicist, or civil engineer who either works for the local lead agency or the division or, if not employed by the local lead agency, has not worked for a mining operation in the jurisdiction of the local agency for at least one year.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

1 (14) The approximate total unreclaimed disturbed acreage
2 remaining as of the end of the calendar year.

3 (15) The total production for each mineral commodity produced
4 during the previous year.

5 (16) A copy of any approved reclamation plan and any
6 amendments or conditions of approval to any existing reclamation
7 plan approved by the lead agency.

8 (b) (1) Every year, not later than the date established by the
9 State Mine Inspector, the person submitting the report pursuant to
10 subdivision (a) shall forward to the lead agency, upon forms
11 furnished by the board, a report that provides all of the information
12 specified in ~~paragraphs (1) to (16), inclusive,~~ of subdivision (a).

13 (2) The owner or operator of a mining operation shall allow
14 access to the property to any governmental agency or the agent of
15 any company providing financial assurances in connection with
16 the reclamation plan, in order that the reclamation can be carried
17 out by the entity or company, in accordance with the provisions
18 of the reclamation plan.

19 (c) Subsequent reports shall include only changes in the
20 information submitted for the items described in subdivision (a),
21 except that, instead of the approved reclamation plan, the reports
22 shall include any reclamation plan amendments approved during
23 the previous year. The reports shall state whether review of a
24 reclamation plan, financial assurances, or an interim management
25 plan is pending under subdivision (b), (c), (d), or (h) of Section
26 2770, or whether an appeal before the board or lead agency
27 governing body is pending under subdivision (e) or (h) of Section
28 2770. The State Mine Inspector shall notify the person submitting
29 the report and the owner's designated agent in writing that the
30 report and the fee required pursuant to subdivision (d) have been
31 received, specify the mining operation's mine number if one has
32 not been issued by the State Mine Inspector, and notify the person
33 and agent of any deficiencies in the report within 90 days of receipt.
34 That person or agent shall have 30 days from receipt of the
35 notification to correct the noted deficiencies and forward the
36 revised reports to the State Mine Inspector and the lead agency.
37 Any person who fails to comply with this section, or knowingly
38 provides incorrect or false information in reports required by this
39 section, may be subject to an administrative penalty as provided
40 in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The minimum fee for any single mining operation may not be less than one thousand dollars (\$1,000) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2014–15 fiscal year and annually thereafter.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's ~~cost~~ *and board's costs* in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. *The board's costs shall be reflected separately in a format approved by the Department of Finance and shall be displayed in the annual budget proposed by the Governor.* In establishing the schedule of fees to be paid by each active and idle mining operation, the board shall consider and establish a cost per acre on an equitable basis reflecting the size and type of operation, the acreage disturbed and undisturbed by mining activities, the acreage subject to the reclamation plan, and other factors addressed by the approved reclamation plan. *The fee for each active and idle mining operation shall not exceed ____ dollars (\$____).*

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees *may not exceed, and may be less than, the amount of ____ dollars (\$____), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005–06 fiscal year and annually thereafter* and shall be based on a cost per acre, subject to the approved reclamation plan, as determined by the board pursuant to paragraph

(2). If the State Mine Inspector determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the State Mine Inspector or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. ~~The board may recommend expenditures of these funds as part of the annual budget process.~~ The moneys in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) *On or before January 1, 2018, and each year thereafter, the State Mine Inspector shall submit to the board and the director a report on the activities of the Abandoned Mines Land Unit. This report shall include, but is not limited to, all of the following:*

(i) *The number and location of known abandoned mines identified along with any associated features and supporting documentation.*

(ii) *Type of mine site and minerals or materials mined.*

(iii) *Summary of assessment and overall mitigation activities and mitigation activities per site performed to date.*

(iv) *Prioritized assessment of sites that present an imminent danger to public health, safety, and welfare, and to the environment.*

(v) *Available funding and efforts to obtain funding to mitigate high-risk sites.*

(vi) *Planned activities for upcoming year.*

~~(B)~~

(C) (i) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation

1 Account. The department may expend the moneys in the
2 subaccount, upon appropriation by the Legislature, for only the
3 purposes of Section 2796.5 and as authorized herein for the
4 remediation of abandoned mines.

5 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
6 collected pursuant to clause (i) may also be used to remediate
7 features of historic abandoned mines and lands that they impact.
8 For the purposes of this section, historic abandoned mines are
9 mines for which operations have been conducted before January
10 1, 1976, and include, but are not limited to, historic gold and silver
11 mines.

12 (5) In case of late payment of the reporting fee, a penalty of not
13 less than one hundred dollars (\$100) or 10 percent of the amount
14 due, whichever is greater, plus interest at the rate of 1 ½ percent
15 per month, computed from the delinquent date of the assessment
16 until and including the date of payment, shall be assessed. New
17 mining operations that have not submitted a report shall submit a
18 report prior to commencement of operations. The new operation
19 shall submit its fee according to the reasonable fee schedule
20 adopted by the board, and the month that the report is received
21 shall become that operation's anniversary month.

22 (e) The lead agency, or the board or *State Mine Inspector* when
23 acting as the lead agency pursuant to Section 2774.4, may impose
24 a fee upon each mining operation to cover the reasonable costs
25 incurred in implementing this chapter and Chapter 9 (commencing
26 with Section 2710).

27 (f) For purposes of this section, "mining operation" means a
28 mining operation of any kind or character ~~whatever~~ *whatsoever*
29 in this state, including, but not limited to, a mining operation that
30 is classified as a "surface mining operation" as defined in Section
31 2735, unless excepted by Section 2714. For the purposes of fee
32 collections only, "mining operation" may include one or more
33 mines operated by a single operator or mining company on one or
34 more sites, if the total annual combined mineral production for all
35 sites is less than 100 troy ounces for precious metals, if precious
36 metals are the primary mineral commodity produced, or less than
37 100,000 short tons if the primary mineral commodity produced is
38 not precious metals.

39 (g) Any information in reports submitted pursuant to subdivision
40 (a) that includes or otherwise indicates the total mineral production,

1 reserves, or rate of depletion of any mining operation may not be
2 disclosed to any member of the public, as defined in subdivision
3 (b) of Section 6252 of the Government Code. Other portions of
4 the reports are public records unless excepted by statute. Statistical
5 bulletins based on these reports and published under Section 2205
6 shall be compiled to show, for the state as a whole and separately
7 for each lead agency, the total of each mineral produced therein.
8 In order not to disclose the production, reserves, or rate of depletion
9 from any identifiable mining operation, no production figure shall
10 be published or otherwise disclosed unless that figure is the
11 aggregated production of not less than three mining operations. If
12 the production figure for any lead agency would disclose the
13 production, reserves, or rate of depletion of less than three mining
14 operations or otherwise permit the reasonable inference of the
15 production, reserves, or rate of depletion of any identifiable mining
16 operation, that figure shall be combined with the same figure of
17 not less than two other lead agencies without regard to the location
18 of the lead agencies. The bulletin shall be published annually by
19 June 30 or as soon thereafter as practicable.

20 (h) The approval of a form by the board pursuant to this section
21 is not the adoption of a regulation for purposes of Chapter 3.5
22 (commencing with Section 11340) of Part 1 of Division 3 of Title
23 2 of the Government Code and is not subject to that chapter.

24 SEC. 7. Section 2208 of the Public Resources Code is amended
25 to read:

26 2208. The State Mine Inspector, *State Geologist*, director, or
27 a qualified assistant may at any time enter or examine any and all
28 mines, quarries, wells, mills, reduction works, refining works, and
29 other mineral properties or working plants in this state in order to
30 gather data to comply with the provisions of this chapter.

31 ~~SEC. 8. Section 2717.5 is added to the Public Resources Code;~~
32 ~~to read:~~

33 ~~2717.5. (a) An affected mine operator, a lead agency with~~
34 ~~jurisdiction over the operation, or an affected person, may appeal~~
35 ~~to the board the department's determination regarding a mining~~
36 ~~operation's placement on, removal from, or denial of placement~~
37 ~~on or removal from, the list identified in subdivision (b) of Section~~
38 ~~2717.~~

39 ~~(b) An appeal pursuant to subdivision (a) shall be subject to the~~
40 ~~following requirements, as applicable:~~

1 ~~(1) The appeal shall be made in writing, on a form provided by~~
2 ~~the board, and shall be received by the board within 15 days of the~~
3 ~~operator's, lead agency, or affected person's receipt of a notice of~~
4 ~~the department's determination as described in subdivision (a), or~~
5 ~~within 15 days of the department's posting of the notice on its~~
6 ~~Internet Web site.~~

7 ~~(2) An appeal filed by a lead agency shall demonstrate good~~
8 ~~cause for reversal of a determination.~~

9 ~~(3) An appeal filed by an affected person other than a lead~~
10 ~~agency shall demonstrate that the affected person has a sufficient~~
11 ~~connection to, or direct impact from, the operation of the mine at~~
12 ~~issue.~~

13 ~~(4) Where the board is the lead agency, it may not appeal the~~
14 ~~decision of the department but may follow the department's~~
15 ~~procedures for removal of a mining operation from the list. The~~
16 ~~board may hear an appeal filed by any other party pursuant to~~
17 ~~subdivision (a).~~

18 ~~(5) The appeal shall demonstrate, as a necessary element of the~~
19 ~~appeal, that the facts and issues relevant to the appeal were brought~~
20 ~~to the attention of the department prior to the department's~~
21 ~~determination described in subdivision (a).~~

22 ~~(c) The board shall promptly notify the department and the lead~~
23 ~~agency that the appeal has been received by the board. Where the~~
24 ~~appeal is filed by the lead agency or the board is the lead agency,~~
25 ~~no notice to the lead agency shall be required.~~

26 ~~(d) (1) A mining operation seeking placement on the list shall~~
27 ~~not be placed on the list pending the final outcome of an appeal~~
28 ~~filed pursuant to subdivision (a).~~

29 ~~(2) A mining operation appealing the department's removal of~~
30 ~~the operation from the list shall remain on the list pending the final~~
31 ~~outcome of an appeal filed pursuant to subdivision (a).~~

32 ~~(e) (1) (A) The board shall hear the appeal if the chair of the~~
33 ~~board or his or her designated hearing officer determines the appeal~~
34 ~~is within the jurisdiction of the board and the appeal raises a~~
35 ~~substantial issue related to the department's determination~~
36 ~~regarding a mining operation's placement on, removal from, or~~
37 ~~denial of placement on or removal from, the list.~~

38 ~~(B) A determination of the board's jurisdiction by the chair or~~
39 ~~his or her designee shall consider all of the following:~~

1 (i) ~~Whether the information presented with the appeal presents~~
2 ~~any dispute of the material fact or facts supporting the department's~~
3 ~~determination.~~

4 (ii) ~~Whether the appeal is an attempt to challenge an enforcement~~
5 ~~decision or a court decision.~~

6 (iii) ~~Whether the appellant has standing.~~

7 (iv) ~~Whether the appeal is timely.~~

8 (v) ~~Whether the facts constituting the basis for the appeal have~~
9 ~~been presented to the department prior to the department's~~
10 ~~determination as described in subdivision (a).~~

11 (vi) ~~Whether any relevant circumstances exist that are not~~
12 ~~specifically identified but which, in the judgment of the chair or~~
13 ~~his or her designee, preclude the appeal.~~

14 (2) ~~If the chair or hearing officer finds, based on the criteria~~
15 ~~described in paragraph (1), that the appeal is not within the~~
16 ~~jurisdiction of the board or does not raise a substantial issue, the~~
17 ~~chair or his or her designee shall refuse to grant the appeal and the~~
18 ~~department's decision shall be deemed final for purposes of seeking~~
19 ~~judicial review of that decision.~~

20 (f) ~~A decision by the board pursuant to this section shall not~~
21 ~~preclude any party from initiating a new proceeding to be included~~
22 ~~on the list, to be maintained on the list, or to effect removal of a~~
23 ~~mining operation from the list, in accordance with this section or~~
24 ~~based on new or different circumstances than were determined by~~
25 ~~the chair or his or her designee on a previous appeal.~~

26 *SEC. 8. Section 2209 of the Public Resources Code is amended*
27 *to read:*

28 2209. The director *or the State Geologist* may fix a price upon
29 and dispose of to the public all publications of the division,
30 including reports, bulletins, maps, registers, or other publications.
31 The price shall approximate the cost of publication and distribution.
32 The director *or the State Geologist* may also furnish the
33 publications of the division to public libraries without cost and
34 may exchange publications with geological surveys, scientific
35 societies, and other like bodies.

36 *SEC. 9. Section 2210 of the Public Resources Code is amended*
37 *to read:*

38 2210. All money received by the division *and the State*
39 *Geologist* from sales of publications issued by the division shall

1 be deposited at least once each month in the State treasury to the
2 credit of the General Fund.

3 *SEC. 10. Section 2732.5 of the Public Resources Code is*
4 *amended to read:*

5 2732.5. "Permit" means ~~any~~ *a land use* authorization from, or
6 approval by, a lead agency, the absence of which would preclude
7 surface mining operations.

8 ~~SEC. 9.~~

9 *SEC. 11. Section 2733 of the Public Resources Code is*
10 *amended to read:*

11 2733. "Reclamation" means the combined process of land
12 treatment that minimizes water degradation, air pollution, damage
13 to aquatic or wildlife habitat, flooding, erosion, and other adverse
14 effects from surface mining operations, including adverse surface
15 effects incidental to underground mines, so that mined lands are
16 reclaimed, to a usable condition that is readily adaptable for
17 alternate land uses, and create no danger to public health or safety.
18 The process may extend to affected lands surrounding mined lands;
19 may require backfilling, grading, resoiling, revegetation, soil
20 compaction, stabilization, or other measures; and shall be certified
21 by a registered professional geologist, geophysicist, or ~~professional~~
22 *civil engineer.*

23 ~~SEC. 10.~~

24 *SEC. 12. Section 2770 of the Public Resources Code is*
25 *amended to read:*

26 2770. (a) Except as provided in this section, a person shall not
27 conduct surface mining operations unless a permit is obtained
28 from, ~~and~~ *a current reclamation plan has been submitted to and*
29 *approved by, and current financial assurances for reclamation*
30 *have been approved by, the lead agency for the operation and*
31 ~~financial assurances for reclamation pursuant to the reclamation~~
32 ~~plan have been submitted to and approved by the director pursuant~~
33 ~~to this article.~~ *operation. Where the State Mine Inspector has*
34 *assumed the lead agency's authority pursuant to Section 2774.4,*
35 *surface mining operations shall not be conducted unless, in*
36 *addition to having a permit approved by the lead agency, the*
37 *person has a current reclamation plan and financial assurances*
38 *for reclamation approved by the State Mine Inspector.*

39 (b) A person with an existing surface mining operation who has
40 vested rights pursuant to Section 2776 and who does not have an

1 approved reclamation plan shall submit a reclamation plan to the
2 lead agency not later than March 31, 1988. If a reclamation plan
3 application is not on file by March 31, 1988, the continuation of
4 the surface mining operation is prohibited until a reclamation plan
5 is submitted to the lead agency. For purposes of this subdivision,
6 a reclamation plan may consist of all or the appropriate sections
7 of any plans or written agreements previously approved by the
8 lead agency or another agency, together with any additional
9 documents needed to substantially meet the requirements of
10 Sections 2772 and 2773 and the lead agency surface mining
11 ordinance adopted pursuant to subdivision (a) of Section 2774,
12 provided that all documents which together were proposed to serve
13 as the reclamation plan are submitted for approval to the lead
14 agency in accordance with this chapter.

15 ~~(c) If a person with an existing surface mining operation has~~
16 ~~received lead agency approval of its financial assurances for~~
17 ~~reclamation prior to January 1, 2015, the director~~

18 *(c) The lead agency shall administratively review, at least*
19 *annually, and make any changes changes, to ensure those existing*
20 *financial assurances for all surface mining operations within its*
21 *jurisdiction are in accordance with subdivision (d) prior to January*

22 ~~1, 2016.~~ *(d). If the State Mine Inspector has assumed the lead*
23 *agency's authority pursuant to Section 2774.4, a person operating*
24 *a surface mining operation within such lead agency's jurisdiction*
25 *shall submit financial assurances for reclamation to the State Mine*
26 *Inspector within 60 days after the State Mine Inspector's*
27 *assumption for review and approval in accordance with subdivision*

28 *(d). The State Mine Inspector shall administratively review, at*
29 *least annually, and make any changes, to ensure financial*
30 *assurances for all mining operations for which the State Mine*
31 *Inspector has authority pursuant to Section 2774.4 are in*
32 *accordance with subdivision (d). The review of existing financial*
33 *assurances shall not be considered a project for purposes of*
34 *Division 13 (commencing with Section 21000). A person with an*
35 *existing surface mining operation that does not have financial*
36 *assurances that received the director's approval prior to January*
37 *1, 2016, shall submit financial assurances for reclamation to the*
38 *director for review in accordance with subdivision (d).*

39 *(d) The lead agency's review of a reclamation plan submitted*
40 *pursuant to subdivision (b) or the director's review of financial*

1 assurances pursuant to subdivision (c) is limited to whether the
 2 plan or the financial assurances substantially meet the applicable
 3 requirements of Sections 2772, 2773, and 2773.1, and the lead
 4 agency surface mining ordinance adopted pursuant to subdivision
 5 (a) of Section 2774, but, in any event, the ~~director~~ *lead agency or*
 6 *the State Mine Inspector, as the case may be*, shall require that
 7 financial assurances for reclamation be sufficient to perform
 8 reclamation of lands remaining disturbed. For purposes of this
 9 chapter, reclamation plans *or financial assurances* determined to
 10 substantially meet these requirements shall be ~~approved by the~~
 11 ~~lead agency and financial assurances determined to substantially~~
 12 ~~meet these requirements shall be approved by the director.~~
 13 *approved*. Reclamation plans or financial assurances determined
 14 not to substantially meet these requirements shall be returned to
 15 the operator within 60 days. The operator shall have 60 days to
 16 revise the plan or financial assurances to address identified
 17 deficiencies, at which time the revised plan *or financial assurances*
 18 shall be returned to the lead agency, *or the State Mine Inspector,*
 19 *as the case may be*, for review and approval, or the revised
 20 reclamation plan shall be returned to the director for review and
 21 approval. Except as specified in subdivision (e) or (i), the
 22 continuation of the surface mining operation is prohibited until a
 23 reclamation plan ~~is approved by a lead agency~~ and financial
 24 assurances for reclamation are ~~approved by the director.~~ *approved*.

25 (e) (1) A person who, based on the evidence of the record,
 26 claims that a lead agency has ~~either~~ (A) failed to act according to
 27 due process or has relied on considerations not related to the
 28 specific applicable requirements of Sections 2772, 2773, and
 29 2773.1, and the lead agency surface mining ordinance adopted
 30 pursuant to subdivision (a) of Section 2774, in reaching a decision
 31 to approve or deny approval of a reclamation plan, (B) failed to
 32 act within a reasonable time of receipt of a completed application,
 33 or (C) failed to review and approve reclamation plans as required
 34 by subdivisions (c) and (d), may appeal that action or inaction to
 35 the board.

36 (2) A person who, based on the evidence of the record, claims
 37 that the ~~director~~ *State Mine Inspector* has either (A) failed to act
 38 according to due process or has relied on considerations not related
 39 to the specific applicable requirements of Sections 2772, 2773,
 40 and 2773.1, in reaching a decision to approve or deny approval of

1 financial assurances, or (B) failed to review and approve financial
2 assurances as required by subdivisions (c) and (d), may appeal that
3 action or inaction to the board.

4 (f) The board may decline to hear an appeal if it determines that
5 the appeal raises no substantial issues related to the lead agency's
6 or the ~~director's~~ *State Mine Inspector's* review pursuant to this
7 section.

8 (g) Appeals that the board does not decline to hear shall be
9 scheduled and heard at a public hearing within 45 days of the filing
10 of the appeal, or a longer period as may be mutually agreed upon
11 by the board and the person filing the appeal. In hearing an appeal,
12 the board shall only determine whether the reclamation plan or the
13 financial assurances substantially meet the applicable requirements
14 of Sections 2772, 2773, and 2773.1, and the lead agency surface
15 mining ordinance adopted pursuant to subdivision (a) of Section
16 2774. A reclamation plan or financial assurances determined to
17 meet these requirements shall be approved. A reclamation plan or
18 financial assurances determined not to meet these requirements
19 shall be returned to the operator with a notice of deficiencies, who
20 shall be granted, once only, a period of 30 days, or a longer period
21 mutually agreed upon by the operator and the board, to correct the
22 noted deficiencies and submit the revised reclamation plan *or*
23 *financial assurances* to the lead agency or ~~the revised financial~~
24 ~~assurances to the director~~ *the State Mine Inspector, as the case*
25 *may be*, for review and approval.

26 (h) (1) Within 90 days of a surface mining operation becoming
27 idle, as defined in Section 2727.1, the operator shall submit to the
28 lead agency for review and approval, an interim management plan.
29 The review and approval of an interim management plan shall not
30 be considered a project for purposes of Division 13 (commencing
31 with Section 21000). The approved interim management plan shall
32 be considered an amendment to the surface mining operation's
33 approved reclamation plan, for purposes of this chapter. The
34 interim management plan shall provide measures the operator will
35 implement to maintain the site in compliance with this chapter,
36 including, but not limited to, all permit conditions.

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

1 (A) Renew the interim management plan for an additional period
2 not to exceed five years, which may be renewed for one additional
3 five-year renewal period at the expiration of the first five-year
4 renewal period, if the lead agency finds that the surface mining
5 operator has complied fully with the interim management plan.

6 (B) Require the surface mining operator to commence
7 reclamation in accordance with its approved reclamation plan.

8 (3) The financial assurances required by Section 2773.1 shall
9 remain in effect during the period that the surface mining operation
10 is idle. If the surface mining operation is still idle after the
11 expiration of its interim management plan, the surface mining
12 operation shall commence reclamation in accordance with its
13 approved reclamation plan.

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

24 (5) The lead agency shall approve or deny approval of the
25 revised interim management plan within 60 days of receipt. If the
26 lead agency denies approval of the revised interim management
27 plan, the operator may appeal that action to the lead agency's
28 governing body, which shall schedule a public hearing within 45
29 days of the filing of the appeal, or a longer period mutually agreed
30 upon by the operator and the governing body.

31 (6) Unless review of an interim management plan is pending
32 before the lead agency, or an appeal is pending before the lead
33 agency's governing body, a surface mining operation that remains
34 idle for over one year after becoming idle as defined in Section
35 2727.1 without obtaining approval of an interim management plan
36 shall be considered abandoned and the operator shall commence
37 and complete reclamation in accordance with the approved
38 reclamation plan.

39 (i) An enforcement action that may be brought against a surface
40 mining operation for operating without an approved reclamation

1 plan, financial assurance, or interim management plan shall be
2 held in abeyance pending review pursuant to subdivision (b), (c),
3 (d), or (h), or the resolution of an appeal filed with the board
4 pursuant to subdivision (e), or with a lead agency governing body
5 pursuant to subdivision (h).

6 ~~SEC. 11.~~

7 *SEC. 13.* Section 2772 of the Public Resources Code is
8 amended to read:

9 2772. (a) The reclamation plan shall be filed with the lead
10 agency, on a form ~~provided by the lead agency~~ *developed by the*
11 *board, with provisions for additional information provided at the*
12 *discretion of the lead agency*, by any person who owns, leases, or
13 otherwise controls or operates on all, or any portion, of any mined
14 lands, and who plans to conduct surface mining operations on the
15 lands.

16 (b) All documentation for the reclamation plan shall be
17 submitted by the lead agency to the department at one time.

18 (c) The reclamation plan shall include all of the following
19 information and documents:

20 (1) The name and address of the surface mining operator and
21 the names and addresses of any persons designated by the operator
22 as an agent for the service of process.

23 (2) The anticipated quantity and type of minerals for which the
24 surface mining operation is to be conducted.

25 (3) The proposed dates for the initiation and termination of
26 surface mining operation.

27 (4) The maximum anticipated depth of the surface mining
28 operation.

29 (5) The size and legal description of the lands that will be
30 affected by the surface mining operation, a map that includes the
31 boundaries and topographic details of the lands, a description of
32 the general geology of the area, a detailed description of the
33 geology of the area in which surface mining is to be conducted,
34 the location of all streams, roads, railroads, and utility facilities
35 within, or adjacent to, the lands, the location of all proposed access
36 roads to be constructed in conducting the surface mining operation,
37 and the names and addresses of the owners of all surface interests
38 and mineral interests in the lands.

39 (6) A description of, and a plan for, the type of surface mining
40 to be employed, and a time schedule that will provide for the

1 completion of surface mining on each segment of the mined lands
2 so that reclamation can be initiated at the earliest possible time on
3 those portions of the mined lands that will not be subject to further
4 disturbance by the surface mining operation.

5 (7) A description of the proposed use or potential uses of the
6 mined lands after reclamation and evidence that all owners of a
7 possessory interest in the land have been notified of the proposed
8 use or potential uses.

9 (8) A description of the manner in which reclamation, adequate
10 for the proposed use or potential uses, will be accomplished, as
11 certified by a registered professional geologist, geophysicist, or
12 ~~professional~~ civil engineer, pursuant to Section 2733, including
13 both of the following:

14 (A) A description of the manner in which contaminants will be
15 controlled, and mining waste will be disposed.

16 (B) A description of the manner in which affected streambed
17 channels and streambanks will be rehabilitated to a condition
18 minimizing erosion and sedimentation will occur.

19 (9) An assessment of the effect of implementation of the
20 reclamation plan on future mining in the area.

21 (10) A statement that the person submitting the reclamation
22 plan accepts responsibility for reclaiming the mined lands in
23 accordance with the reclamation plan.

24 (11) A schedule with time limits, updated annually, for
25 completing reclamation in accordance with the reclamation plan
26 and the then-current condition of the mining site.

27 (12) Any other information that the lead agency may require
28 by ordinance.

29 (d) An item of information or a document required pursuant to
30 subdivision (c) that has already been prepared as part of a permit
31 application for the surface mining operation, or as part of an
32 environmental document prepared for the project pursuant to
33 Division 13 (commencing with Section 21000), may be included
34 in the reclamation plan by reference, if that item of information
35 or that document is attached to the reclamation plan when the lead
36 agency submits the reclamation plan to the director for review. To
37 the extent that the information or document referenced in the
38 reclamation plan is used to meet the requirements of subdivision
39 (c), the information or document shall become part of the

1 reclamation plan and shall be subject to all other requirements of
2 this article.

3 (e) Nothing in this section is intended to limit or expand the
4 department's authority or responsibility to review a document in
5 accordance with Division 13 (commencing with Section 21000).

6 ~~SEC. 12.~~

7 *SEC. 14.* Section 2773.1 of the Public Resources Code is
8 amended to read:

9 2773.1. (a) ~~Lead agencies shall require financial~~ *Financial*
10 ~~assurances, as determined by the director based on the most recent~~
11 ~~inspection, inspection by the lead agency or the State Mine~~
12 ~~Inspector, as the case may be, shall be required~~ of each surface
13 mining operation to ensure reclamation is performed in accordance
14 with the surface mining operation's approved reclamation plan,
15 as follows:

16 (1) Financial assurances may take the form of surety bonds
17 executed by an admitted surety insurer, as defined in subdivision
18 (a) of Section 995.120 of the Code of Civil Procedure, irrevocable
19 letters of credit, trust funds, or other forms of financial assurances
20 specified by the board pursuant to subdivision (e), that the ~~director~~
21 *lead agency or the State Mine Inspector, as the case may be,*
22 reasonably determines are adequate to perform reclamation in
23 accordance with the surface mining operation's approved
24 reclamation plan.

25 (2) The financial assurances shall remain in effect for the
26 duration of the surface mining operation and any additional period
27 until reclamation is completed.

28 (3) (A) The amount of financial assurances required of a surface
29 mining operation for any one year shall be adjusted annually by
30 the ~~director~~ *lead agency or the State Mine Inspector, as the case*
31 *may be,* to account for new lands disturbed by surface mining
32 operations, inflation, and reclamation of lands accomplished in
33 accordance with the approved reclamation plan.

34 (B) The annual adjustment of financial assurances is not subject
35 to the procedures specified in paragraph (3) of subdivision (d) of
36 Section 2774 unless made in response to an amendment to an
37 existing reclamation plan.

38 (4) The financial assurances shall be made payable to the lead
39 agency and the department. Financial assurances that were
40 approved by the lead agency prior to January 1, 1993, and were

made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, ~~the director lead agency or the State Mine Inspector, as the case may be,~~ shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by ~~the director lead agency or the State Mine Inspector, as the case may be,~~ and the public agencies for any one year shall not exceed that amount ~~which~~ *that* is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a “public agency” may include a federal agency *but does not include the State Mine Inspector.*

(b) If the lead agency or the board, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or ~~the director State Mine Inspector~~ shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or ~~the director State Mine Inspector~~ intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) (A) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency *or the State Mine Inspector* and the operator.

(B) If no time period is specified in the reclamation plan, or if the time period specified is determined by the lead agency *or the State Mine Inspector* to be inappropriate for the condition of the site, the lead agency *or the State Mine Inspector* shall determine a time period for reclamation to be completed if an agreement for

1 such a time period cannot be reached between the lead agency *or*
2 *the State Mine Inspector* and the operator.

3 (3) Proceed to take appropriate action to require forfeiture of
4 the financial assurances if the operator does not substantially
5 comply with paragraph (2).

6 (4) Use the proceeds from the forfeited financial assurances to
7 conduct and complete reclamation in accordance with the approved
8 reclamation plan. In no event shall the financial assurances be used
9 for any other purpose. The operator is responsible for the costs of
10 conducting and completing reclamation in accordance with the
11 approved reclamation plan that are in excess of the proceeds from
12 the forfeited financial assurances.

13 (c) Financial assurances shall no longer be required of a surface
14 mining operation, and shall be released, upon written notification
15 by the lead agency, with the *written* concurrence of the ~~director~~
16 *State Mine Inspector*, which shall be forwarded to the operator,
17 that reclamation has been completed in accordance with the
18 approved reclamation plan. If a mining operation is sold or
19 ownership is transferred to another person, the existing financial
20 assurances shall remain in force and shall not be released by the
21 lead agency or the ~~director~~ *State Mine Inspector* until new financial
22 assurances are secured from the new owner and have been
23 approved by the ~~director~~ *lead agency or the State Mine Inspector*,
24 *as the case may be*, in accordance with Section 2770.

25 (d) (1) The lead agency shall have primary responsibility to
26 seek forfeiture of financial assurances and to reclaim mine sites
27 under subdivision (b). However, in cases where the board is not
28 the lead agency pursuant to Section 2774.4, the ~~director~~ *State Mine*
29 *Inspector* may act to seek forfeiture of financial assurances and
30 reclaim mine sites pursuant to subdivision (b) only if both of the
31 following occurs:

32 (A) The financial incapability of the operator or the
33 abandonment of the mining operation has come to the attention of
34 the ~~director~~ *State Mine Inspector*.

35 (B) The lead agency has been notified in writing by the ~~director~~
36 *State Mine Inspector* of the financial incapability of the operator
37 or the abandonment of the mining operation for at least 15 days,
38 and has not taken appropriate measures to seek forfeiture of the
39 financial assurances and reclaim the mine site; and one of the
40 following has occurred:

1 (i) The lead agency has been notified in writing by the ~~director~~
2 *State Mine Inspector* that failure to take appropriate measures to
3 seek forfeiture of the financial assurances or to reclaim the mine
4 site shall result in actions being taken against the lead agency under
5 Section 2774.4.

6 (ii) The ~~director~~ *State Mine Inspector* determines that there is
7 a violation that amounts to an imminent and substantial
8 endangerment to the public health, safety, or to the environment.

9 (iii) The lead agency notifies the ~~director~~ *State Mine Inspector*
10 in writing that its good faith attempts to seek forfeiture of the
11 financial assurances have not been successful.

12 (2) The ~~director~~ *State Mine Inspector*, in seeking forfeiture of
13 financial assurances and reclaiming mine sites, shall do all of the
14 following:

15 (A) Notify the operator by personal service or certified mail
16 that the ~~director~~ *State Mine Inspector* intends to take appropriate
17 action to forfeit the financial assurances and specify the reasons
18 for so doing.

19 (B) (i) Allow the operator 60 days to commence or cause the
20 commencement of reclamation in accordance with its approved
21 reclamation plan and require that reclamation be completed within
22 the time limits specified in the approved reclamation plan or some
23 other time period mutually agreed upon by the ~~director~~ *State Mine*
24 *Inspector* and the operator.

25 (ii) If no time period is specified in the reclamation plan, or if
26 the time period specified is determined by the ~~director~~ *State Mine*
27 *Inspector* to be inappropriate for the condition of the site, the
28 ~~director~~ *State Mine Inspector* shall determine a time period for
29 reclamation to be completed if an agreement for such a time period
30 cannot be reached between the ~~director~~ *State Mine Inspector* and
31 the operator pursuant to clause (i).

32 (C) Proceed to take appropriate action to require forfeiture of
33 the financial assurances if the operator does not substantially
34 comply with subparagraph (B).

35 (D) Use the proceeds from the forfeited financial assurances to
36 conduct and complete reclamation in accordance with the approved
37 reclamation plan. In no event shall the financial assurances be used
38 for any other purpose. The operator shall be responsible for the
39 costs of conducting and completing reclamation in accordance

1 with the approved reclamation plan that are in excess of the
2 proceeds from the forfeited financial assurances.

3 (e) The board may adopt regulations specifying financial
4 assurance mechanisms other than surety bonds, irrevocable letters
5 of credit, and trust funds, that the board determines are reasonably
6 available and adequate to ensure reclamation pursuant to this
7 chapter, but these mechanisms may not include financial tests, or
8 surety bonds executed by one or more personal sureties. These
9 mechanisms may include reclamation bond pool programs.

10 (f) The board shall adopt, and update as required, guidelines to
11 implement this section. The guidelines are exempt from the
12 requirements of Chapter 3.5 (commencing with Section 11340) of
13 Part 1 of Division 3 of Title 2 of the Government Code, and are
14 not subject to review by the Office of Administrative Law.

15 ~~SEC. 13.~~

16 *SEC. 15.* Section 2774 of the Public Resources Code is
17 amended to read:

18 2774. (a) Every lead agency shall adopt ordinances in
19 accordance with state policy that establish procedures for the
20 review and approval of reclamation plans, ~~receipt of~~ and financial
21 ~~assurances approved by the director,~~ *assurances*, and the issuance
22 of a permit to conduct surface mining operations, *as well as receipt*
23 *of financial assurances approved by the State Mine Inspector when*
24 *authorized pursuant to Section 2774.4*, except that any lead agency
25 without an active surface mining operation in its jurisdiction may
26 defer adopting an implementing ordinance until the filing of a
27 permit application. The ordinances shall establish procedures
28 requiring at least one public hearing and shall be periodically
29 reviewed by the lead agency and revised, as necessary, *with notice*
30 *to the board of any changes*, to ensure that the ordinances continue
31 to be in accordance with state policy.

32 (b) ~~The director~~ *lead agency* shall conduct an inspection of a
33 surface mining operation within ~~one year~~ *six months* of receipt by
34 ~~the State Mine Inspector~~ *lead agency* of the surface mining
35 operation's report submitted pursuant to Section 2207, solely to
36 determine whether the surface mining operation is in compliance
37 with this chapter. In no event shall ~~the director~~ *lead agency* inspect
38 a surface mining operation less than once in any calendar year.
39 ~~The director may~~ *lead agency shall cause an* inspection to be
40 conducted by a state licensed geologist, *or* state licensed civil

1 engineer, ~~state licensed landscape architect, or state licensed~~
2 ~~forester~~, who is experienced in land reclamation and who has not
3 been employed by a surface mining operation within the
4 jurisdiction of the lead agency in any capacity during the previous
5 12 months. *If a lead agency operates a surface mine, the inspector*
6 *shall not have been an employee of the lead agency in any capacity*
7 *during the previous 12 months.* All inspections shall be conducted
8 using a form developed by the department and approved by the
9 board that shall include the professional licensing and disciplinary
10 information of the person who conducted the inspection. The
11 operator shall be solely responsible for the reasonable cost of the
12 inspection. ~~The director~~ *lead agency* shall notify ~~the lead agency~~
13 *State Mine Inspector* within 30 days of the date of completion of
14 the inspection that the inspection has been conducted. The notice
15 shall contain a statement regarding the surface mining operation's
16 compliance with this chapter, shall include a copy of the completed
17 inspection form, and shall specify which aspects of the surface
18 mining operations, if any, are inconsistent with this chapter. If the
19 surface mining operation has a review of its reclamation plan,
20 financial assurances, or an interim management plan pending under
21 subdivision (b), (c), (d), or (h) of Section 2770, or an appeal
22 pending before the board or lead agency governing body under
23 subdivision (e) or (h) of Section 2770, the notice shall so indicate.
24 ~~The director~~ *lead agency* shall forward to the operator a copy of
25 the notice, a copy of the completed inspection form, and any
26 supporting documentation, including, but not limited to, any
27 inspection report prepared by the ~~geologist, geologist or civil~~
28 ~~engineer, landscape architect, or forester~~, who conducted the
29 inspection. *A lead agency's failure to comply with the requirements*
30 *of this section shall be cause for action pursuant to Section 2774.4.*

31 *(c) Where, pursuant to Section 2774.4, the State Mine Inspector*
32 *has assumed a lead agency's authority, inspections shall be carried*
33 *out in accordance with subdivision (b). The operator shall be solely*
34 *responsible for the reasonable cost of the inspection. The State*
35 *Mine Inspector shall notify the lead agency within 30 days of the*
36 *date of completion of the inspection that the inspection has been*
37 *conducted. The notice shall contain a statement regarding the*
38 *surface mining operation's compliance with this chapter, shall*
39 *include a copy of the completed inspection form, and shall specify*
40 *which aspects of the surface mining operations, if any, are*

1 *inconsistent with this chapter. If the surface mining operation has*
2 *a review of its reclamation plan, financial assurances, or an interim*
3 *management plan pending under subdivision (b), (c), (d), or (h)*
4 *of Section 2770, or an appeal pending before the board or lead*
5 *agency governing body under subdivision (e) or (h) of Section*
6 *2770, the notice shall so indicate. The State Mine Inspector shall*
7 *forward to the operator a copy of the notice, a copy of the*
8 *completed inspection form, and any supporting documentation,*
9 *including, but not limited to, any inspection report prepared by*
10 *the geologist or civil engineer who conducted the inspection.*

11 ~~(e)~~

12 *(d) Before approving a surface mining operation's reclamation*
13 *plan, financial assurances, including existing financial assurances*
14 *reviewed by the lead agency pursuant to subdivision (c) of Section*
15 *2770, or any plan amendments, the lead agency shall submit the*
16 *plan, assurances, or amendments to the*~~director~~ *State Mine*
17 *Inspector for review. All documentation for that submission shall*
18 *be submitted to the*~~director~~ *State Mine Inspector at one time. When*
19 *the lead agency submits a reclamation plan or plan amendments*
20 *to the*~~director~~ *State Mine Inspector for review, the lead agency*
21 *shall also submit to the*~~director~~ *State Mine Inspector, for use in*
22 *reviewing the reclamation plan or plan amendments, information*
23 *from any related document prepared, adopted, or certified pursuant*
24 *to Division 13 (commencing with Section 21000), and shall submit*
25 *any other pertinent information. The lead agency shall certify in*
26 *writing to the*~~director~~ *State Mine Inspector that the reclamation*
27 *plan is complete and in compliance with the applicable*
28 *requirements of this chapter and Article 1 (commencing with*
29 *Section 3500) of Chapter 8 of Division 2 of Title 14 of the*
30 *California Code of Regulations and the lead agency's mining*
31 *ordinance in effect at the time that the reclamation plan is submitted*
32 *to the*~~director~~ *State Mine Inspector for review.*

33 ~~(d)~~

34 *(e) (1) The*~~director~~ *State Mine Inspector shall have 30 days*
35 *from the date of receipt of a complete reclamation plan or complete*
36 *plan amendments and financial assurances submitted pursuant to*
37 *subdivision*~~(e)~~ *(d) to prepare written comments, if the*~~director~~ *State*
38 *Mine Inspector so chooses. The lead agency shall evaluate*
39 *written comments received from the*~~director~~ *State Mine Inspector*

1 relating to the reclamation ~~plan or plan~~, plan amendments, or
2 *financial assurances* within a reasonable amount of time.

3 (2) The lead agency shall prepare a written response to the
4 ~~director's State Mine Inspector's~~ comments describing the
5 disposition of the major issues raised by the ~~director's State Mine~~
6 ~~Inspector's~~ comments, and submit the lead agency's proposed
7 response to the ~~director State Mine Inspector~~ at least 30 days prior
8 to approval of the reclamation ~~plan or plan~~, plan amendment, or
9 *financial assurances*. The lead agency's response to the ~~director's~~
10 ~~State Mine Inspector's~~ comments shall describe whether the lead
11 agency proposes to adopt the ~~director's State Mine Inspector's~~
12 comments to the reclamation ~~plan or plan~~, plan amendment, or
13 *financial assurances*. If the lead agency does not propose to adopt
14 the ~~director's State Mine Inspector's~~ comments, the lead agency
15 shall specify, in detail, why the lead agency proposes not to adopt
16 the comments. Copies of any written comments received and
17 responses prepared by the lead agency shall be forwarded to the
18 operator. The lead agency shall also give the ~~director State Mine~~
19 ~~Inspector~~ at least 30 days' notice of the time, place, and date of
20 the hearing before the lead agency at which ~~time~~ the reclamation
21 ~~plan or plan~~, plan amendment ~~is scheduled to~~, or *financial*
22 *assurances may* be approved by the lead agency. If no hearing is
23 required by this chapter, or by the local ordinance, or other state
24 law, then the lead agency shall provide 30 days' notice to the
25 ~~director State Mine Inspector~~ that it intends to approve the
26 reclamation ~~plan or plan~~, plan amendment. The lead agency shall
27 send to the ~~director~~ its final response to the ~~director's~~ comments
28 within 30 days following its approval of the reclamation ~~plan or~~
29 ~~plan amendment during which period the department retains all~~
30 ~~powers, duties, and authorities of this chapter.~~ *amendment, or*
31 *financial assurances. If the State Mine Inspector is dissatisfied*
32 *with the lead agency's approval, the State Mine Inspector may*
33 *seek judicial review of that approval pursuant to Section 1094.5*
34 *of the Code of Civil Procedure within 30 days of notice of the lead*
35 *agency's action. Lead agency approval of a reclamation plan,*
36 *plan amendment, or financial assurances that is inconsistent with*
37 *this chapter shall be cause for action under Section 2774.4,*
38 *whether judicial review of the approval was obtained or not.*

39 (3) (A) Prior to approving initial financial assurances for a
40 reclamation plan or any amendments, pursuant to subdivision (a)

1 of Section 2770, the ~~director~~ *State Mine Inspector* shall have 45
2 days from the date of receipt of a complete reclamation plan or
3 complete plan amendments submitted pursuant to subdivision (c)
4 to prepare financial assurances for reclamation pursuant to the
5 proposed reclamation plan and to submit the proposed financial
6 assurances to the lead agency for review.

7 (B) The lead agency shall have 30 days from the date of its
8 receipt of the financial assurances to evaluate the financial
9 assurances prepared by the ~~director~~ *State Mine Inspector* and to
10 submit written comments, if the lead agency so chooses.

11 (C) The ~~director~~ *State Mine Inspector* shall evaluate any written
12 comments received from the lead agency pursuant to subparagraph
13 (B) and shall prepare a written response to the lead agency's
14 comments, describing the disposition of the major issues raised
15 by the lead agency's comments. The response shall indicate
16 whether the ~~director~~ *State Mine Inspector* proposes to adopt the
17 lead agency's comments or, if not, shall specify, in detail, why the
18 ~~director~~ *State Mine Inspector* does not propose to adopt the lead
19 agency's comments. Copies of any written comments received
20 and responses prepared by the ~~director~~ *State Mine Inspector* shall
21 be forwarded to the operator. The ~~director~~ *State Mine Inspector*
22 shall submit the response and the approved financial assurances
23 to the lead agency and to the operator within 30 days of receipt of
24 the lead agency's comments.

25 (4) To the extent that there is a conflict between the comments
26 of a trustee agency or a responsible agency that are based on the
27 agency's statutory or regulatory authority and the comments of
28 other commenting agencies ~~which~~ *that* are received by the lead
29 agency pursuant to Division 13 (commencing with Section 21000)
30 regarding a reclamation plan or plan amendments, the lead agency
31 shall consider only the comments of the trustee agency or
32 responsible agency.

33 (e) A lead agency shall notify the ~~director~~ *State Mine Inspector*
34 of the filing of an application for a permit to conduct surface
35 mining operations within 30 days of an application being filed
36 with the lead agency. By July 1 of each year, the lead agency shall
37 submit to the ~~director~~ *State Mine Inspector* for each active or idle
38 mining operation a copy of any permit or reclamation plan
39 amendments, as applicable, or a statement that there have been no
40 changes during the previous year. Failure to file with the ~~director~~

State Mine Inspector the information required under this section shall be cause for action under Section 2774.4.

~~SEC. 14.~~

SEC. 16. Section 2774.1 of the Public Resources Code is amended to read:

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the ~~director~~ *State Mine Inspector* determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the ~~director~~ *State Mine Inspector* shall notify the operator of that violation by personal service or certified mail. The notice of violation shall specify the remedial steps to be taken to correct any noncompliance identified in the notice, as well as a reasonable time for compliance of each instance of noncompliance if compliance cannot reasonably be attained within 30 days of the date of the notice. If a violation extends beyond 30 days after the date of the lead agency's or the ~~director's~~ *State Mine Inspector's* notification, unless the operator has accepted a scope of work and schedule, agreed to by the lead agency or the ~~director~~ *State Mine Inspector*, for achieving compliance, the lead agency or the ~~director~~ *State Mine Inspector* shall issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, to cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the ~~director~~ *State Mine Inspector*, concerning the alleged violation. An order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance that the lead agency or ~~director~~ *State Mine Inspector* determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) *Following the issuance of an order under subdivision (a), the lead agency or the State Mine Inspector shall be entitled to*

1 *access to the mining operation to inspect the status of compliance*
2 *with the order. Entitlement to access shall be without further notice*
3 *than the order, and shall end only when the lead agency or the*
4 *State Mine Inspector determines that compliance with the order*
5 *has been attained or the order is reversed on appeal, whichever*
6 *is sooner.*

7 (e)

8 (d) An operator who violates or fails to comply with an order
9 issued under subdivision (a) after the order's effective date, as
10 provided in subdivision (b), or who fails to submit a report to the
11 State Mine Inspector or lead agency as required by Section 2207,
12 shall be subject to an order by the lead agency or the ~~director~~ *State*
13 *Mine Inspector* imposing an administrative penalty of not more
14 than five thousand dollars (\$5,000) per day, assessed from the
15 original date of noncompliance with this chapter or Section 2207.
16 The penalty may be imposed administratively by the lead agency
17 or the ~~director~~ *State Mine Inspector*. In determining the amount
18 of the administrative penalty, the lead agency or the ~~director~~ *State*
19 *Mine Inspector* shall take into consideration the nature,
20 circumstances, extent, and gravity of the violation or violations,
21 any prior history of violations, the degree of culpability, economic
22 savings, if any, resulting from the violation, and any other matters
23 justice may require. Orders setting administrative penalties shall
24 become effective upon issuance of the order and payment shall be
25 made to the lead agency or the ~~director~~ *State Mine Inspector* within
26 30 days, unless the operator petitions the legislative body of the
27 lead agency, the board, or the superior court for review as provided
28 in Section 2774.2. An order shall be served by personal service or
29 by certified mail upon the operator. Penalties collected by the
30 ~~director~~ *State Mine Inspector* shall not be used for purposes other
31 than to cover the reasonable costs incurred by the ~~director~~ *the*
32 *board* or the State Mine Inspector in implementing this chapter or
33 Section 2207.

34 (d)

35 (e) If the lead agency or the ~~director~~ *State Mine Inspector*
36 determines that the surface mine is not in compliance with this
37 chapter, so that the surface mine presents an imminent and
38 substantial endangerment to the public health or the environment,
39 the lead agency or the Attorney General, on behalf of the ~~director~~

1 *State Mine Inspector*, may seek an order from a court of competent
2 jurisdiction enjoining that operation.

3 (e)

4 (f) Upon a complaint by ~~the director~~, the department, *the State*
5 *Mine Inspector*, or the board, the Attorney General may bring an
6 action to recover administrative penalties under this section, and
7 penalties under Section 2207, in any court of competent jurisdiction
8 in this state against any person violating any provision of this
9 chapter or Section 2207, or any regulation adopted pursuant to this
10 chapter or Section 2207. The Attorney General may bring this
11 action on his or her own initiative if, after examining the complaint
12 and the evidence, he or she believes a violation has occurred. The
13 Attorney General may also seek an order from a court of competent
14 jurisdiction compelling the operator to comply with this chapter
15 and Section 2207 *and to cease operation until compliance is*
16 *proven*.

17 (f)

18 (g) (1) The lead agency has primary responsibility for enforcing
19 this chapter and Section 2207. In cases where the board is not the
20 lead agency pursuant to Section 2774.4, *or in cases where the State*
21 *Mine Inspector has not assumed authority for mine inspections*
22 *and determining financial assurance amounts pursuant to Section*
23 *2774.4*, enforcement actions may be initiated by ~~the director~~ *State*
24 *Mine Inspector* pursuant to this section only after the violation has
25 come to the attention of ~~the director~~ *State Mine Inspector* and either
26 of the following occurs:

27 (A) The lead agency has been notified by ~~the director~~ *State Mine*
28 *Inspector* in writing of the violation for at least 30 days, and has
29 not taken appropriate enforcement action, which may include
30 failing to issue an order to comply within a reasonable time after
31 issuing a notice of violation.

32 (B) ~~The director~~ *State Mine Inspector* determines that there is
33 a violation that amounts to an imminent and substantial
34 endangerment to the public health or safety, or to the environment.

35 ~~(2) The director shall comply with this section in initiating~~
36 ~~enforcement actions.~~

37 (2) *Where the board or the State Mine Inspector is the lead*
38 *agency pursuant to Section 2774.4, the board or the State Mine*
39 *Inspector, as the case may be, has sole responsibility for enforcing*
40 *this chapter and Section 2207.*

1 ~~(g)~~

2 (h) Remedies under this section are in addition to, and do not
3 supersede or limit, any and all other remedies, civil or criminal.

4 SEC. 17. Section 2774.3 of the Public Resources Code is
5 amended to read:

6 2774.3. The board shall review lead agency ordinances ~~which~~
7 that establish permit and reclamation procedures, *and any proposed*
8 *changes thereto*, to determine whether each ordinance *or proposed*
9 *change* is in accordance with state policy, and shall certify the
10 ordinance *or proposed change* as being in accordance with state
11 policy if it adequately meets, or imposes requirements more
12 stringent than, the California surface mining and reclamation
13 policies and procedures established by the board pursuant to this
14 chapter. *Proposed changes to lead agency ordinances shall not*
15 *be effective until certified by the board pursuant to this section.*

16 ~~SEC. 15.~~

17 SEC. 18. Section 2774.4 of the Public Resources Code is
18 amended to read:

19 2774.4. (a) If the board finds that a lead agency either has (1)
20 approved reclamation plans or, ~~prior to January 1, 2015~~, financial
21 assurances that are not consistent with this chapter, (2) failed, ~~prior~~
22 ~~to January 1, 2015~~, to inspect or cause the inspection of surface
23 mining operations as required by this chapter, (3) failed to seek
24 forfeiture of financial assurances and to carry out reclamation of
25 surface mining operations as required by this chapter, (4) failed
26 to take appropriate enforcement actions as required by this chapter,
27 (5) intentionally misrepresented the results of inspections required
28 under this chapter, or (6) failed to submit information to the
29 department as required by this chapter, *including annually*
30 *certifying to the board all of the following: (A) that the lead agency*
31 *has approved an adequate reclamation plan and financial*
32 *assurances, including any amendments thereto, for each mining*
33 *operation in its jurisdiction, (B) that its mineral resources*
34 *management plan complies with applicable law and has been*
35 *adopted in accordance with Section 2762, and (C) that all notices*
36 *required pursuant to Section 2772.7 have been recorded*, the board
37 shall assign to the State Mine Inspector the authority to exercise
38 any of the powers of that ~~lead~~ agency under this chapter, except
39 for permitting authority.

(b) *Until January 1, 2016, in cases where the board has assumed authority to exercise the powers of the lead agency under this chapter, except for permitting authority, the board shall continue to do so. Thereafter, the board shall assign those powers to the State Mine Inspector.*

~~(b)~~

(c) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the ~~board~~ *State Mine Inspector* pursuant to subdivision (a).

~~(c)~~

(d) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

~~(d)~~

(e) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

~~(e)~~

(f) If, after conducting the public hearing required by subdivision ~~(e)~~, (d), the board decides to take action pursuant to subdivision (a), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

(1) The action to be taken by the board.

(2) Why the board decided to take the action.

(3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

~~(f)~~

(g) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision ~~(d)~~ (e) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

~~(g)~~

(h) (1) A lead agency may unilaterally and voluntarily relinquish *any or all of* its responsibilities under this chapter, and the ~~board~~ State Mine Inspector shall assume those responsibilities.

(2) (A) No sooner than three years after relinquishing its lead agency responsibilities, the lead agency may request the board to authorize it to resume its role as a lead agency.

(B) If the board finds, after holding a public hearing as described in subdivision ~~(d)~~, (e), that the lead agency has corrected all deficiencies, if any, pursuant to subdivision (a) in implementing and enforcing this chapter and its implementing regulations, the board shall restore to the agency the lead agency powers assumed by the ~~board~~ State Mine Inspector pursuant to this subdivision.

~~SEC. 16.~~

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O