

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1142

Introduced by Assembly Member Gray

February 27, 2015

An act to amend Sections 2207, 2773.1, 2774, and ~~2774.1~~ of, to amend and repeal Section 2717 of, and to add Section 2773.11 to, 2774.2 of the Public Resources Code, relating to mining and geology.

LEGISLATIVE COUNSEL'S DIGEST

AB 1142, as amended, Gray. Mining and geology: surface mining.

~~(1) The Surface Mining and Reclamation Act of 1975 requires the department to 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 certain surface mining operations. 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 that meets certain requirements. The act, until January 1, 2019, requires this list to identify surface mining operations whose reclamation plan has been approved and is in compliance with the act, whose mining operation is in compliance with the approved reclamation plan or an order to comply, as specified, and whose mining operation has an approved financial assurance, as specified.~~

~~This bill would continue indefinitely the inclusion on the list the identification of those surface mining operations.~~

(2)

(1) The ~~act~~ *Surface Mining and Reclamation Act of 1975* prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to financial assurances and, among other things, would ~~prohibit an operator from being required to adjust financial assurances that are in excess of the amount determined necessary to perform reclamation in accordance with the surface mining operation's approved reclamation plan,~~ require financial assurance cost estimates be submitted for review and include estimates of the time needed to complete reclamation of the ~~mine,~~ and ~~prescribe the actions to be taken by an operator, lead agency, and the director prior to the modification of the amount of a financial assurance or the full or partial release of the financial assurance instrument.~~ *mine and require an operator to replace an approved financial assurance only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance.* By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(3)

(2) The act requires the owner or operator of a mining operation to forward annually to the ~~director~~ *Director of Conservation* and the lead agency a report that provides, among other things, proof of annual inspection by the lead agency. The act also requires every lead agency to adopt ordinances that establish procedures for the review and approval of reclamation plans, and, before approving a reclamation plan, to submit the plan to the director. The act requires a lead agency to inspect a surface mining operation within 6 months of receiving a specified report and to conduct an inspection no less than once every calendar year. The act authorizes a lead agency to ~~authorize~~ *cause* an inspection to be conducted by a state licensed geologist, state licensed civil engineer, state licensed landscape architect, or state licensed forester, as specified.

This bill would revise and recast those provisions and, among other things, would require the owner or operator to provide a copy of the previously completed annual inspection form and a requested date for the next annual inspection by the lead agency, require a lead agency to ~~authorize~~ *cause* an inspection to be conducted by an employee of the lead agency who has received specified training, impose new

requirements on the lead agency related to the timing of inspections, impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining operation, and require the State Geologist to coordinate with the director, board, lead agencies, and interested parties to develop a curriculum for the training of mine inspectors. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(4)

(3) The act requires that the lead agency have primary responsibility in enforcing the act. The act authorizes, in cases where the board is not the lead agency, the director to initiate enforcement actions if the lead agency has been notified by the director, for at least 15 days, of a violation and has not taken appropriate enforcement action, or the director determines there is a violation that presents an imminent and substantial endangerment to the public health or safety or the environment. *The act establishes procedures and timelines for an operator to have an order setting administrative penalties reviewed by a legislative body of a lead agency, the board, or a superior court.*

~~This bill would require the lead agency, the director, or the board, as appropriate, to take into account and seek to minimize the impact of any proposed enforcement action on the number of existing jobs supported directly or indirectly by the surface mining operation.~~

This bill, after the expiration of a specified review period, would authorize the director or the board when it acts as a lead agency to apply to the small claims court or the superior court, as appropriate, for a judgment to collect an unpaid administrative penalty.

(5)

(4) 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. Section 2207 of the Public Resources Code is
2 amended to read:

- 1 2207. (a) The owner or the operator of a mining operation
2 within the state shall forward to the director annually, not later
3 than a date established by the director, upon forms approved by
4 the board from time to time, a report that identifies and contains
5 all of the following:
- 6 (1) The name, address, and telephone number of the person,
7 company, or other owner of the mining operation.
 - 8 (2) The name, address, and telephone number of a designated
9 agent who resides in this state, and who will receive and accept
10 service of all orders, notices, and processes of the lead agency,
11 board, director, or court.
 - 12 (3) The location of the mining operation, its name, its mine
13 number as issued by the Office of Mine Reclamation or the
14 director, its section, township, range, latitude, longitude, and
15 approximate boundaries of the mining operation marked on a
16 United States Geological Survey 7½-minute or 15-minute
17 quadrangle map.
 - 18 (4) The lead agency.
 - 19 (5) The approval date of the mining operation's reclamation
20 plan.
 - 21 (6) The mining operation's status as active, idle, reclaimed, or
22 in the process of being reclaimed.
 - 23 (7) The commodities produced by the mine and the type of
24 mining operation.
 - 25 (8) A copy of the previously completed annual inspection form
26 and a requested date for the next annual inspection by the lead
27 agency.
 - 28 (9) Proof of financial assurances.
 - 29 (10) Ownership of the property, including government agencies,
30 if applicable, by the assessor's parcel number, and total assessed
31 value of the mining operation.
 - 32 (11) The approximate permitted size of the mining operation
33 subject to Chapter 9 (commencing with Section 2710), in acres.
 - 34 (12) The approximate total acreage of land newly disturbed by
35 the mining operation during the previous calendar year.
 - 36 (13) The approximate total of disturbed acreage reclaimed during
37 the previous calendar year.
 - 38 (14) The approximate total unreclaimed disturbed acreage
39 remaining as of the end of the calendar year.

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

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

6 (b) (1) Every year, not later than the date established by the
7 director, the person submitting the report pursuant to subdivision
8 (a) shall forward to the lead agency, upon forms furnished by the
9 board, a report that provides all of the information specified in
10 subdivision (a).

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

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

39 (d) (1) The board shall impose, by regulation, pursuant to
40 paragraph (2), an annual reporting fee on, and method for collecting

1 annual fees from, each active or idle mining operation. The
2 maximum fee for any single mining operation may not exceed four
3 thousand dollars (\$4,000) annually and may not be less than one
4 hundred dollars (\$100) annually, as adjusted for the cost of living
5 as measured by the California Consumer Price Index for all urban
6 consumers, calendar year averages, using the percentage change
7 in the previous year, beginning with the 2005–06 fiscal year and
8 annually thereafter.

9 (2) (A) The board shall adopt, by regulation, a schedule of fees
10 authorized under paragraph (1) to cover the department’s cost in
11 carrying out this section and Chapter 9 (commencing with Section
12 2710), as reflected in the Governor’s proposed Budget, and may
13 adopt those regulations as emergency regulations. In establishing
14 the schedule of fees to be paid by each active and idle mining
15 operation, the fees shall be calculated on an equitable basis
16 reflecting the size and type of operation. The board shall also
17 consider the total assessed value of the mining operation, the
18 acreage disturbed by mining activities, and the acreage subject to
19 the reclamation plan.

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

29 (3) The total revenue generated by the reporting fees may not
30 exceed, and may be less than, the amount of three million five
31 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
32 living as measured by the California Consumer Price Index for all
33 urban consumers, calendar year averages, using the percentage
34 change in the previous year, beginning with the 2005–06 fiscal
35 year and annually thereafter. If the director determines that the
36 revenue collected during the preceding fiscal year was greater or
37 less than the cost to operate the program, the board shall adjust
38 the fees to compensate for the overcollection or undercollection
39 of revenues.

1 (4) (A) The reporting fees established pursuant to this
2 subdivision shall be deposited in the Mine Reclamation Account,
3 which is hereby created. Any fees, penalties, interest, fines, or
4 charges collected by the director or board pursuant to this chapter
5 or Chapter 9 (commencing with Section 2710) shall be deposited
6 in the Mine Reclamation Account. The money in the account shall
7 be available to the department and board, upon appropriation by
8 the Legislature, for the purpose of carrying out this section and
9 complying with Chapter 9 (commencing with Section 2710), which
10 includes, but is not limited to, classification and designation of
11 areas with mineral resources of statewide or regional significance,
12 reclamation plan and financial assurance review, mine inspection,
13 and enforcement.

14 (B) (i) In addition to reporting fees, the board shall collect five
15 dollars (\$5) per ounce of gold and ten cents (\$.10) per ounce of
16 silver mined within the state and shall deposit the fees collected
17 in the Abandoned Mine Reclamation and Minerals Fund
18 Subaccount, which is hereby created in the Mine Reclamation
19 Account. The department may expend the moneys in the
20 subaccount, upon appropriation by the Legislature, for only the
21 purposes of Section 2796.5 and as authorized herein for the
22 remediation of abandoned mines.

23 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
24 collected pursuant to clause (i) may also be used to remediate
25 features of historic abandoned mines and lands that they impact.
26 For the purposes of this section, historic abandoned mines are
27 mines for which operations have been conducted before January
28 1, 1976, and include, but are not limited to, historic gold and silver
29 mines.

30 (5) In case of late payment of the reporting fee, a penalty of not
31 less than one hundred dollars (\$100) or 10 percent of the amount
32 due, whichever is greater, plus interest at the rate of 1 ½ percent
33 per month, computed from the delinquent date of the assessment
34 until and including the date of payment, shall be assessed. New
35 mining operations that have not submitted a report shall submit a
36 report prior to commencement of operations. The new operation
37 shall submit its fee according to the reasonable fee schedule
38 adopted by the board, and the month that the report is received
39 shall become that operation's anniversary month.

1 (e) The lead agency, or the board when acting as the lead agency,
2 may impose a fee upon each mining operation to cover the
3 reasonable costs incurred in implementing this chapter and Chapter
4 9 (commencing with Section 2710).

5 (f) For purposes of this section, “mining operation” means a
6 mining operation of any kind or character whatever in this state,
7 including, but not limited to, a mining operation that is classified
8 as a “surface mining operation” as defined in Section 2735, unless
9 excepted by Section 2714. For the purposes of fee collections only,
10 “mining operation” may include one or more mines operated by
11 a single operator or mining company on one or more sites, if the
12 total annual combined mineral production for all sites is less than
13 100 troy ounces for precious metals, if precious metals are the
14 primary mineral commodity produced, or less than 100,000 short
15 tons if the primary mineral commodity produced is not precious
16 metals.

17 (g) Any information in reports submitted pursuant to subdivision
18 (a) that includes or otherwise indicates the total mineral production,
19 reserves, or rate of depletion of any mining operation may not be
20 disclosed to any member of the public, as defined in subdivision
21 (b) of Section 6252 of the Government Code. Other portions of
22 the reports are public records unless excepted by statute. Statistical
23 bulletins based on these reports and published under Section 2205
24 shall be compiled to show, for the state as a whole and separately
25 for each lead agency, the total of each mineral produced therein.
26 In order not to disclose the production, reserves, or rate of depletion
27 from any identifiable mining operation, no production figure shall
28 be published or otherwise disclosed unless that figure is the
29 aggregated production of not less than three mining operations. If
30 the production figure for any lead agency would disclose the
31 production, reserves, or rate of depletion of less than three mining
32 operations or otherwise permit the reasonable inference of the
33 production, reserves, or rate of depletion of any identifiable mining
34 operation, that figure shall be combined with the same figure of
35 not less than two other lead agencies without regard to the location
36 of the lead agencies. The bulletin shall be published annually by
37 June 30 or as soon thereafter as practicable.

38 (h) The approval of a form by the board pursuant to this section
39 is not the adoption of a regulation for purposes of the
40 Administrative Procedure Act (Chapter 3.5 (commencing with

1 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
2 Code) and is not subject to that act.

3 ~~SEC. 2. Section 2717 of the Public Resources Code, as~~
4 ~~amended by Section 2 of Chapter 417 of the Statutes of 2013, is~~
5 ~~amended to read:~~

6 ~~2717. (a) Notwithstanding Section 10231.5 of the Government~~
7 ~~Code, the board shall submit to the Legislature on December 1 of~~
8 ~~each year a report on the actions taken pursuant to this chapter~~
9 ~~during the preceding fiscal year. The report shall include a~~
10 ~~statement of the actions, including legislative recommendations,~~
11 ~~that are necessary to carry out more completely the purposes and~~
12 ~~requirements of this chapter.~~

13 ~~(b) For the purposes of ensuring compliance with Sections~~
14 ~~10295.5 and 20676 of the Public Contract Code, the department~~
15 ~~shall, at a minimum, quarterly publish in the California Regulatory~~
16 ~~Notice Register, or otherwise make available upon request to the~~
17 ~~Department of General Services or any other state or local agency,~~
18 ~~a list identifying all of the following:~~

19 ~~(1) Surface mining operations for which a report is required and~~
20 ~~has been submitted pursuant to Section 2207 that indicates all of~~
21 ~~the following:~~

22 ~~(A) The reclamation plan and financial assurances have been~~
23 ~~approved pursuant to this chapter.~~

24 ~~(B) Compliance with state reclamation standards developed~~
25 ~~pursuant to Section 2773.~~

26 ~~(C) Compliance with the financial assurance guidelines~~
27 ~~developed pursuant to Section 2773.1.~~

28 ~~(D) Whether the annual reporting fee has been submitted to the~~
29 ~~department.~~

30 ~~(2) Surface mining operations for which an appeal is pending~~
31 ~~before the board pursuant to subdivision (e) of Section 2770, if~~
32 ~~the appeal was not pending before the board for more than 180~~
33 ~~days.~~

34 ~~(3) Surface mining operations for which an inspection is required~~
35 ~~and for which an inspection notice has been submitted by the lead~~
36 ~~agency pursuant to Section 2774 that indicates both compliance~~
37 ~~with the approved reclamation plan and that sufficient financial~~
38 ~~assurances, pursuant to Section 2773.1, have been approved and~~
39 ~~secured.~~

40 ~~(4) Surface mining operations that meet all of the following:~~

- 1 ~~(A) The reclamation plan has been approved and is in~~
2 ~~compliance with this chapter.~~
- 3 ~~(B) The mining operation is in compliance with either of the~~
4 ~~following:~~
- 5 ~~(i) The approved reclamation plan.~~
- 6 ~~(ii) An order to comply issued pursuant to this chapter and that~~
7 ~~is being complied with by the operator. An order to comply may~~
8 ~~be stipulated to as follows:~~
- 9 ~~(I) By the department, lead agency, and operator if the~~
10 ~~enforcement action was initiated by the director.~~
- 11 ~~(II) By the lead agency and the operator, with notice of the~~
12 ~~stipulation provided to the director if the enforcement action was~~
13 ~~initiated by the lead agency.~~
- 14 ~~(C) In accordance with Section 2773.1 and Article 11~~
15 ~~(commencing with Section 3800) of Title 14 of the California Code~~
16 ~~of Regulations, as amended, the surface mining operation has an~~
17 ~~approved financial assurance in place that is adequate for~~
18 ~~reclamation pursuant to the approved reclamation plan.~~
- 19 ~~(e) Between July 1, 2017, and January 1, 2018, the department~~
20 ~~shall submit to the Legislature a report on the activities of lead~~
21 ~~agencies and surface mining operations. This report shall include,~~
22 ~~but need not be limited to, all of the following:~~
- 23 ~~(1) Number of financial assurance cost estimates reviewed and~~
24 ~~approved each year by each lead agency.~~
- 25 ~~(2) Number of annual mine inspections performed by each lead~~
26 ~~agency.~~
- 27 ~~(3) Information on idle mines and interim management plans~~
28 ~~approved by each lead agency.~~
- 29 ~~(4) Number and location of mining operations that are no longer~~
30 ~~in operation with no intent to resume and are in the process of~~
31 ~~reclamation and how many years each of these mining operations~~
32 ~~has claimed that status.~~
- 33 ~~(5) Information on approved mineral resources management~~
34 ~~plans across the state from the board.~~
- 35 ~~(6) Number and location of mines with reclamation plans~~
36 ~~approved prior to the adoption of the 1993 reclamation standards.~~
- 37 ~~(7) Percentage of mining operations on the list published~~
38 ~~pursuant to subdivision (b) and the number and location of mining~~
39 ~~operations that have been placed on the list pursuant to clause (ii)~~
40 ~~of subparagraph (B) of paragraph (4) of subdivision (b).~~

1 ~~(8) Number of historic abandoned mines remediated by the~~
2 ~~department and the locations of known remaining hazards.~~

3 ~~(9) Number, types, and status of notices of violations and orders~~
4 ~~to comply issued by the department organized by location.~~

5 ~~(10) Number of administrative penalties issued by the~~
6 ~~department and amounts, as well as information on the amounts~~
7 ~~actually collected by the department organized by location.~~

8 ~~(d) A report submitted pursuant to subdivision (a) or (c) shall~~
9 ~~be submitted in compliance with Section 9795 of the Government~~
10 ~~Code.~~

11 ~~SEC. 3. Section 2717 of the Public Resources Code, as added~~
12 ~~by Section 3 of Chapter 417 of the Statutes of 2013, is repealed.~~

13 ~~SEC. 4.~~

14 ~~SEC. 2. Section 2773.1 of the Public Resources Code is~~
15 ~~amended to read:~~

16 2773.1. (a) Lead agencies shall require financial assurances
17 of each surface mining operation to ensure reclamation is
18 performed in accordance with the surface mining operation's
19 approved reclamation plan, as follows:

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

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

31 (3) The amount of financial assurances required of a surface
32 mining operation for any one year shall be reviewed and, if
33 necessary, adjusted once each calendar year to account for new
34 lands disturbed by surface mining operations, inflation, and
35 reclamation of lands accomplished in accordance with the approved
36 reclamation plan. ~~An operator shall not be required to adjust~~
37 ~~financial assurances that are in excess of the amount determined~~
38 ~~necessary to perform reclamation in accordance with the surface~~
39 ~~mining operation's approved reclamation plan. An operator shall~~
40 ~~be required to replace an approved financial assurance mechanism~~

1 *to bond for the reclamation of the surface mining operation only*
2 *if the financial assurance cost estimate identifies a need to increase*
3 *the amount of the financial assurance mechanism.*

4 (4) Financial assurance cost estimates shall be submitted to the
5 lead agency for review on the form adopted by the board by
6 regulation pursuant to subdivision (f). The estimates shall include
7 estimates of the time needed to complete reclamation of the mine
8 in accordance with the approved reclamation plan, including, but
9 not limited to, any monitoring studies required by the reclamation
10 plan.

11 (5) The financial assurances shall be made payable to the lead
12 agency and the department. Financial assurances that were
13 approved by the lead agency prior to January 1, 1993, and were
14 made payable to the State Geologist shall be considered payable
15 to the department for purposes of this chapter. However, if a surface
16 mining operation has received approval of its financial assurances
17 from a public agency other than the lead agency, the lead agency
18 shall deem those financial assurances adequate for purposes of
19 this section, or shall credit them toward fulfillment of the financial
20 assurances required by this section, if they are made payable to
21 the public agency, the lead agency, and the department and
22 otherwise meet the requirements of this section. In any event, if a
23 lead agency and one or more public agencies exercise jurisdiction
24 over a surface mining operation, the total amount of financial
25 assurances required by the lead agency and the public agencies
26 for any one year shall not exceed that amount that is necessary to
27 perform reclamation of lands remaining disturbed. For purposes
28 of this paragraph, a “public agency” may include a federal agency.

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

35 (1) Notify the operator by personal service or certified mail that
36 the lead agency or the director intends to take appropriate action
37 to forfeit the financial assurances and specify the reasons for so
38 doing.

39 (2) Allow the operator 60 days to commence or cause the
40 commencement of reclamation in accordance with its approved

1 reclamation plan and require that reclamation be completed within
2 the time limits specified in the approved reclamation plan or some
3 other time period mutually agreed upon by the lead agency or the
4 director and the operator.

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

8 (4) Use the proceeds from the forfeited financial assurances to
9 conduct and complete reclamation in accordance with the approved
10 reclamation plan. The financial assurances shall not be used for
11 any other purpose. The operator is responsible for the costs of
12 conducting and completing reclamation in accordance with the
13 approved reclamation plan that are in excess of the proceeds from
14 the forfeited financial assurances.

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

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

31 (1) The financial incapability of the operator or the abandonment
32 of the mining operation has come to the attention of the director.

33 (2) The lead agency has been notified in writing by the director
34 of the financial incapability of the operator or the abandonment
35 of the mining operation for at least 15 days, the lead agency has
36 not taken appropriate measures to seek forfeiture of the financial
37 assurances and reclaim the mine site, and one of the following has
38 occurred:

39 (A) The lead agency has been notified in writing by the director
40 that failure to take appropriate measures to seek forfeiture of the

1 financial assurances or to reclaim the mine site shall result in
2 actions being taken against the lead agency under Section 2774.4.

3 (B) The director determines that there is a violation that amounts
4 to an imminent and substantial endangerment to the public health,
5 safety, or to the environment.

6 (C) The lead agency notifies the director in writing that its good
7 faith attempts to seek forfeiture of the financial assurances have
8 not been successful.

9 The director shall comply with subdivision (b) in seeking
10 forfeiture of financial assurances and reclaiming mine sites.

11 (e) The board may adopt regulations specifying financial
12 assurance mechanisms other than surety bonds, irrevocable letters
13 of credit, and trust funds, which the board determines are
14 reasonably available and adequate to ensure reclamation pursuant
15 to this chapter, but these mechanisms shall not include financial
16 tests, or surety bonds executed by one or more personal sureties.
17 These mechanisms may include reclamation bond pool programs.

18 (f) On or before March 1, 1993, the board shall adopt guidelines
19 to implement this section. The guidelines are exempt from the
20 requirements of the Administrative Procedure Act (Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3 of Title
22 2 of the Government Code), and are not subject to review by the
23 Office of Administrative Law.

24 ~~SEC. 5.—Section 2773.11 is added to the Public Resources Code,~~
25 ~~to read:~~

26 ~~2773.11.—(a) Prior to the modification of the amount of a~~
27 ~~financial assurance or the full or partial release of the financial~~
28 ~~assurance instrument to which both the lead agency and the~~
29 ~~department are cobeneficiaries pursuant to Section 2773.1, the~~
30 ~~lead agency shall provide to the director all of the following~~
31 ~~documents at one time:~~

32 ~~(1) An inspection report, prepared by a qualified person pursuant~~
33 ~~to Section 2774, indicating that there are aspects of the surface~~
34 ~~mining operation that require modification of the existing financial~~
35 ~~assurance amount or stating that the mined land has been reclaimed~~
36 ~~in full or in part, as the case may be, in accordance with the~~
37 ~~approved reclamation plan.~~

38 ~~(2) A revised financial assurance cost estimate prepared by the~~
39 ~~operator and accepted by the lead agency, or prepared by the lead~~
40 ~~agency pursuant to Section 2773.1, with supporting documentation~~

1 that indicates the specific cost changes to the existing financial
2 assurance amount, or that indicates there are no further outstanding
3 reclamation liabilities to be included in the financial assurance.

4 (3) A statement by the lead agency, with supporting
5 documentation that may include the most recent inspection report
6 and any geological and engineering reports prepared as part of the
7 inspection report, that the mined land remains subject to a financial
8 assurance as modified or that the mined land has been reclaimed
9 in accordance with the approved reclamation plan, that there are
10 no outstanding reclamation liabilities, and recommending to the
11 director that the financial assurance be released.

12 (4) The director shall review and comment on the documents
13 within 45 days from the date of receipt of the documents, pursuant
14 to Section 2774. The director shall inspect the surface mining
15 operation if the director determines it necessary pursuant to Section
16 2774.1 and shall do any of the following:

17 (A) Notify the lead agency of the director's concurrence that
18 the modified financial assurance amount is adequate or that there
19 are no outstanding reclamation liabilities on the mined land and
20 that the original financial assurance should be released in full or
21 in part pursuant to Section 2773.1, at which time the financial
22 assurance shall be released.

23 (B) Notify the lead agency that the director has found, based
24 on an inspection, aspects of the surface mining operation that
25 require additional modifications to the financial assurance amount
26 or aspects that are not in compliance with the approved reclamation
27 plan.

28 (C) Commence the financial assurance forfeiture process
29 pursuant to Section 2773.1.

30 (b) (1) An operator may request the lead agency and the director
31 jointly to inspect and review a request for full or partial release of
32 a financial assurance instrument. Notwithstanding subdivision (a),
33 the operator may submit a request for a joint inspection and review
34 to the lead agency and the director along with the surface mining
35 operation's most recent inspection report, a revised financial
36 assurance cost estimate, and other supporting documentation.

37 (2) The lead agency and the director shall conduct a joint
38 inspection for the purpose of evaluating the operator's request
39 within 90 days after receipt of the operator's request.

1 ~~(3) Within 45 days after completion of the joint inspection, the~~
2 ~~lead agency and the director shall do any of the following:~~

3 ~~(A) Notify the operator the modified financial assurance amount~~
4 ~~is adequate or that there are no outstanding reclamation liabilities~~
5 ~~on the mined land and that the original financial assurance should~~
6 ~~be released in full or in part pursuant to Section 2773.1, at which~~
7 ~~time the financial assurance shall be released.~~

8 ~~(B) Notify the operator that aspects of the surface mining~~
9 ~~operation require additional modifications to the financial assurance~~
10 ~~amount or that aspects of the surface mining operation are not in~~
11 ~~compliance with the approved reclamation plan.~~

12 ~~(C) Commence the financial assurance forfeiture process~~
13 ~~pursuant to Section 2773.1.~~

14 ~~(e) If a violation by the operator is confirmed by an inspection~~
15 ~~either by the lead agency or by the director, the lead agency or the~~
16 ~~director may take actions pursuant to Section 2774.1 to ensure the~~
17 ~~violation is corrected. The financial assurance shall not be released~~
18 ~~until the violation is corrected.~~

19 ~~(d) Prior to sending written notification and release of financial~~
20 ~~assurances pursuant to Section 2773.1, the lead agency shall obtain~~
21 ~~the written concurrence of the director that the completion of~~
22 ~~reclamation of the mined land disturbed by the surface mining~~
23 ~~operation is in accordance with the requirements of the reclamation~~
24 ~~plan approved by the lead agency.~~

25 ~~(e) The board shall promulgate a regulation consistent with this~~
26 ~~section.~~

27 ~~SEC. 6.~~

28 ~~SEC. 3.~~ Section 2774 of the Public Resources Code is amended
29 ~~to read:~~

30 2774. (a) Every lead agency shall adopt ordinances in
31 accordance with state policy that establish procedures for the
32 review and approval of reclamation plans and financial assurances
33 and the issuance of a permit to conduct surface mining operations,
34 except that any lead agency without an active surface mining
35 operation in its jurisdiction may defer adopting an implementing
36 ordinance until the filing of a permit application. The ordinances
37 shall establish procedures requiring at least one public hearing and
38 shall be periodically reviewed by the lead agency and revised, as
39 necessary, to ensure that the ordinances continue to be in
40 accordance with state policy.

1 (b) Surface mining operations shall be inspected annually, solely
2 to determine whether the surface mining operation is in compliance
3 with its reclamation plan as described in subdivision (c) of Section
4 2772. The lead agency shall cause an inspection to be conducted
5 by a state licensed geologist, state licensed civil engineer, state
6 licensed landscape architect, state licensed forester, or a lead
7 agency employee who is a mine inspector qualified pursuant to
8 subdivision-~~(i)~~; (h), who is experienced in land reclamation and
9 who has not been employed by the surface mining operation being
10 inspected in any capacity during the previous 12 months, except
11 that a lead agency employee who is a qualified mine inspector may
12 inspect surface mining operations conducted by another department
13 within the local agency. All inspections shall be conducted using
14 a form developed by the department and approved by the board
15 that includes the professional licensing and disciplinary information
16 of the person who conducted the inspection. The operator shall be
17 solely responsible for the reasonable cost of the inspection. The
18 lead agency or the inspector qualified pursuant to subdivision-~~(i)~~
19 (h), shall provide a notice of completion of inspection to the
20 director within 90 days of conducting the inspection. The notice
21 shall contain a statement regarding the surface mining operation's
22 compliance with its approved reclamation plan, as described in
23 subdivision (c) of Section 2772, a copy of the completed inspection
24 form, and which aspects of the surface mining operations, if any,
25 are inconsistent with its approved reclamation plan, as described
26 in subdivision (c) of Section 2772, and any corrective measures
27 recommended by the inspector. If the surface mining operation
28 has a review of its reclamation plan, financial assurances, or an
29 interim management plan pending under subdivision (b), (c), (d),
30 or (h) of Section 2770, or an appeal pending before the board or
31 lead agency governing body under subdivision (e) or (h) of Section
32 2770, the notice shall so indicate. The lead agency shall forward
33 to the operator a copy of the notice, a copy of the completed
34 inspection form, and any supporting documentation, including,
35 but not limited to, any inspection report prepared by the geologist,
36 civil engineer, landscape architect, forester, or mine inspector
37 qualified pursuant to subdivision-~~(i)~~ (h) who conducted the
38 inspection.

39 (c) Before approving a surface mining operation's reclamation
40 plan or financial assurances, or any amendments to the reclamation

1 plan and adjustments to financial assurances based on an
2 amendment to a reclamation plan, the lead agency shall submit
3 the plan, assurances, or amendments to the director for review.
4 The plan or amendments shall be submitted to the director as early
5 as practicable in order to facilitate review of the plan pursuant to
6 the California Environmental Quality Act (Division 13
7 (commencing with Section 21000)). All documentation for that
8 submission shall be submitted to the director at one time. When
9 the lead agency submits a reclamation plan or plan amendments
10 to the director for review, the lead agency shall also submit to the
11 director, for use in reviewing the reclamation plan or plan
12 amendments, information from any prior final related document
13 prepared, adopted, or certified pursuant to the California
14 Environmental Quality Act (Division 13 (commencing with Section
15 21000)), and shall submit any other pertinent information. The
16 lead agency shall certify to the director that the reclamation plan
17 is considered complete and in substantial compliance with the
18 applicable requirements of this chapter and Article 1 (commencing
19 with Section 3500) of Chapter 8 of Division 2 of Title 14 of the
20 California Code of Regulations and the lead agency's mining
21 ordinance in effect at the time that the reclamation plan is submitted
22 to the director for review.

23 (d) (1) The director shall have 30 days from the date of receipt
24 of a reclamation plan or plan amendments submitted pursuant to
25 subdivision (c), and 45 days from the date of receipt of financial
26 assurances submitted pursuant to subdivision (c), to prepare written
27 comments, if the director so chooses. The lead agency shall
28 evaluate written comments received from the director relating to
29 the reclamation plan, plan amendments, or financial assurances
30 within a reasonable amount of time.

31 (2) The lead agency shall prepare a written response to the
32 director's comments describing the disposition of the major issues
33 raised by the director's comments, and submit the lead agency's
34 proposed response to the director at least 30 days prior to approval
35 of the reclamation plan, plan amendment, or financial assurance.
36 The lead agency's response to the director's comments shall
37 describe whether the lead agency proposes to adopt the director's
38 comments to the reclamation plan, plan amendment, or financial
39 assurance. If the lead agency does not propose to adopt the
40 director's comments, the lead agency shall specify, in detail, why

1 the lead agency proposes not to adopt the comments. Copies of
2 any written comments received and responses prepared by the lead
3 agency shall be forwarded to the operator. The lead agency shall
4 also give the director at least 30 days' notice of the time, place,
5 and date of the hearing before the lead agency at which time the
6 reclamation plan, plan amendment, or financial assurance is
7 scheduled to be approved by the lead agency. If no hearing is
8 required by this chapter, or by the local ordinance, or other state
9 law, then the lead agency shall provide 30 days' notice to the
10 director that it intends to approve the reclamation plan, plan
11 amendment, or financial assurance. The lead agency shall send to
12 the director its final response to the director's comments within
13 30 days following its approval of the reclamation plan, plan
14 amendment, or financial assurance, along with final approved
15 copies of those documents, during which period the department
16 retains all powers, duties, and authorities of this chapter.

17 (3) To the extent there is a conflict between the comments of a
18 trustee agency or a responsible agency that are based on the
19 agency's statutory or regulatory authority and the comments of
20 other commenting agencies that are received by the lead agency
21 pursuant to the California Environmental Quality Act (Division
22 13 (commencing with Section 21000)) regarding a reclamation
23 plan or plan amendments, the lead agency shall consider only the
24 comments of the trustee agency or responsible agency.

25 (e) (1) If an operator does not request an inspection date on the
26 annual report filed pursuant to Section 2207, or if the lead agency
27 is unable to cause the inspection of a given surface mining
28 operation on the date requested by the operator, the lead agency
29 shall provide the operator with a minimum of ~~30~~ *five* days' written
30 notice of a pending inspection or a lesser time period if agreed to
31 by the operator.

32 (2) Within 30 days of an annual inspection being conducted
33 pursuant to this section, each operator shall provide an annual
34 financial assurance cost estimate, on the form developed by the
35 board by regulation pursuant to subdivision (f) of Section 2773.1,
36 to the director and the lead agency for review.

37 (3) The director shall have 45 days from the date of receipt of
38 the operator's annual financial assurance cost estimate to prepare
39 written comments on the operator's financial assurances and
40 provide the comments to the lead agency and the operator. The

1 lead agency shall have 30 days from receipt of the director's
2 comments to evaluate the written comments received from the
3 director and provide the director and operator its proposed response
4 to the director. The lead agency shall accept or reject a surface
5 mining operation's annual financial assurance cost estimate within
6 60 days of receipt of the director's comments or the due date of
7 the director's comments if comments are not received. The lead
8 agency shall send to the director its final response to the director's
9 comments within 30 days of its acceptance of the annual financial
10 assurance cost estimate.

11 (4) If the lead agency determines an operator's annual financial
12 assurance cost estimate is inadequate, the lead agency shall specify
13 the reasons for that determination. The operator shall have 30 days
14 to appeal that denial pursuant to subdivision (e) of Section 2770
15 or provide a revised financial assurance cost estimate incorporating
16 the suggested changes to the director and the lead agency for
17 approval by the lead agency.

18 (5) The operator shall provide the director and the lead agency
19 with a revised financial assurances mechanism within 60 days of
20 the lead agency's approval. ~~An operator shall not be required to~~
21 ~~adjust financial assurances that are in excess of the amount~~
22 ~~determined necessary to perform reclamation in accordance with~~
23 ~~the surface mining operation's approved reclamation plan provided~~
24 ~~that financial assurance mechanism remains in effect. An operator~~
25 *shall be required to replace an approved financial assurance*
26 *mechanism to bond for the reclamation of the surface mining*
27 *operation only if the financial assurance cost estimate identifies*
28 *a need to increase the amount of the financial assurance*
29 *mechanism.*

30 (f) (1) No later than April 1 of each year, the director shall
31 provide each lead agency with a notice listing each active or idle
32 surface mining operation within the lead agency's jurisdiction. For
33 each surface mining operation, the director shall request and the
34 lead agency shall provide to the director, on a form provided by
35 the director, no later than July 1 of each year, the following
36 information:

37 (A) A copy of any permit or reclamation plan amendments, as
38 applicable.

39 (B) A statement that there have been no changes during the
40 previous year, as applicable.

1 (C) The date of each surface mining operation’s last inspection.

2 (D) The date of each surface mining operation’s last financial
3 assurance review pursuant to Section 2773.1 for each operation
4 listed.

5 (2) The director shall request similar information on any new
6 or omitted operations, to be provided to the director no later than
7 July 1 of each year.

8 (3) The form provided by the director shall include the
9 department’s current information for each operation. The notice
10 to each lead agency shall include a statement that failure to file
11 with the director the information requested pursuant to this
12 subdivision may be cause for action pursuant to Section 2774.4.

13 (g) The review and approval of financial assurances pursuant
14 to this section shall not be considered a project for purposes of the
15 California Environmental Quality Act (Division 13 (commencing
16 with Section 21000)).

17 ~~(h) (1) If a surface mining operation is not inspected by the~~
18 ~~lead agency on the date requested by the operator pursuant to~~
19 ~~Section 2207 and the operator has not received a 30-day notice of~~
20 ~~pending inspection from the lead agency as provided in subdivision~~
21 ~~(e), the operator may send a notice to the lead agency and the~~
22 ~~director stating the operator’s intent to have the surface mining~~
23 ~~operation inspected by a third party who has not been employed~~
24 ~~in any capacity by the operator in the previous 12 months and who~~
25 ~~is a state-licensed geologist, state-licensed civil engineer,~~
26 ~~state-licensed landscape architect, or state-licensed forester who~~
27 ~~is experienced in land reclamation. An inspector retained by the~~
28 ~~operator pursuant to this section shall provide the lead agency a~~
29 ~~15-day notice of the inspector’s intended inspection date for the~~
30 ~~operation and shall provide a reasonable opportunity for a~~
31 ~~representative of the lead agency to attend the inspection.~~

32 ~~(2) An inspector who inspects a surface mining operation~~
33 ~~pursuant to this subdivision shall provide the notice of completion~~
34 ~~of inspection specified in subdivision (b) to the director and the~~
35 ~~lead agency, whether or not a lead agency representative~~
36 ~~participated in the inspection. The notice shall include the stamp~~
37 ~~of the licensed professional who conducted the inspection.~~

38 (i)

39 (h) (1) The State Geologist shall coordinate with the director,
40 board, lead agencies, and interested parties to develop a curriculum

1 for the training of mine inspectors. The curriculum shall include,
2 but need not be limited to, all of the following:

- 3 (A) Training on determining revegetative success.
- 4 (B) Evaluating slopes for signs of instability.
- 5 (C) How to properly use the inspection form approved by the
6 board.
- 7 (D) The calculation of financial assurances.
- 8 (E) Considerations for corrective measures.
- 9 (F) Other issues necessary to ensure the consistent inspection
10 of surface mines under this chapter.

11 (2) Lead agency employees who inspect surface mining
12 operations under this chapter shall be deemed qualified mine
13 inspectors for up to two years after the State Geologist has finalized
14 the curriculum pursuant to paragraph (1) and the training has been
15 available to lead agency employees.

16 (3) A lead agency employee who has completed the training
17 curriculum developed pursuant to paragraph (1) shall be a qualified
18 mine inspector.

19 (4) Nothing in this subdivision shall be construed to affect or
20 impose qualifications or standards on employees designated by a
21 local, state, or federal agency to perform inspections of real
22 property under separate provisions of local, state, or federal law,
23 including, but not limited to, the Porter-Cologne Water Quality
24 Control Act (Division 7 (commencing with Section 13000) of the
25 Water Code), the federal Clean Water Act (33 U.S.C. Sec. 1251
26 et seq.), and the Fish and Game Code, notwithstanding the fact
27 that that informational addenda are submitted to lead agencies
28 pursuant to this chapter in addition to reclamation plans, including
29 materials submitted pursuant to subdivision (d) of Section 2772.

30 ~~(5) Absent express authorization under this chapter, mine~~
31 ~~inspectors shall not inspect operations for the purpose of evaluating~~
32 ~~compliance with separate provisions of local, state, or federal law,~~
33 ~~including, but not limited to, the Porter-Cologne Water Quality~~
34 ~~Control Act (Division 7 (commencing with Section 13000) of the~~
35 ~~Water Code), the federal Clean Water Act (33 U.S.C. Sec. 1251~~
36 ~~et seq.), and the Fish and Game Code.~~

37 ~~SEC. 7. Section 2774.1 of the Public Resources Code is~~
38 ~~amended to read:~~

39 ~~2774.1. (a) Except as provided in subdivision (i) of Section~~
40 ~~2770, if the lead agency or the director determines, based upon an~~

1 annual inspection pursuant to Section 2774, or otherwise confirmed
2 by an inspection of the mining operation, that a surface mining
3 operation is not in compliance with this chapter, the lead agency
4 or the director may notify the operator of that violation by personal
5 service or certified mail. If the violation extends beyond 30 days
6 after the date of the lead agency's or the director's notification,
7 the lead agency or the director may issue an order by personal
8 service or certified mail requiring the operator to comply with this
9 chapter or, if the operator does not have an approved reclamation
10 plan or financial assurances, cease all further mining activities.

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

22 (c) ~~An operator who violates or fails to comply with an order~~
23 ~~issued under subdivision (a) after the order's effective date, as~~
24 ~~provided in subdivision (b), or who fails to submit a report to the~~
25 ~~director or lead agency as required by Section 2207, shall be subject~~
26 ~~to an order by the lead agency or the director imposing an~~
27 ~~administrative penalty of not more than five thousand dollars~~
28 ~~(\$5,000) per day, assessed from the original date of noncompliance~~
29 ~~with this chapter or Section 2207. The penalty may be imposed~~
30 ~~administratively by the lead agency or the director. In determining~~
31 ~~the amount of the administrative penalty, the lead agency or the~~
32 ~~director shall take into consideration the nature, circumstances,~~
33 ~~extent, and gravity of the violation or violations, any prior history~~
34 ~~of violations, the degree of culpability, economic savings, if any,~~
35 ~~resulting from the violation, and any other matters justice may~~
36 ~~require. Orders setting administrative penalties shall become~~
37 ~~effective upon issuance of the order and payment shall be made~~
38 ~~to the lead agency or the director within 30 days, unless the~~
39 ~~operator petitions the legislative body of the lead agency, the board,~~
40 ~~or the superior court for review as provided in Section 2774.2. An~~

1 order shall be served by personal service or by certified mail upon
2 the operator. Penalties collected by the director shall not be used
3 for purposes other than to cover the reasonable costs incurred by
4 the director in implementing this chapter or Section 2207.

5 (d) ~~If the lead agency or the director determines that the surface
6 mine is not in compliance with this chapter, so that the surface
7 mine presents an imminent and substantial endangerment to the
8 public health or the environment, the lead agency or the Attorney
9 General, on behalf of the director, may seek an order from a court
10 of competent jurisdiction enjoining that operation.~~

11 (e) ~~Upon a complaint by the director, the department, or the
12 board, the Attorney General may bring an action to recover
13 administrative penalties under this section, and penalties under
14 Section 2207, in any court of competent jurisdiction in this state
15 against any person violating any provision of this chapter or Section
16 2207, or any regulation adopted pursuant to this chapter or Section
17 2207. The Attorney General may bring this action on his or her
18 own initiative if, after examining the complaint and the evidence,
19 he or she believes a violation has occurred. The Attorney General
20 may also seek an order from a court of competent jurisdiction
21 compelling the operator to comply with this chapter and Section
22 2207.~~

23 (f) ~~(1) The lead agency has primary responsibility for enforcing
24 this chapter and Section 2207. In cases where the board is not the
25 lead agency pursuant to Section 2774.4, enforcement actions may
26 be initiated by the director pursuant to this section only after the
27 violation has come to the attention of the director and either of the
28 following occurs:~~

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

34 (B) ~~The director determines that there is a violation that amounts
35 to an imminent and substantial endangerment to the public health
36 or safety, or to the environment.~~

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

39 (g) ~~In exercising enforcement authority pursuant to this section,
40 the lead agency, the director, or the board, as appropriate, shall~~

1 take into account and seek to minimize the impact of any proposed
2 enforcement action on the number of existing jobs supported
3 directly or indirectly by the surface mining operation.

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

6 SEC. 4. Section 2774.2 of the Public Resources Code is
7 amended to read:

8 2774.2. (a) Within 30 days of the issuance of an order setting
9 administrative penalties under subdivision (c) of Section 2774.1,
10 the operator may petition that legislative body of the lead agency,
11 if the lead agency has issued the order, or the board for orders
12 issued by the director, for review of the order. If the operator does
13 not petition for review within the time limits set by this subdivision,
14 the order setting administrative penalties shall not be subject to
15 review by any court or agency.

16 (b) The legislative body of the lead agency or the board shall
17 notify the operator by personal service or certified mail whether
18 it will review the order setting administrative penalties. In
19 reviewing an order pursuant to this section, the record shall consist
20 of the record before the lead agency or the ~~director~~, *director* and
21 any other relevant evidence which, in the judgment of the
22 legislative body or the board, should be considered to effectuate
23 and implement the policies of this chapter.

24 (c) The legislative body or the board may affirm, modify, or set
25 aside, in whole or in part, by its own ~~order~~, *any order* an order of
26 the lead agency or the director setting administrative penalties
27 reviewed by the legislative body or the board pursuant to this
28 section.

29 (d) ~~Any~~ *An* order of the legislative body or the board issued
30 under subdivision (c) shall become effective upon *its* issuance
31 ~~thereof~~, unless the operator petitions the superior court for review
32 as provided in subdivision (e). ~~Any~~ *An* order shall be served by
33 personal service or by certified mail upon the operator. Payment
34 of ~~any~~ *an* administrative penalty ~~which~~ *that* is specified in an order
35 issued ~~under~~ *pursuant to* subdivision ~~(e)~~, *(c)* shall be made to the
36 lead agency or the director within 30 days of service of the ~~order~~;
37 ~~however~~, *order. However*, the payment shall be held in an interest
38 bearing impound account pending the resolution of a petition for
39 review filed pursuant to subdivision (e).

1 (e) ~~Any~~ An operator aggrieved by an order of the legislative
2 body or the board issued ~~under~~ pursuant to subdivision (c) may
3 obtain review of the order by filing in the superior court a petition
4 for writ of mandate within 30 days following the issuance of the
5 order. ~~Any~~ An operator aggrieved by an order of a lead agency or
6 the director setting administrative penalties ~~under~~ pursuant to
7 subdivision (c) of Section 2774.1, for which the legislative body
8 or board denies review, may obtain review of the order in the
9 superior court by filing in the court a petition for writ of mandate
10 within 30 days following the denial of review. The provisions of
11 Section 1094.5 of the Code of Civil Procedure shall govern judicial
12 proceedings pursuant to this subdivision, except that in every case
13 the court shall exercise its independent judgment. If the operator
14 does not petition for a writ of mandate within the time limits set
15 by this subdivision, an order of the board or the legislative body
16 shall not be subject to review by any court or agency.

17 (f) (1) *After the expiration of the time to petition for review*
18 *pursuant to subdivision (a) or (e), the director or the board acting*
19 *as the lead agency may apply to the small claims court or the*
20 *superior court, depending on the jurisdictional amount, in the*
21 *county where the administrative penalty was imposed for a*
22 *judgment to collect the unpaid administrative penalty imposed*
23 *pursuant to subdivision (c) of Section 2774.1. The application*
24 *shall include all of the following:*

25 (A) *The order setting the administrative penalty pursuant to*
26 *subdivision (c) of Section 2774.1.*

27 (B) *A notice to the operator of the right to petition for review*
28 *of the order.*

29 (C) *Either of the following:*

30 (i) *A declaration from the board that no petition was made or*
31 *that the board declined to review the petition.*

32 (ii) *A copy of the final order of the board.*

33 (2) *An application submitted pursuant to this subdivision shall*
34 *constitute a sufficient showing to warrant the issuance of the*
35 *judgment. The court clerk shall enter the judgment immediately*
36 *in conformity with the application.*

37 (3) *The judgment entered pursuant to this subdivision shall have*
38 *the same force and effect as, and shall be subject to all the*
39 *provisions of law relating to, a judgment in a civil action and may*

1 *be enforced in the same manner as any other judgment of the court.*

2 *The court shall make enforcement of the judgment a priority.*

3 ~~SEC. 8.~~

4 *SEC. 5.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of Section
9 17556 of the Government Code.

O