

AMENDED IN SENATE JULY 1, 2015
AMENDED IN ASSEMBLY JUNE 3, 2015
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, 2715.5, 2733, 2770, 2772, 2773.1, 2774, and 2774.2 of, and to add Sections 2736, 2772.1, and 2773.4 to, 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 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 the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain

timeframes; and, require the director to take certain actions upon receiving a proposed reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would revise and recast provisions of the act related to financial assurances and, among other things, would require financial assurance cost estimates be submitted for review and include estimates of the time needed to complete reclamation of the ~~mine and~~ mine; 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~~ assurance; *require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate to the director for review, as specified; and, require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency.* By adding to the duties of ~~local agencies,~~ a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the State Mining and Geology Board to conduct a specified public hearing if the lead agency has evidence that an operator may be financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to seize the operator's financial assurances if warranted following that hearing.

(2) The act requires the owner or operator of a mining operation to forward annually to the ~~Director of Conservation~~ director 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 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,~~ agency; authorize a lead

agency to cause an inspection to be conducted by an unlicensed employee of the lead agency who meets specified criteria and who, after January 1, 2018, has completed an inspection workshop, as ~~provided~~, *provided*; impose new requirements on the lead agency related to the timing of ~~inspections~~, *inspections*; impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining ~~operation~~, *operation*; and require the director to provide an inspection workshop and update workshop for lead agency employees who inspect surface mining operations after January 1, 2018. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(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, 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.

(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:
 3 2207. (a) The owner or the operator of a mining operation
 4 within the state shall forward to the director annually, not later
 5 than a date established by the director, upon forms approved by

1 the board from time to time, a report that identifies and contains
2 all of the following:

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

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

9 (3) The location of the mining operation, its name, its mine
10 number as issued by the Office of Mine Reclamation or the
11 director, its section, township, range, latitude, longitude, and
12 approximate boundaries of the mining operation marked on a
13 United States Geological Survey 7½-minute or 15-minute
14 quadrangle map.

15 (4) The lead agency.

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

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

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

22 (8) A copy of the previously completed annual inspection form
23 and a requested date for the next annual inspection by the lead
24 agency.

25 (9) Proof of financial assurances.

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

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

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

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

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

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

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

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

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

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

37 (d) (1) The board shall impose, by regulation, pursuant to
38 paragraph (2), an annual reporting fee on, and method for collecting
39 annual fees from, each active or idle mining operation. The
40 maximum fee for any single mining operation may not exceed four

1 thousand dollars (\$4,000) annually and may not be less than one
2 hundred dollars (\$100) annually, as adjusted for the cost of living
3 as measured by the California Consumer Price Index for all urban
4 consumers, calendar year averages, using the percentage change
5 in the previous year, beginning with the 2005–06 fiscal year and
6 annually thereafter.

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

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

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

38 (4) (A) The reporting fees established pursuant to this
39 subdivision shall be deposited in the Mine Reclamation Account,
40 which is hereby created. Any fees, penalties, interest, fines, or

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

11 (B) (i) In addition to reporting fees, the board shall collect five
12 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
13 silver mined within the state and shall deposit the fees collected
14 in the Abandoned Mine Reclamation and Minerals Fund
15 Subaccount, which is hereby created in the Mine Reclamation
16 Account. The department may expend the moneys in the
17 subaccount, upon appropriation by the Legislature, for only the
18 purposes of Section 2796.5 and as authorized herein for the
19 remediation of abandoned mines.

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

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

37 (e) The lead agency, or the board when acting as the lead agency,
38 may impose a fee upon each mining operation to cover the
39 reasonable costs incurred in implementing this chapter and Chapter
40 9 (commencing with Section 2710).

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

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

34 (h) The approval of a form by the board pursuant to this section
35 is not the adoption of a regulation for purposes of the
36 Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code) and is not subject to that act.

39 *SEC. 2. Section 2715.5 of the Public Resources Code is*
40 *amended to read:*

1 2715.5. (a) The Cache Creek Resource Management Plan, in
2 conjunction with a site specific plan deemed consistent by the lead
3 agency with the Cache Creek Resource Management Plan, until
4 December 31, 2017, shall be considered to be a functional
5 equivalent of a reclamation plan for the purposes of this chapter.
6 No other reclamation plan shall be required to be reviewed and
7 approved for any excavation project subject to the Cache Creek
8 Resource Management Plan that is conducted in conformance with
9 an approved site specific plan that is consistent with the Cache
10 Creek Resource Management ~~Plan~~, *Plan* and the standards
11 specified in that plan governing erosion control, channel
12 stabilization, habitat restoration, flood control, or infrastructure
13 maintenance, if that plan is reviewed and approved by a lead
14 agency pursuant to this chapter.

15 (b) For *the* purposes of this section, the board of supervisors of
16 the county in which the Cache Creek Resource Management Plan
17 is to be implemented shall prepare and file the annual report
18 required to be prepared pursuant to Section 2207.

19 (c) Nothing in this section precludes an enforcement action by
20 the board or the department brought pursuant to this chapter or
21 Section 2207 if the lead agency or the director determines that a
22 surface mining operator, acting under the authority of the Cache
23 Creek Resource Management Plan, is not in compliance with the
24 requirements of this chapter or Section 2207.

25 (d) ~~“Site~~ *For purposes of this section, “site specific plan,”* ~~for~~
26 ~~the purposes of this section, plan”~~ means an individual project
27 plan approved by the lead agency that is consistent with the Cache
28 Creek Resource Management Plan. Site specific plans prepared
29 in conformance with the Cache Creek Resource Management Plan
30 shall, ~~at a minimum~~, include, *at a minimum*, the information
31 required pursuant to subdivision (c) of Section 2772, shall comply
32 with the requirements of Article 9 (commencing with Section
33 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of
34 the California Code of Regulations, and shall be provided along
35 with a financial assurance estimate to the department for review
36 and comment pursuant to Section ~~2774~~. *2772.1 or 2773.4, as*
37 *applicable*. Notwithstanding the number of days authorized by
38 ~~paragraph (1) of subdivision (d) (b) of Section 2774~~, *2772.1 or*
39 *subdivision (c) of Section 2773.4*, the department shall review the
40 site specific plan and the financial assurance estimate and prepare

1 any written comments within 15 days from the date of receipt of
 2 the plan and the estimate.

3 (e) Prior to engaging in an excavation activity in conformance
 4 with the Cache Creek Resource Management Plan, a surface mining
 5 operation shall be required to obtain financial assurances that meet
 6 the requirements of Section 2773.1.

7 (f) This section shall remain in effect only until December 31,
 8 2017, and as of that date is repealed, unless a later enacted statute
 9 that is enacted before December 31, 2017, deletes or extends that
 10 date.

11 *SEC. 3. Section 2733 of the Public Resources Code is amended*
 12 *to read:*

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

23 *SEC. 4. Section 2736 is added to the Public Resources Code,*
 24 *to read:*

25 2736. “Financial assurances” means a current approved
 26 financial assurance cost estimate and a financial assurance
 27 mechanism that is at least equal to the current approved financial
 28 assurance cost estimate.

29 *SEC. 5. Section 2770 of the Public Resources Code is amended*
 30 *to read:*

31 2770. (a) Except as provided in this section, a person shall not
 32 conduct surface mining operations unless a permit is obtained
 33 from, a reclamation plan has been submitted to and approved by,
 34 and financial assurances for reclamation have been approved ~~by~~;
 35 *by* the lead agency for the operation pursuant to this article.

36 (b) A person with an existing surface mining operation who has
 37 vested rights pursuant to Section 2776 and who does not have an
 38 approved reclamation plan shall submit a reclamation plan to the
 39 lead agency not later than March 31, 1988. If a reclamation plan
 40 application is not on file by March 31, 1988, the continuation of

1 the surface mining operation is prohibited until a reclamation plan
2 is submitted to the lead agency. For *the* purposes of this
3 subdivision, a reclamation plan *existing prior to January 1, 2016*,
4 may consist of all or the appropriate sections of any plans or written
5 agreements previously approved by the lead agency or another
6 agency, together with any additional documents needed to
7 substantially meet the requirements of Sections 2772 and 2773
8 and the lead agency surface mining ordinance adopted pursuant
9 to subdivision (a) of Section 2774, provided that all ~~documents~~
10 *documents*, which together were proposed to serve as the
11 reclamation ~~plan~~ *plan*, are submitted for approval to the lead
12 agency in accordance with this chapter.

13 ~~(e) If a person with an existing surface mining operation has~~
14 ~~received lead agency approval of its financial assurances for~~
15 ~~reclamation prior to January 1, 1991, the lead agency shall~~
16 ~~administratively review those existing financial assurances in~~
17 ~~accordance with subdivision (d) prior to January 1, 1992. The~~
18 ~~review of existing financial assurances shall not be considered a~~
19 ~~project for purposes of Division 13 (commencing with Section~~
20 ~~21000). A person with an existing surface mining operation that~~
21 ~~does not have financial assurances that received lead agency~~
22 ~~approval prior to January 1, 1991, shall submit financial assurances~~
23 ~~for reclamation for review in accordance with subdivision (d).~~

24 ~~(c) The review of financial assurances shall not be considered~~
25 ~~a project for purposes of the California Environmental Quality~~
26 ~~Act (Division 13 (commencing with Section 21000)).~~

27 (d) The lead agency's review of a reclamation plan submitted
28 pursuant to subdivision (b) or of financial assurances pursuant to
29 subdivision (c) is limited to whether the plan or the financial
30 assurances substantially meet the applicable requirements of
31 Sections 2772, 2773, ~~and 2773.1, and 2773.3~~ and the lead agency
32 surface mining ordinance adopted pursuant to subdivision (a) of
33 Section 2774, but, in any event, the lead agency shall require that
34 financial assurances for reclamation be sufficient to perform
35 reclamation of lands remaining disturbed. Reclamation plans or
36 financial assurances determined to substantially meet these
37 requirements shall be approved by the lead agency for purposes
38 of this chapter. Reclamation plans or financial assurances
39 determined not to substantially meet these requirements shall be
40 returned to the operator within 60 days. The operator has 60 days

1 to revise the plan or financial assurances to address identified
2 deficiencies, at which time the revised plan or financial assurances
3 shall be returned to the lead agency for review and approval. Except
4 as specified in subdivision (e) or (i), unless the operator has filed
5 on or before July 1, 1990, an appeal pursuant to subdivision (e)
6 with regard to nonapproval of the reclamation plan, or has filed
7 on or before January 1, 1994, an appeal pursuant to subdivision
8 (e) with regard to nonapproval of financial assurances, and that
9 appeal is pending before the board, the continuation of the surface
10 mining operation is prohibited until a reclamation plan and
11 financial assurances for reclamation are approved by the lead
12 agency.

13 (e) A person who, ~~based on the evidence of the record,~~ can
14 substantiate, *based on the evidence of the record,* that a lead agency
15 has either (1) failed to act according to due process or has relied
16 on considerations not related to the specific applicable requirements
17 of Sections 2772, 2773, ~~and 2773.1, and 2773.3~~ and the lead
18 agency surface mining ordinance adopted pursuant to subdivision
19 (a) of Section 2774, in reaching a decision to deny approval of a
20 reclamation plan or financial assurances for reclamation, (2) failed
21 to act within a reasonable time of receipt of a completed
22 application, or (3) failed to review and approve reclamation plans
23 or financial assurances as required by ~~subdivisions (e) and~~
24 *subdivision (d) or Sections 2772.1 and 2773.4,* may appeal that
25 action or inaction to the board. *If the director has commented*
26 *pursuant to Section 2773.4 that a financial assurance cost estimate*
27 *is inadequate, the director may appeal the lead agency's approval*
28 *of a financial assurance cost estimate on any of the grounds*
29 *identified in this subdivision that were included in the director's*
30 *comments pursuant to Article 7 (commencing with Section 3680)*
31 *of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the*
32 *California Code of Regulations.*

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

36 (g) Appeals that the board does not decline to hear shall be
37 scheduled and heard at a public hearing within 45 days of the filing
38 of the ~~appeal,~~ *appeal* or a longer period as may be mutually agreed
39 upon by the board and the person filing the appeal. In hearing an
40 appeal, the board shall only determine whether the reclamation

1 plan or the financial assurances substantially meet the applicable
2 requirements of Sections 2772, 2773, ~~and~~ 2773.1, and 2773.3 and
3 the lead agency surface mining ordinance adopted pursuant to
4 subdivision (a) of Section 2774. A reclamation plan or financial
5 assurances determined to meet these requirements shall be
6 approved *or upheld*. A reclamation plan or financial assurances
7 determined not to meet these requirements shall be returned to the
8 ~~person filing the appeal~~ with a notice of deficiencies, *to the*
9 *operator*, who shall be granted, once only, a period of 30 days, or
10 a longer period mutually agreed upon by the operator and the
11 board, to correct the noted deficiencies and submit the revised
12 reclamation plan or the revised financial assurances to the lead
13 agency for review and approval.

14 (h) (1) Within 90 days of a surface mining operation becoming
15 idle, as defined in Section 2727.1, the operator shall submit to the
16 lead agency for review and ~~approval~~, *approval* an interim
17 management plan. The review and approval of an interim
18 management plan shall not be considered a project for purposes
19 of ~~Division the California Environmental Quality Act (Division~~
20 ~~13 (commencing with Section 21000): 21000~~). The approved
21 interim management plan shall be considered an amendment to
22 the surface mining operation's approved reclamation ~~plan~~, *plan*
23 for purposes of this chapter. The interim management plan shall
24 provide measures the operator will implement to maintain the site
25 in compliance with this chapter, including, but not limited to, all
26 permit conditions.

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

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

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

37 (3) The financial assurances required by Section 2773.1 shall
38 remain in effect during the period that the surface mining operation
39 is idle. If the surface mining operation is still idle after the
40 expiration of its interim management plan, the ~~surface mining~~

1 ~~operation~~ *operator* shall commence reclamation in accordance
 2 with its approved reclamation plan.

3 (4) Within 60 days of the receipt of the interim management
 4 ~~plan,~~ *plan* or a longer period mutually agreed upon by the lead
 5 agency and the operator, the lead agency shall review and approve
 6 the plan in accordance with its ordinance adopted pursuant to
 7 subdivision (a) of Section 2774, so long as the plan satisfies the
 8 requirements of this subdivision, and so notify the operator in
 9 writing. Otherwise, the lead agency shall notify the operator in
 10 writing of any deficiencies in the plan. The operator shall have 30
 11 days, or a longer period mutually agreed upon by the operator and
 12 the lead agency, to submit a revised plan.

13 (5) The lead agency shall approve or deny approval of the
 14 revised interim management plan within 60 days of receipt. If the
 15 lead agency denies approval of the revised interim management
 16 plan, the operator may appeal that action to the lead agency's
 17 governing body, which shall schedule a public hearing within 45
 18 days of the filing of the ~~appeal,~~ *appeal* or a longer period mutually
 19 agreed upon by the operator and the governing body.

20 (6) Unless review of an interim management plan is pending
 21 before the lead ~~agency,~~ *agency* or an appeal is pending before the
 22 lead agency's governing body, a surface mining operation that
 23 remains idle for over one year after becoming ~~idle~~ *idle*, as defined
 24 in Section ~~2727.1~~ *2727.1*, without obtaining approval of an interim
 25 management plan shall be considered abandoned and the operator
 26 shall commence and complete reclamation in accordance with the
 27 approved reclamation plan.

28 (i) An enforcement action that may be brought against a surface
 29 mining operation for operating without an approved reclamation
 30 plan, financial assurance, or interim management plan shall be
 31 held in abeyance pending review pursuant to subdivision (b), ~~(e);~~
 32 (d), or (h), or the resolution of an appeal filed with the board
 33 pursuant to subdivision (e), or with a lead agency governing body
 34 pursuant to subdivision (h).

35 *SEC. 6. Section 2772 of the Public Resources Code is amended*
 36 *to read:*

37 2772. (a) The reclamation plan shall be filed with the lead
 38 agency, on a form provided by the lead agency, by any person who
 39 owns, leases, or otherwise controls or operates ~~on-~~ *all* or any

1 portion of ~~any, any~~ mined ~~lands, lands~~ and who plans to conduct
2 surface mining operations on the lands.

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

5 *(b) The reclamation plan shall include a chart identifying the*
6 *page number, chapter, appendix, or other specific location in the*
7 *reclamation plan where content meeting the requirements, as*
8 *applicable, of Sections 2772, 2773, and 2773.3 is located.*

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

11 (1) The name and address of the ~~surface mining~~ operator and
12 the names and addresses of any persons designated by the operator
13 as an agent for the service of process.

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

16 (3) The proposed dates for the initiation and ~~termination of~~
17 *completion of reclamation activities for the* surface mining
18 operation.

19 (4) The maximum anticipated depth of the surface mining
20 operation.

21 ~~(5) The size and legal description of the lands that will be~~
22 ~~affected by the surface mining operation, a map that includes the~~
23 ~~boundaries and topographic details of the lands, a description of~~
24 ~~the general geology of the area, a detailed description of the~~
25 ~~geology of the area in which surface mining is to be conducted,~~
26 ~~the location of all streams, roads, railroads, and utility facilities~~
27 ~~within, or adjacent to, the lands, the location of all proposed access~~
28 ~~roads to be constructed in conducting the surface mining operation,~~
29 ~~and the names and addresses of the owners of all surface interests~~
30 ~~and mineral interests in the lands.~~

31 *(5) A reclamation plan map or maps that shall include all of*
32 *the following:*

33 *(A) Size and legal description of the lands that will be affected*
34 *by the surface mining operation and the names and addresses of*
35 *the owners of all surface interests and mineral interests in the*
36 *lands.*

37 *(B) Clearly defined and accurately drawn property lines,*
38 *setbacks, and the reclamation plan boundary.*

1 (C) Existing topography and final topography depicted with
2 contour lines drawn at appropriate intervals for the site's
3 conditions.

4 (D) Detailed geologic description of the area of the surface
5 mining operation.

6 (E) Location of railroads, utility facilities, access roads,
7 temporary roads to be reclaimed, and any roads remaining for
8 the approved end use.

9 (F) All maps, diagrams, or calculations that require preparation
10 in accordance with the Professional Engineers Act (Chapter 7
11 commencing with Section 6700) of Division 3 of the Business and
12 Professions Code, the Geologist and Geophysicist Act (Chapter
13 12.5 commencing with Section 7800) of Division 3 of the Business
14 and Professions Code, or the Professional Land Surveyors' Act
15 (Chapter 15 commencing with Section 8700) of Division 3 of the
16 Business and Professions Code shall be prepared by a
17 California-licensed professional, shall include his or her license
18 number and name, and shall bear the signature and seal of the
19 licensee.

20 (6) A description ~~of, of~~ and a plan ~~for, for~~ for the type of surface
21 mining to be ~~employed, employed~~ and a time schedule that will
22 provide for the completion of surface mining on each segment of
23 the mined lands so that reclamation can be initiated at the earliest
24 possible time on those portions of the mined lands that will not be
25 subject to further disturbance by the surface mining operation.

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

30 (8) A description of the manner in which reclamation, adequate
31 for the proposed use or potential ~~uses~~ *uses*, will be accomplished,
32 including both of the following:

33 (A) A description of the manner in which *known* contaminants
34 will be ~~controlled, controlled~~ and mining waste will be disposed.

35 (B) A description of the manner in which affected streambed
36 channels and streambanks will be rehabilitated to a condition
37 ~~minimizing that minimizes~~ erosion and ~~sedimentation will occur.~~
38 *sedimentation*.

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

1 (10) A statement that the person submitting the reclamation
2 plan accepts responsibility for reclaiming the mined lands in
3 accordance with the reclamation plan.

4 (11) Any other information ~~which~~ *that* the lead agency may
5 require by ordinance.

6 (d) An item of information or a document required pursuant to
7 subdivision (c) that has already been prepared as part of a permit
8 application for the surface mining operation, or as part of an
9 environmental document prepared for the project pursuant to
10 ~~Division the California Environmental Quality Act (Division 13~~
11 ~~(commencing with Section 21000), 21000))~~ may be included in
12 the reclamation plan by reference, if that item of information or
13 that document is attached to the reclamation plan when the lead
14 agency submits the reclamation plan to the director for review. To
15 the extent ~~that~~ the information ~~or~~, document, *or component of a*
16 *document* referenced in the reclamation plan is used to meet the
17 requirements of subdivision (c) *or Section 2773 or 2773.3*, the
18 information ~~or~~, document, *or component of a document* shall
19 become part of the reclamation plan and shall be subject to all
20 other requirements of this article.

21 (e) Nothing in this section is intended to limit or expand the
22 department's authority or responsibility to review a document in
23 accordance with ~~Division the California Environmental Quality~~
24 ~~Act (Division 13 (commencing with Section 21000), 21000))~~.

25 *SEC. 7. Section 2772.1 is added to the Public Resources Code,*
26 *to read:*

27 *2772.1. (a) (1) Prior to approving a surface mining*
28 *operation's reclamation plan or plan amendment, the lead agency*
29 *shall submit the reclamation plan or plan amendment to the*
30 *director for review. The reclamation plan or plan amendment shall*
31 *be submitted to the director as early as practicable in order to*
32 *facilitate the review of the reclamation plan pursuant to the*
33 *California Environmental Quality Act (Division 13 (commencing*
34 *with Section 21000)). All documentation for the submission shall*
35 *be submitted to the director at one time.*

36 *(2) An item of information, document, or component of a*
37 *document that has been prepared as part of a permit application*
38 *for the surface mining operation or as part of an environmental*
39 *document prepared for the project pursuant to the California*
40 *Environmental Quality Act (Division 13 (commencing with Section*

1 21000)) shall be incorporated into the reclamation plan or plan
2 amendment if it is used to satisfy the requirements of subdivision
3 (c) of Section 2772 and Sections 2773 and 2773.3, if applicable.
4 If an item of information, document, or component of a document
5 is incorporated, reference to the item shall be added to the chart
6 required pursuant to subdivision (b) of Section 2772 and shall be
7 properly indexed with the corresponding appendix reference and
8 page numbers, if applicable. The item shall be included in an
9 appendix to and shall become part of the reclamation plan or plan
10 amendment. A technical report created by a California-licensed
11 professional to support variations to the reclamation standards
12 adopted by the board pursuant to Section 2773 shall be included
13 in an appendix to the reclamation plan or plan amendment bearing
14 the California-licensed professional's stamp or seal, as applicable.
15 (3) The lead agency shall certify to the director that the
16 reclamation plan or plan amendment is a complete submission
17 and is in substantial compliance with all of the following:
18 (A) The applicable requirements of this chapter.
19 (B) Article 1 (commencing with Section 3500) of Chapter 8 of
20 Division 2 of Title 14 of the California Code of Regulations.
21 (C) The lead agency's surface mining ordinance in effect at the
22 time that the reclamation plan or plan amendment is submitted to
23 the director for review.
24 (b) (1) The director shall have 15 days from the receipt of a
25 reclamation plan or plan amendment to notify the lead agency and
26 operator if the submission is incomplete. An incomplete submission
27 is one that does not meet the content requirements of subdivisions
28 (c) and (d) of section 2772 and subdivision (a). The director's
29 notice shall specifically identify all aspects of the submission that
30 are incomplete. If the submission is incomplete due to the failure
31 to include a professionally stamped copy of a technical report,
32 map, or diagram that is required to be prepared by a
33 California-licensed professional pursuant to subdivision (c) of
34 section 2772, the director shall request a stamped copy of the
35 technical report, map, or diagram only, instead of a full
36 resubmission of the reclamation plan or plan amendment. The
37 review time required pursuant to paragraph (2) shall begin when
38 the stamped copy of the technical report, map, or diagram is
39 received by the director. The director's time to review the
40 reclamation plan or plan amendment shall commence upon the

1 receipt of a submission that contains the item or items identified
2 in the director's notice to the lead agency.

3 (2) The director shall have 45 days from the receipt of a
4 complete reclamation plan or plan amendment to prepare written
5 comments if the director chooses. The lead agency shall review
6 and evaluate written comments received from the director relating
7 to the reclamation plan or plan amendment within a reasonable
8 amount of time.

9 (3) (A) The lead agency shall prepare a written response to the
10 director's comments received pursuant to paragraph (2) describing
11 the disposition of the major issues raised by the comments. The
12 lead agency shall submit its response to the director at least 30
13 days prior to the intended approval of the reclamation plan or
14 plan amendment. The lead agency's response shall include either
15 of the following:

16 (i) A description of how the lead agency proposes to adopt the
17 director's comments to the reclamation plan or plan amendment.

18 (ii) A detailed description of the reasons why the lead agency
19 proposes not to adopt the director's comments.

20 (B) Copies of any written comments received and responses
21 prepared by the lead agency pursuant to subparagraph (A) shall
22 be forwarded to the operator.

23 (4) (A) The lead agency shall give the director at least 30 days'
24 notice of the time, place, and date of the hearing at which the
25 reclamation plan or plan amendment is scheduled to be approved
26 by the lead agency.

27 (B) If no hearing is required by this chapter, the local ordinance,
28 or other state law, the lead agency shall provide 30 days' notice
29 to the director that the lead agency intends to approve the
30 reclamation plan or plan amendment.

31 (5) (A) Within 60 days following approval of the reclamation
32 plan or plan amendment, the lead agency shall provide the director
33 its final response to the director's written comments and the final
34 approved copies of those documents. During that time, the
35 department retains all of its powers, duties, and authorities
36 pursuant to this chapter.

37 (B) The lead agency's final response shall include an index
38 showing permit conditions of approval and binding mitigation
39 measures adopted or certified pursuant to the California
40 Environmental Quality Act (Division 13 (commencing with Section

1 21000)) that are necessary to meet the requirements of subdivision
 2 (c) of Section 2772 and Sections 2773 and 2773.3. Those conditions
 3 of approval and mitigation measures shall be included in an
 4 appendix to the reclamation plan or plan amendment and shall be
 5 considered part of the reclamation compliance requirements and
 6 subject to the annual inspection requirements. To the extent those
 7 conditions of approval and mitigation measures are not subject
 8 to separate lead agency or other state or federal agency bonding
 9 or performance requirements, those conditions and measures shall
 10 be subject to the financial assurances requirements of this article.

11 (6) No later than 60 days after the approval of the reclamation
 12 plan or plan amendment, the lead agency shall provide an official
 13 copy of the approved reclamation plan or plan amendment
 14 incorporating all approved modifications to the reclamation plan
 15 or plan amendment to the director.

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

24 (d) Nothing in this section is intended to limit or expand the
 25 department's authority or responsibility to review a document in
 26 accordance with the California Environmental Quality Act
 27 (Division 13 (commencing with Section 21000)).

28 ~~SEC. 2.~~

29 SEC. 8. Section 2773.1 of the Public Resources Code is
 30 amended to read:

31 2773.1. (a) Lead agencies shall require financial assurances
 32 of each surface mining operation to ensure reclamation is
 33 performed in accordance with the surface mining operation's
 34 approved reclamation plan, as follows:

35 (1) ~~Financial assurances~~ A financial assurance mechanism may
 36 take the form of surety bonds executed by an admitted surety
 37 insurer, as defined in subdivision (a) of Section 995.120 of the
 38 Code of Civil Procedure, irrevocable letters of credit, trust funds,
 39 or other forms of financial assurances specified by the board
 40 pursuant to subdivision (e) that the lead agency reasonably

1 determines are adequate to perform reclamation in accordance
2 with the surface mining operation's approved reclamation plan.

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

6 (3) The amount of financial assurances required of a surface
7 mining operation for any one year shall be reviewed and, if
8 necessary, adjusted once each calendar year to account for new
9 lands disturbed by surface mining operations, inflation, and
10 reclamation of lands accomplished in accordance with the approved
11 reclamation plan. An operator shall be required to replace an
12 approved financial assurance mechanism to bond for the
13 reclamation of the surface mining operation only if the financial
14 assurance cost estimate identifies a need to increase the amount
15 of the financial assurance mechanism.

16 (4) Financial assurance cost estimates shall be submitted to the
17 lead agency for review on the form adopted by the board by
18 regulation pursuant to subdivision (f). The estimates shall include
19 estimates of the time needed to complete reclamation of the mine
20 in accordance with the approved reclamation plan, including, but
21 not limited to, any monitoring studies required by the reclamation
22 plan.

23 (5) ~~The financial assurances~~ *Each financial assurance*
24 *mechanism shall be made payable to the lead agency and the*
25 *department. Financial assurances that were A financial assurance*
26 *mechanism shall not be released without the consent of the lead*
27 *agency and the department. A financial assurance mechanism that*
28 *was approved by the lead agency prior to January 1, 1993, and*
29 *were was made payable to the State Geologist shall be considered*
30 *payable to the department for purposes of this chapter. However,*
31 *if a surface mining operation has received approval of its financial*
32 *assurances from a public agency other than the lead agency, the*
33 *lead agency shall deem those financial assurances adequate for*
34 *purposes of this section, or shall credit them toward fulfillment of*
35 *the financial assurances required by this section, if they are made*
36 *payable to the public agency, the lead agency, and the department*
37 *and otherwise meet the requirements of this section. In any event,*
38 *if a lead agency and one or more public agencies exercise*
39 *jurisdiction over a surface mining operation, the total amount of*
40 *financial assurances required by the lead agency and the public*

1 agencies for any one year shall not exceed that amount that is
 2 necessary to perform reclamation of lands remaining disturbed.
 3 For purposes of this paragraph, a “public agency” may include a
 4 federal agency.

5 *(b) (1) If the lead agency, or the board when acting as a lead*
 6 *agency, has evidence that an operator may be financially incapable*
 7 *of completing reclamation in accordance with its approved*
 8 *reclamation plan or that the operator may have abandoned the*
 9 *surface mining operation without completing reclamation, the lead*
 10 *agency or board shall conduct a public hearing to determine*
 11 *whether the operator is financially capable of completing*
 12 *reclamation in accordance with the approved reclamation plan*
 13 *or has abandoned the surface mining operation. The hearing shall*
 14 *be noticed to the operator and the director at least 30 days prior*
 15 *to the hearing.*

16 ~~(b)~~

17 (2) If the lead agency or the board, following ~~a public hearing,~~
 18 *the public hearing conducted pursuant to paragraph (1),*
 19 determines that the operator is financially incapable of performing
 20 reclamation in accordance with its approved reclamation ~~plan,~~
 21 *plan* or has abandoned its surface mining operation without
 22 ~~commencing~~ *completing* reclamation, either the lead agency or
 23 the director shall do all of the following:

24 ~~(1)~~

25 (A) Notify the operator by personal service or certified mail that
 26 the lead agency or the director intends to take appropriate action
 27 to forfeit the financial assurances and specify the reasons for so
 28 doing.

29 ~~(2) Allow the operator 60 days to commence or cause the~~
 30 ~~commencement of reclamation in accordance with its approved~~
 31 ~~reclamation plan and require that reclamation be completed within~~
 32 ~~the time limits specified in the approved reclamation plan or some~~
 33 ~~other time period mutually agreed upon by the lead agency or the~~
 34 ~~director and the operator.~~

35 ~~(3)~~

36 (B) Proceed to take appropriate action to require forfeiture of
 37 the financial ~~assurances if the operator does not substantially~~
 38 ~~comply with paragraph (2):~~ *assurances.*

39 ~~(4)~~

1 (C) Use the proceeds from the forfeited financial assurances to
2 conduct and complete reclamation in accordance with the approved
3 reclamation plan. *If the surface mining operation cannot be*
4 *reclaimed in accordance with its approved reclamation plan, or*
5 *the financial assurances are inadequate to reclaim in accordance*
6 *with its approved reclamation plan, the lead agency or director*
7 *may use seized financial assurances to reclaim or remediate mining*
8 *disturbances as appropriate for the site conditions as determined*
9 *by both the lead agency and the director.* The financial assurances
10 shall not be used for any other purpose. The operator is responsible
11 for the costs of conducting and completing reclamation in
12 accordance with the approved reclamation plan *or a remediation*
13 *plan developed pursuant to this section as determined appropriate*
14 *by both the lead agency and the director* that are in excess of the
15 proceeds from the forfeited financial assurances.

16 (c) Financial assurances shall no longer be required of a surface
17 mining operation, and shall be released, upon *the* written
18 ~~notification by concurrence of the lead agency and the director,~~
19 which shall be forwarded to the operator and the ~~director,~~
20 *institutions providing or holding the financial assurance*
21 *mechanism, that reclamation has been completed in accordance*
22 *with the approved reclamation plan. If a surface mining operation*
23 *is sold or ownership is transferred to another person, the existing*
24 *financial assurances shall remain in force and shall not be released*
25 *by the lead agency and the director until new financial assurances*
26 *are secured from the new owner and have been approved by the*
27 *lead agency in accordance with*~~Section 2770.~~ *Sections 2770,*
28 *2773.1, and 2773.4. Within 90 days of the sale or transfer of the*
29 *surface mining operation, the new operator shall establish or*
30 *maintain an appropriate financial assurance mechanism and sign*
31 *a new statement of reclamation responsibility in accordance with*
32 *paragraph (10) of subdivision (c) of Section 2772.*

33 (d) The lead agency shall have primary responsibility to seek
34 forfeiture of financial assurances and to reclaim mine sites ~~under~~
35 *pursuant to subdivision (b).* However, ~~in cases where~~ *if* the board
36 is not the lead agency pursuant to Section 2774.4, the director may
37 act to seek forfeiture of financial assurances and reclaim mine sites
38 pursuant to subdivision (b) only if both of the following occurs:

1 (1) The financial incapability of the operator or the abandonment
 2 of the *surface* mining operation has come to the attention of the
 3 director.

4 (2) The lead agency has been notified in writing by the director
 5 of the financial incapability of the operator or the abandonment
 6 of the *surface* mining operation for at least 15 days, the lead agency
 7 has not taken appropriate measures to seek forfeiture of the
 8 financial assurances and reclaim the mine site, and one of the
 9 following has occurred:

10 (A) The lead agency has been notified in writing by the director
 11 that failure to take appropriate measures to seek forfeiture of the
 12 financial assurances or to reclaim the mine site shall result in
 13 actions being taken against the lead agency under Section 2774.4.

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

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

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

22 (e) The board may adopt regulations specifying financial
 23 assurance mechanisms other than surety bonds, irrevocable letters
 24 of credit, and trust funds, which the board determines are
 25 reasonably available and adequate to ensure reclamation pursuant
 26 to this chapter, but these mechanisms shall not include financial
 27 tests, *tests* or surety bonds executed by one or more personal
 28 sureties. These mechanisms may include reclamation bond pool
 29 programs.

30 (f) ~~On or before March 1, 1993, the~~ The board shall adopt *or*
 31 *revise* guidelines to implement this section *as necessary*. The
 32 guidelines are exempt from the requirements of the Administrative
 33 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
 34 Part 1 of Division 3 of Title 2 of the Government Code), and are
 35 not subject to review by the Office of Administrative Law.

36 *SEC. 9. Section 2773.4 is added to the Public Resources Code,*
 37 *to read:*

38 *2773.4. (a) (1) Prior to approving the financial assurances*
 39 *for a new reclamation plan or adjustments to financial assurances*
 40 *based on an amendment to a reclamation plan, the lead agency*

1 shall submit the financial assurance cost estimate to the director
2 for review.

3 (2) The lead agency shall provide the director with a preliminary
4 determination of whether the financial assurance cost estimate
5 submitted pursuant to paragraph (1) is adequate, complete, and
6 consistent with Section 2773.1.

7 (3) All documentation submitted to the director pursuant to this
8 subdivision shall be submitted at one time.

9 (b) No later than 15 days after receiving a financial assurance
10 cost estimate, the director shall notify the lead agency and the
11 operator if the submission is incomplete. An incomplete submission
12 is one that does not meet the content requirements of Section
13 2773.1. The director's notice shall specifically identify all aspects
14 of the submission that are incomplete. The director's time to review
15 the financial assurance cost estimate shall commence upon the
16 receipt of a submission that contains the aspects identified in the
17 director's notice to the lead agency.

18 (c) (1) The director shall have 45 days from the date of receipt
19 of a complete financial assurance cost estimate to prepare written
20 comments if the director chooses.

21 (2) The lead agency shall evaluate written comments received
22 from the director relating to the financial assurances within a
23 reasonable amount of time. The lead agency shall prepare a written
24 response to the director's comments describing the disposition of
25 the major issues raised by the director's comments.

26 (3) The lead agency shall submit its proposed response to the
27 director at least 30 days prior to approval of the financial
28 assurance cost estimate. The lead agency's response shall include
29 either of the following:

30 (A) A description of how the lead agency proposes to adopt the
31 director's comments to the financial assurance cost estimate.

32 (B) A detailed description of the reasons why the lead agency
33 proposes to reject the director's comments.

34 (4) Copies of any written comments received and responses
35 prepared by the lead agency shall be forwarded to the operator.

36 (5) (A) The lead agency shall give the director at least 30 days'
37 notice of the time, place, and date of the hearing at which the
38 financial assurance cost estimate is scheduled to be approved by
39 the lead agency. If no hearing is required by this chapter, local
40 ordinance, or other state law, then the lead agency shall provide

1 30 days' notice to the director that it intends to approve the
2 financial assurance cost estimate.

3 (B) The lead agency shall send to the director its final response
4 to the director's comments within 30 days following its approval
5 of the financial assurance cost estimate, during which time the
6 department retains all of its powers, duties, and authority pursuant
7 to this chapter.

8 (d) (1) Within 30 days of an annual inspection being conducted
9 pursuant to Section 2774, an operator shall provide an annual
10 financial assurance cost estimate to the lead agency for review.

11 (2) Within 60 days of receiving an operator's annual financial
12 assurance cost estimate, the lead agency shall do both of the
13 following:

14 (A) Review the annual financial assurance cost estimate for
15 adequacy and completeness consistent with Section 2773.1.

16 (B) Submit the annual financial assurance cost estimate to the
17 director for review.

18 (3) All documentation submitted to the director pursuant to this
19 subdivision shall be submitted at one time.

20 (4) The lead agency shall provide the director with a preliminary
21 determination of whether the annual financial assurance cost
22 estimate submitted pursuant to this subdivision is adequate,
23 complete, and consistent with Section 2773.1.

24 (5) Within 15 days of receiving an annual financial assurance
25 cost estimate, the director shall notify the lead agency and the
26 operator if the submission is incomplete. An incomplete submission
27 is one that does not meet the content requirements of Section
28 2773.1. The director's notice shall specifically identify all aspects
29 of the submission that are incomplete. The director's time to review
30 the annual financial assurance cost estimate shall commence upon
31 the receipt of a submission that contains the aspects identified in
32 the director's notice to the lead agency.

33 (6) (A) Within 45 days of receiving an operator's complete
34 annual financial assurance cost estimate from the lead agency,
35 the director shall prepare written comments on the operator's
36 financial assurances and provide the comments to the lead agency
37 and the operator, if the director so chooses.

38 (B) Within 30 days from receiving the director's written
39 comments pursuant to this subdivision, the lead agency shall

1 *evaluate the written comments and provide the director and*
2 *operator its proposed response to the director.*

3 *(C) Within 60 days of receiving the director's written comments,*
4 *or the due date of the director's written comments if they are not*
5 *received, the lead agency shall accept or reject an operator's*
6 *annual financial assurance cost estimate. In approving a financial*
7 *assurance cost estimate, the lead agency, with the concurrence of*
8 *the operator, may modify the financial assurance cost estimate as*
9 *necessary to correct deficiencies identified by the director or lead*
10 *agency.*

11 *(D) Within 30 days of the lead agency's acceptance of the*
12 *annual financial assurance cost estimate, the lead agency shall*
13 *send the director its final response to the director's comments.*

14 *(7) If the lead agency determines an operator's annual financial*
15 *assurance cost estimate is inadequate, the lead agency shall specify*
16 *the reasons for that determination. The operator shall have 30*
17 *days to appeal that denial pursuant to subdivision (e) of Section*
18 *2770 or provide a revised financial assurance cost estimate*
19 *incorporating the suggested changes to the director and the lead*
20 *agency for approval by the lead agency.*

21 *(e) (1) Within 30 days of the lead agency's approval of a*
22 *financial assurance cost estimate pursuant to this section, the*
23 *operator shall provide the lead agency and the director an*
24 *appropriate financial assurance mechanism. The operator shall*
25 *provide this financial assurance mechanism even if the director*
26 *has appealed the approval pursuant to subdivision (e) of section*
27 *2770.*

28 *(2) Within 15 days of receiving a financial assurance mechanism*
29 *pursuant to this subdivision, the lead agency and the director shall*
30 *review the financial assurance mechanism to determine if the type*
31 *of mechanism, including the release instructions, meets the*
32 *requirements of this chapter.*

33 *(3) A financial assurance mechanism utilizing any of the forms*
34 *provided as Appendix D, Appendix E-1, Appendix E-2, Appendix*
35 *E-3, and Appendix F to the guidelines adopted by the board*
36 *pursuant to subdivision (f) of section 2773.1 shall be deemed to*
37 *meet the requirements of this chapter. A financial assurance*
38 *mechanism considered by the lead agency or the director to not*
39 *meet the requirements of this chapter shall be returned to the*

1 *operator with correction instructions as to the type and release*
2 *language of the financial assurance mechanism.*

3 ~~SEC. 3.~~

4 *SEC. 10.* Section 2774 of the Public Resources Code is
5 amended to read:

6 2774. (a) Every lead agency shall adopt ordinances in
7 accordance with state policy that establish procedures for the
8 review and approval of reclamation plans and financial assurances
9 and the issuance of a permit to conduct surface mining operations,
10 except that any lead agency without an active surface mining
11 operation in its jurisdiction may defer adopting an implementing
12 ordinance until the filing of a permit application. The ordinances
13 shall establish procedures requiring at least one public hearing and
14 shall be periodically reviewed by the lead agency and revised, as
15 necessary, to ensure that the ordinances continue to be in
16 accordance with state policy.

17 (b) Surface mining operations shall be inspected annually, solely
18 to determine whether the surface mining operation is in compliance
19 with its reclamation plan as described in subdivision (c) of Section
20 2772. The lead agency shall cause an inspection to be conducted
21 by a state licensed geologist, state licensed civil engineer, state
22 licensed landscape architect, state licensed forester, or a lead
23 agency employee who is experienced in land reclamation and who
24 has not been employed by the surface mining operation being
25 inspected in any capacity during the previous 12 months, except
26 that a lead agency employee may inspect surface mining operations
27 conducted by another department within the local agency. All
28 inspections shall be conducted using a form developed by the
29 department and approved by the board that includes the
30 professional licensing and disciplinary information of the person
31 who conducted the inspection. The operator shall be solely
32 responsible for the reasonable cost of the inspection. The lead
33 agency shall provide a notice of completion of inspection to the
34 director within 90 days of conducting the inspection. The notice
35 shall contain a statement regarding the surface mining operation's
36 compliance with its approved reclamation plan, as described in
37 subdivision (c) of Section 2772, a copy of the completed inspection
38 form, and which aspects of the surface mining operations, if any,
39 are inconsistent with its approved reclamation plan, as described
40 in subdivision (c) of Section 2772, and any corrective measures

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

12 ~~(e) Before approving a surface mining operation's reclamation~~
13 ~~plan or financial assurances, or any amendments to the reclamation~~
14 ~~plan and adjustments to financial assurances based on an~~
15 ~~amendment to a reclamation plan, the lead agency shall submit~~
16 ~~the plan, assurances, or amendments to the director for review.~~
17 ~~The plan or amendments shall be submitted to the director as early~~
18 ~~as practicable in order to facilitate review of the plan pursuant to~~
19 ~~the California Environmental Quality Act (Division 13~~
20 ~~(commencing with Section 21000)). All documentation for that~~
21 ~~submission shall be submitted to the director at one time. When~~
22 ~~the lead agency submits a reclamation plan or plan amendments~~
23 ~~to the director for review, the lead agency shall also submit to the~~
24 ~~director, for use in reviewing the reclamation plan or plan~~
25 ~~amendments, information from any prior final related document~~
26 ~~prepared, adopted, or certified pursuant to the California~~
27 ~~Environmental Quality Act (Division 13 (commencing with Section~~
28 ~~21000)), and shall submit any other pertinent information. The~~
29 ~~lead agency shall certify to the director that the reclamation plan~~
30 ~~is considered complete and in substantial compliance with the~~
31 ~~applicable requirements of this chapter and Article 1 (commencing~~
32 ~~with Section 3500) of Chapter 8 of Division 2 of Title 14 of the~~
33 ~~California Code of Regulations and the lead agency's mining~~
34 ~~ordinance in effect at the time that the reclamation plan is submitted~~
35 ~~to the director for review.~~

36 ~~(d) (1) The director shall have 30 days from the date of receipt~~
37 ~~of a reclamation plan or plan amendments submitted pursuant to~~
38 ~~subdivision (e), and 45 days from the date of receipt of financial~~
39 ~~assurances submitted pursuant to subdivision (e), to prepare written~~
40 ~~comments, if the director so chooses. The lead agency shall~~

1 evaluate written comments received from the director relating to
2 the reclamation plan, plan amendments, or financial assurances
3 within a reasonable amount of time.

4 (2) The lead agency shall prepare a written response to the
5 director's comments describing the disposition of the major issues
6 raised by the director's comments, and submit the lead agency's
7 proposed response to the director at least 30 days prior to approval
8 of the reclamation plan, plan amendment, or financial assurance.
9 The lead agency's response to the director's comments shall
10 describe whether the lead agency proposes to adopt the director's
11 comments to the reclamation plan, plan amendment, or financial
12 assurance. If the lead agency does not propose to adopt the
13 director's comments, the lead agency shall specify, in detail, why
14 the lead agency proposes not to adopt the comments. Copies of
15 any written comments received and responses prepared by the lead
16 agency shall be forwarded to the operator. The lead agency shall
17 also give the director at least 30 days' notice of the time, place,
18 and date of the hearing before the lead agency at which time the
19 reclamation plan, plan amendment, or financial assurance is
20 scheduled to be approved by the lead agency. If no hearing is
21 required by this chapter, or by the local ordinance, or other state
22 law, then the lead agency shall provide 30 days' notice to the
23 director that it intends to approve the reclamation plan, plan
24 amendment, or financial assurance. The lead agency shall send to
25 the director its final response to the director's comments within
26 30 days following its approval of the reclamation plan, plan
27 amendment, or financial assurance, along with final approved
28 copies of those documents, during which period the department
29 retains all powers, duties, and authorities of this chapter.

30 (3) To the extent there is a conflict between the comments of a
31 trustee agency or a responsible agency that are based on the
32 agency's statutory or regulatory authority and the comments of
33 other commenting agencies that are received by the lead agency
34 pursuant to the California Environmental Quality Act (Division
35 13 (commencing with Section 21000)) regarding a reclamation
36 plan or plan amendments, the lead agency shall consider only the
37 comments of the trustee agency or responsible agency.

38 (e) (1) —

39 (c) If an operator does not request an inspection date on the
40 annual report filed pursuant to Section 2207, 2207 or if the lead

1 agency is unable to cause the inspection of a given surface mining
2 operation on the date requested by the operator, the lead agency
3 shall provide the operator with a minimum of five days' written
4 notice of a pending inspection or a lesser time period if agreed to
5 by the operator.

6 ~~(2) Within 30 days of an annual inspection being conducted~~
7 ~~pursuant to this section, each operator shall provide an annual~~
8 ~~financial assurance cost estimate, on the form developed by the~~
9 ~~board by regulation pursuant to subdivision (f) of Section 2773.1,~~
10 ~~to the director and the lead agency for review.~~

11 ~~(3) (A) Within 60 days of the receipt of an operator's annual~~
12 ~~financial assurance cost estimate, the lead agency shall do both of~~
13 ~~the following:~~

14 ~~(i) Review the annual financial assurance cost estimate for~~
15 ~~adequacy and completeness consistent with Section 2773.1.~~

16 ~~(ii) Submit the annual financial assurance cost estimate to the~~
17 ~~director for review.~~

18 ~~(B) All documentation submitted to the director pursuant to this~~
19 ~~paragraph shall be submitted at one time.~~

20 ~~(C) The lead agency shall provide the director with a preliminary~~
21 ~~determination of whether the annual financial assurance cost~~
22 ~~estimate submitted pursuant to this paragraph is adequate and~~
23 ~~complete consistent with Section 2773.1.~~

24 ~~(4) The director shall have 45 days from the date of receipt of~~
25 ~~the operator's annual financial assurance cost estimate from the~~
26 ~~lead agency to prepare written comments on the operator's financial~~
27 ~~assurances and provide the comments to the lead agency and the~~
28 ~~operator. The lead agency shall have 30 days from receipt of the~~
29 ~~director's comments to evaluate the written comments received~~
30 ~~from the director and provide the director and operator its proposed~~
31 ~~response to the director. The lead agency shall accept or reject a~~
32 ~~surface mining operation's annual financial assurance cost estimate~~
33 ~~within 60 days of receipt of the director's comments or the due~~
34 ~~date of the director's comments if comments are not received. The~~
35 ~~lead agency shall send to the director its final response to the~~
36 ~~director's comments within 30 days of its acceptance of the annual~~
37 ~~financial assurance cost estimate.~~

38 ~~(5) If the lead agency determines an operator's annual financial~~
39 ~~assurance cost estimate is inadequate, the lead agency shall specify~~
40 ~~the reasons for that determination. The operator shall have 30 days~~

1 to appeal that denial pursuant to subdivision (e) of Section 2770
2 or provide a revised financial assurance cost estimate incorporating
3 the suggested changes to the director and the lead agency for
4 approval by the lead agency.

5 ~~(6) The operator shall provide the director and the lead agency~~
6 ~~with a revised financial assurances mechanism within 60 days of~~
7 ~~the lead agency's approval. An operator shall be required to replace~~
8 ~~an approved financial assurance mechanism to bond for the~~
9 ~~reclamation of the surface mining operation only if the financial~~
10 ~~assurance cost estimate identifies a need to increase the amount~~
11 ~~of the financial assurance mechanism.~~

12 ~~(f)~~

13 ~~(d)~~ (1) No later than April 1 of each year, the director shall
14 provide each lead agency with a notice listing each active or idle
15 surface mining operation within the lead agency's jurisdiction. For
16 each surface mining operation, the director shall request and the
17 lead agency shall provide to the director, on a form provided by
18 the director, no later than July 1 of each ~~year~~, *year* the following
19 information:

20 (A) A copy of any permit or reclamation plan amendments, as
21 applicable.

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

24 (C) The date of each surface mining operation's last inspection.

25 (D) The date of each surface mining operation's last financial
26 assurance review pursuant to Section 2773.1 for each operation
27 listed.

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

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

35 ~~(h)~~

36 (e) (1) After January 1, 2018, a lead agency employee who is
37 not a state-licensed geologist, state-licensed civil engineer,
38 state-licensed landscape architect, or a state-license forester and
39 who inspects surface mining operations under this chapter shall
40 have completed an inspection workshop or an update workshop

1 provided by the director. The director shall provide an adequate
2 transition time period for lead agency inspectors to complete the
3 update workshop if it becomes necessary.

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

15 ~~SEC. 4.~~

16 *SEC. 11.* Section 2774.2 of the Public Resources Code is
17 amended to read:

18 2774.2. (a) Within 30 days of the issuance of an order setting
19 administrative penalties under subdivision (c) of Section 2774.1,
20 the operator may petition that legislative body of the lead agency,
21 if the lead agency has issued the order, or the board for orders
22 issued by the director, for review of the order. If the operator does
23 not petition for review within the time limits set by this subdivision,
24 the order setting administrative penalties shall not be subject to
25 review by any court or agency.

26 (b) The legislative body of the lead agency or the board shall
27 notify the operator by personal service or certified mail whether
28 it will review the order setting administrative penalties. In
29 reviewing an order pursuant to this section, the record shall consist
30 of the record before the lead agency or the director and any other
31 relevant evidence which, in the judgment of the legislative body
32 or the board, should be considered to effectuate and implement
33 the policies of this chapter.

34 (c) The legislative body or the board may affirm, modify, or set
35 aside, in whole or in part, by its own order an order of the lead
36 agency or the director setting administrative penalties reviewed
37 by the legislative body or the board pursuant to this section.

38 (d) An order of the legislative body or the board issued under
39 subdivision (c) shall become effective upon its issuance unless the
40 operator petitions the superior court for review as provided in

1 subdivision (e). An order shall be served by personal service or
2 by certified mail upon the operator. Payment of an administrative
3 penalty that is specified in an order issued pursuant to subdivision
4 (c) shall be made to the lead agency or the director within 30 days
5 of service of the order. However, the payment shall be held in an
6 interest bearing impound account pending the resolution of a
7 petition for review filed pursuant to subdivision (e).

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

24 (f) (1) After the expiration of the time to petition for review
25 pursuant to subdivision (a) or (e), the director or the board acting
26 as the lead agency may apply to the small claims court or the
27 superior court, depending on the jurisdictional amount, in the
28 county where the administrative penalty was imposed for a
29 judgment to collect the unpaid administrative penalty imposed
30 pursuant to subdivision (c) of Section 2774.1. The application shall
31 include all of the following:

32 (A) The order setting the administrative penalty pursuant to
33 subdivision (c) of Section 2774.1.

34 (B) A notice to the operator of the right to petition for review
35 of the order.

36 (C) Either of the following:

37 (i) A declaration from the board that no petition was made or
38 that the board declined to review the petition.

39 (ii) A copy of the final order of the board.

1 (2) An application submitted pursuant to this subdivision shall
2 constitute a sufficient showing to warrant the issuance of the
3 judgment. The court clerk shall enter the judgment immediately
4 in conformity with the application.

5 (3) The judgment entered pursuant to this subdivision shall have
6 the same force and effect as, and shall be subject to all the
7 provisions of law relating to, a judgment in a civil action and may
8 be enforced in the same manner as any other judgment of the court.
9 The court shall make enforcement of the judgment a priority.

10 ~~SEC. 5.~~

11 *SEC. 12.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.