

AMENDED IN SENATE MARCH 19, 2015

**SENATE BILL**

**No. 209**

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**Introduced by Senator Pavley**

February 11, 2015

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An act to amend ~~Section~~ *Sections 607, 2207, 2772, 2773.1, and 2774* of ~~of, and to add Sections 2006.5 and 2780 to,~~ the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Pavley. Surface mining: ~~inspections: training: inspections and financial assurances.~~

*Existing law establishes the Office of Mine Reclamation within the Department of Conservation.*

*This bill would instead establish the Division of Mines within the department under the direction of the State Mine Inspector.*

~~The Surface Mining and Reclamation Act of 1975~~

*Existing law requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides, among other things, proof of annual inspection by the lead agency. agency and proof of financial assurances. The Surface Mining and Reclamation Act of 1975 requires the owner or operator of a mining operation to file with the lead agency reclamation plans containing specified information. The act requires the lead agency to require financial assurances of each surface mining operation. The act requires a lead agency to inspect a surface mining operation within 6 months of receiving ~~th~~ the operation's annual report and to conduct an inspection no less than once every calendar year. The act authorizes a lead agency to authorize 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 require the Department of Conservation, no later than January 1, 2018, and on an ongoing basis thereafter, to offer continuing educational opportunities for lead agency employees to become certified, as appropriate, by the department to inspect surface mining operations. The bill would prohibit a lead agency that operates a surface mining operation from having an inspection performed by a lead agency employee, as specified, unless that employee has become certified as a surface mining operation inspector within the previous 2 years.

*This bill would revise the proof of financial assurances to be submitted with the annual report. The bill would define “financial assurances” to be the combination of an approved current financial assurance cost estimate and a financial assurance mechanism, as specified. The bill would require the inspections be conducted by a state licensed geologist, state licensed civil engineer, or state licensed geophysicist, as specified. The bill would authorize the lead agency and the State Mine Inspector to inspect all mining operations and, when conducting those inspections, would require certain determinations be made. The bill would require the reclamation plan to be filed on a form developed by the State Mining and Geology Board and to include a schedule with time limits for completing reclamation, in accordance with the plan, to be reviewed and confirmed by the lead agency during the annual inspections. The bill would authorize a lead agency to relinquish some or all of its duties and responsibilities under the act and other state law regulating surface mining operation and would require the State Mine Inspector to assume those duties and responsibilities relinquished by the lead agency.*

*This bill would state the intent of the Legislature to, among other things, modernize the Surface Mining and Reclamation Act of 1975.*

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

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

- 1     SECTION 1. *It is the intent of the Legislature to modernize the*
- 2     *Surface Mining and Reclamation Act of 1975 (Chapter 9*
- 3     *(commencing with Section 2710) of Division 2 of the Public*
- 4     *Resources Code) to remedy concerns and issues identified by*
- 5     *various stakeholders, ranging from conservation groups to mine*

1 operators to local governments. Issues that have been raised  
2 include, but are not limited to, the following:

3 (a) A fair and adequate fee structure to support the Office of  
4 Mine Reclamation.

5 (b) Improving compliance with the annual inspection  
6 requirement and enforcement.

7 (c) Training to local governments that often serve as the lead  
8 agency for surface mines.

9 (d) Ensuring the adequacy of financial assurances and  
10 reclamation plans.

11 (e) Improving the professionalism of the Office of Mine  
12 Reclamation and improving administrative efficiency and appeals  
13 processes within the act.

14 SEC. 2. Section 607 of the Public Resources Code is amended  
15 to read:

16 607. The work of the department shall be divided into at least  
17 the following:

18 (a) California Geological Survey.

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

20 (c) Division of Land Resource Protection.

21 ~~(d) Office of Mine Reclamation.~~

22 (d) Division of Mines.

23 SEC. 3. Section 2006.5 is added to the Public Resources Code,  
24 to read:

25 2006.5. "State Mine Inspector" means the individual directing  
26 the Division of Mines established pursuant to subdivision (d) of  
27 Section 607.

28 SEC. 4. Section 2207 of the Public Resources Code is amended  
29 to read:

30 2207. (a) The owner or the operator of a mining operation  
31 within the state shall forward to the director annually, not later  
32 than a date established by the director, upon forms approved by  
33 the board from time to time, a report that identifies all of the  
34 following:

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

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

- 1 (3) The location of the mining operation, its name, its mine  
2 number as issued by the *federal* Bureau of Mines or the director,  
3 its section, township, range, latitude, longitude, and approximate  
4 boundaries of the mining operation marked on a United States  
5 Geological Survey 7 ½-minute or 15-minute quadrangle map.
- 6 (4) The lead agency.
- 7 (5) The approval date of the mining operation's reclamation  
8 plan.
- 9 (6) The mining operation's status as active, idle, reclaimed, or  
10 in the process of being reclaimed.
- 11 (7) The commodities produced by the mine and the type of  
12 mining operation.
- 13 (8) (A) Proof of annual inspection by the lead agency.  
14 (B) *It is the intent of the Legislature to develop a separate*  
15 *procedure for county-owned borrow pits and similar sites and the*  
16 *training necessary to inspect them.*
- 17 (9) Proof of ~~financial assurances~~ *the most recently approved*  
18 *financial cost estimate and the approved financial assurance cost*  
19 *mechanism.*
- 20 (10) Ownership of the property, including government agencies,  
21 if applicable, by the assessor's parcel number, and total assessed  
22 value of the mining operation.
- 23 (11) The approximate permitted size of the mining operation  
24 subject to Chapter 9 (commencing with Section 2710), in acres.
- 25 (12) The approximate total acreage of land newly disturbed by  
26 the mining operation during the previous calendar year.
- 27 (13) The approximate total of disturbed acreage reclaimed during  
28 the previous calendar year.
- 29 (14) The approximate total unreclaimed disturbed acreage  
30 remaining as of the end of the calendar year.
- 31 (15) The total production for each mineral commodity produced  
32 during the previous year.
- 33 (16) A copy of any approved reclamation plan and any  
34 amendments or conditions of approval to any existing reclamation  
35 plan approved by the lead agency.
- 36 (b) (1) Every year, not later than the date established by the  
37 director, the person submitting the report pursuant to subdivision  
38 (a) shall forward to the lead agency, upon forms furnished by the  
39 board, a report that provides all of the information specified in  
40 ~~paragraphs (1) to (16), inclusive, of subdivision (a).~~

1 (2) The owner or operator of a mining operation shall allow  
2 access to the property to any governmental agency or the agent of  
3 any company providing financial assurances in connection with  
4 the reclamation plan, in order that the reclamation can be carried  
5 out by the entity or company, in accordance with the provisions  
6 of the reclamation plan.

7 (c) Subsequent reports shall include only changes in the  
8 information submitted for the items described in subdivision (a),  
9 except that, instead of the approved reclamation plan, the reports  
10 shall include any reclamation plan amendments approved during  
11 the previous year. The reports shall state whether review of a  
12 reclamation plan, financial assurances, or an interim management  
13 plan is pending under subdivision (b), (c), (d), or (h) of Section  
14 2770, or whether an appeal before the board or lead agency  
15 governing body is pending under subdivision (e) or (h) of Section  
16 2770. The director shall notify the person submitting the report  
17 and the owner's designated agent in writing that the report and the  
18 fee required pursuant to subdivision (d) have been received, specify  
19 the mining operation's mine number if one has not been issued by  
20 the *federal* Bureau of Mines, and notify the person and agent of  
21 any deficiencies in the report within 90 days of receipt. That person  
22 or agent shall have 30 days from receipt of the notification to  
23 correct the noted deficiencies and forward the revised reports to  
24 the director and the lead agency. Any person who fails to comply  
25 with this section, or knowingly provides incorrect or false  
26 information in reports required by this section, may be subject to  
27 an administrative penalty as provided in subdivision (c) of Section  
28 2774.1.

29 (d) (1) The board shall impose, by regulation, pursuant to  
30 paragraph (2), an annual reporting fee on, and method for collecting  
31 annual fees from, each active or idle mining operation. The  
32 maximum fee for any single mining operation may not exceed four  
33 thousand dollars (\$4,000) annually and may not be less than one  
34 hundred dollars (\$100) annually, as adjusted for the cost of living  
35 as measured by the California Consumer Price Index for all urban  
36 consumers, calendar year averages, using the percentage change  
37 in the previous year, beginning with the 2005–06 fiscal year and  
38 annually thereafter.

39 (2) (A) The board shall adopt, by regulation, a schedule of fees  
40 authorized under paragraph (1) to cover the department's cost in

1 carrying out this section and Chapter 9 (commencing with Section  
2 2710), as reflected in the Governor’s Budget, and may adopt those  
3 regulations as emergency regulations. In establishing the schedule  
4 of fees to be paid by each active and idle mining operation, the  
5 fees shall be calculated on an equitable basis reflecting the size  
6 and type of operation. The board shall also consider the total  
7 assessed value of the mining operation, the acreage disturbed by  
8 mining activities, and the acreage subject to the reclamation plan.

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

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

28 (4) (A) The reporting fees established pursuant to this  
29 subdivision shall be deposited in the Mine Reclamation Account,  
30 which is hereby created. Any fees, penalties, interest, fines, or  
31 charges collected by the director or board pursuant to this chapter  
32 or Chapter 9 (commencing with Section 2710) shall be deposited  
33 in the Mine Reclamation Account. The money in the account shall  
34 be available to the department and board, upon appropriation by  
35 the Legislature, for the purpose of carrying out this section and  
36 complying with Chapter 9 (commencing with Section 2710), which  
37 includes, but is not limited to, classification and designation of  
38 areas with mineral resources of statewide or regional significance,  
39 reclamation plan and financial assurance review, mine inspection,  
40 and enforcement.

1 (B) (i) In addition to reporting fees, the board shall collect five  
2 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of  
3 silver mined within the state and shall deposit the fees collected  
4 in the Abandoned Mine Reclamation and Minerals Fund  
5 Subaccount, which is hereby created in the Mine Reclamation  
6 Account. The department may expend the moneys in the  
7 subaccount, upon appropriation by the Legislature, for only the  
8 purposes of Section 2796.5 and as authorized herein for the  
9 remediation of abandoned mines.

10 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees  
11 collected pursuant to clause (i) may also be used to remediate  
12 features of historic abandoned mines and lands that they impact.  
13 For the purposes of this section, historic abandoned mines are  
14 mines for which operations have been conducted before January  
15 1, 1976, and include, but are not limited to, historic gold and silver  
16 mines.

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

27 (e) The lead agency, or the board when acting as the lead agency,  
28 may impose a fee upon each mining operation to cover the  
29 reasonable costs incurred in implementing this chapter and Chapter  
30 9 (commencing with Section 2710).

31 (f) For purposes of this section, “mining operation” means a  
32 mining operation of any kind or character whatever in this state,  
33 including, but not limited to, a mining operation that is classified  
34 as a “surface mining operation” as defined in Section 2735, unless  
35 excepted by Section 2714. For the purposes of fee collections only,  
36 “mining operation” may include one or more mines operated by  
37 a single operator or mining company on one or more sites, if the  
38 total annual combined mineral production for all sites is less than  
39 100 troy ounces for precious metals, if precious metals are the  
40 primary mineral commodity produced, or less than 100,000 short

1 tons if the primary mineral commodity produced is not precious  
2 metals.

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

24 (h) The approval of a form by the board pursuant to this section  
25 is not the adoption of a regulation for purposes of Chapter 3.5  
26 (commencing with Section 11340) of Part 1 of Division 3 of Title  
27 2 of the Government Code and is not subject to that chapter.

28 *SEC. 5. Section 2772 of the Public Resources Code is amended*  
29 *to read:*

30 2772. (a) ~~The reclamation plan~~ *Reclamation plans and*  
31 *amended reclamation plans* shall be filed with the lead agency,  
32 on a form ~~provided by the lead agency; developed by the board,~~  
33 *with provisions for additional information required at the*  
34 *discretion of the lead agency, by any person who owns, leases, or*  
35 ~~otherwise controls or operates on all, or any portion of any, mined~~  
36 ~~lands, and who or company that plans to conduct surface mining~~  
37 ~~operations on the lands.~~ *any land.*

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

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

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

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

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

10 (4) The maximum anticipated depth of the surface mining  
11 operation.

12 (5) The size and legal description of the lands that will be  
13 affected by the surface mining operation, a map that includes the  
14 boundaries and topographic details of the lands, a description of  
15 the general geology of the area, a detailed description of the  
16 geology of the area in which surface mining is to be conducted,  
17 the location of all streams, roads, railroads, and utility facilities  
18 within, or adjacent to, the lands, the location of all proposed access  
19 roads to be constructed in conducting the surface mining operation,  
20 and the names and addresses of the owners of all surface interests  
21 and mineral interests in the lands.

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

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

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

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

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

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

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

6 *(11) A schedule with time limits for completing reclamation, in*  
7 *accordance with the reclamation plan, to be reviewed and*  
8 *confirmed by the lead agency during the annual inspections.*

9 ~~(11)~~

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

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

25 ~~(e) Nothing in this~~ *This section is intended to does not* limit or  
26 expand the ~~department's~~ *State Mine Inspector's* authority or  
27 responsibility to review a document in accordance with Division  
28 13 (commencing with Section 21000).

29 *SEC. 6. Section 2773.1 of the Public Resources Code is*  
30 *amended to read:*

31 ~~2773.1. (a) Lead agencies shall require~~ *All surface mining*  
32 *operations subject to this chapter shall have financial assurances*  
33 ~~*of each surface mining operation approved pursuant to this chapter*~~  
34 ~~*to ensure reclamation is performed in accordance with the surface*~~  
35 ~~*mining operation's approved reclamation plan, as follows: can be*~~  
36 ~~*completed at any time during surface mining operations in*~~  
37 ~~*accordance with this chapter and the surface mining operation's*~~  
38 ~~*reclamation plan. For purposes of this section, "financial*~~  
39 ~~*assurances" are the combination of an approved current financial*~~  
40 ~~*assurance cost estimate and a financial assurance mechanism that*~~

1 *is equal to or greater than the current financial assurance cost*  
2 *estimate.*

3 ~~(1) Financial assurances—~~*The financial assurance mechanism*  
4 *may take the form of surety bonds executed by an admitted surety*  
5 *insurer, as defined in subdivision (a) of Section 995.120 of the*  
6 *Code of Civil Procedure, irrevocable letters of credit, trust funds,*  
7 *or other forms of financial—assurances assurance mechanisms*  
8 *specified by the board pursuant to subdivision (e), which the lead*  
9 *agency reasonably determines are adequate to perform reclamation*  
10 *in accordance with the surface mining operation’s approved*  
11 *reclamation plan.*

12 (2) ~~The financial assurances~~ *assurance mechanism* shall remain  
13 in effect for the duration of the surface mining operation and any  
14 additional period until reclamation is completed.

15 (3) The amount of financial assurances required of a surface  
16 mining operation for any one year shall be adjusted annually to  
17 account for new lands disturbed by surface mining operations,  
18 inflation, and reclamation of lands accomplished in accordance  
19 with the approved reclamation plan.

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

38 (4) *The financial assurance mechanism shall be made payable*  
39 *to the lead agency and the department and shall not be reduced*  
40 *or released without mutual written consent.*

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

7 (1) Notify the operator by personal service or certified mail that  
8 the lead agency or the director intends to take appropriate action  
9 to forfeit the financial assurances and specify the reasons for so  
10 doing.

11 (2) Allow the operator 60 days to commence or cause the  
12 commencement of reclamation in accordance with its approved  
13 reclamation plan and require that reclamation be completed within  
14 the time limits specified in the approved reclamation plan or some  
15 other time period mutually agreed upon by the lead agency or the  
16 director and the operator.

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

20 (4) Use the proceeds from the forfeited financial assurances to  
21 conduct and complete reclamation in accordance with the approved  
22 reclamation plan. In no event shall the financial assurances be used  
23 for any other purpose. The operator is responsible for the costs of  
24 conducting and completing reclamation in accordance with the  
25 approved reclamation plan ~~which~~ *that* are in excess of the proceeds  
26 from the forfeited financial assurances.

27 (c) Financial assurances shall no longer be required of a surface  
28 mining operation, and shall be released, upon written notification  
29 by the lead agency, which shall be forwarded to the operator and  
30 the director, that reclamation has been completed in accordance  
31 with the approved reclamation plan. If a mining operation is sold  
32 or ownership is transferred to another person, the existing financial  
33 assurances shall remain in force and shall not be released by the  
34 lead agency until new financial assurances are secured from the  
35 new owner and have been approved by the lead agency in  
36 accordance with Section 2770.

37 (d) The lead agency shall have primary responsibility to seek  
38 forfeiture of financial assurances and to reclaim mine sites under  
39 subdivision (b). However, in cases where the board is not the lead  
40 agency pursuant to Section 2774.4, the director may act to seek

1 forfeiture of financial assurances and reclaim mine sites pursuant  
2 to subdivision (b) only if both of the following occurs:

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

5 (2) The lead agency has been notified in writing by the director  
6 of the financial incapability of the operator or the abandonment  
7 of the mining operation for at least 15 days, and has not taken  
8 appropriate measures to seek forfeiture of the financial assurances  
9 and reclaim the mine site; and one of the 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 may not include financial  
27 tests, or surety bonds executed by one or more personal sureties.  
28 These mechanisms may include reclamation bond pool programs.

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

34 **SECTION 4.**

35 *SEC. 7.* Section 2774 of the Public Resources Code is amended  
36 to read:

37 2774. (a) Every lead agency shall adopt ordinances in  
38 accordance with state policy that establish procedures for the  
39 review and approval of reclamation plans and financial assurances  
40 and the issuance of a permit to conduct surface mining operations,

1 except that any lead agency without an active surface mining  
2 operation in its jurisdiction may defer adopting an implementing  
3 ordinance until the filing of a permit application. The ordinances  
4 shall establish procedures requiring at least one public hearing and  
5 shall be periodically reviewed by the lead agency and revised, as  
6 necessary, to ensure that the ordinances continue to be in  
7 accordance with state policy.

8 (b) (1) (A) The lead agency shall conduct an inspection of a  
9 surface mining operation within six months of receipt by the lead  
10 agency of the surface mining operation's report submitted pursuant  
11 to Section 2207, solely to determine whether the surface mining  
12 operation is in compliance with this chapter. In no event shall a  
13 lead agency inspect a surface mining operation less than once in  
14 any calendar year. The lead agency ~~may~~ shall cause an inspection  
15 to be conducted by a state licensed geologist, state licensed civil  
16 engineer, ~~state licensed landscape architect,~~ or state licensed  
17 forester, *geophysicist*, who is experienced in land reclamation and  
18 who has not been employed by a surface mining operation within  
19 the jurisdiction of the lead agency in any capacity during the  
20 previous 12 months. If a lead agency operates a surface mining  
21 operation, the inspector shall not have been an employee of the  
22 lead agency in any capacity during the previous 12 months unless,  
23 beginning January 1, 2018, the lead agency employee has become  
24 certified as a surface mining operation inspector within the previous  
25 two years pursuant to paragraph (2). All inspections shall be  
26 conducted using a form developed by the department and approved  
27 by the board that shall include the professional licensing and  
28 disciplinary information of the person who conducted the  
29 inspection. The operator shall be solely responsible for the  
30 reasonable cost of the inspection. The lead agency shall notify the  
31 director within 30 days of the date of completion of the inspection  
32 that the inspection has been conducted. The notice shall contain a  
33 statement regarding the surface mining operation's compliance  
34 with this chapter, shall include a copy of the completed inspection  
35 form, and shall specify which aspects of the surface mining  
36 operations, if any, are inconsistent with this chapter. If the surface  
37 mining operation has a review of its reclamation plan, financial  
38 assurances, or an interim management plan pending under  
39 subdivision (b), (c), (d), or (h) of Section 2770, or an appeal  
40 pending before the board or lead agency governing body under

1 subdivision (e) or (h) of Section 2770, the notice shall so indicate.  
2 The lead agency shall forward to the operator a copy of the notice,  
3 a copy of the completed inspection form, and any supporting  
4 documentation, including, but not limited to, any inspection report  
5 prepared by the geologist, civil engineer, ~~landscape architect, or~~  
6 ~~forester, or geophysicist~~, who conducted the inspection.

7 *(B) It is the intent of the Legislature to define which aspects of*  
8 *an inspection constitute the professional practice of geology and*  
9 *engineering requiring certification by an appropriate professional.*

10 (2) No later than January 1, 2018, and on an ongoing basis  
11 thereafter, the department shall offer continuing educational  
12 opportunities for lead agency employees to become certified, as  
13 appropriate, by the department to inspect surface mining operations.

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

33 *(c) In addition to subdivision (a), lead agencies or the State*  
34 *Mine Inspector may inspect all mining operations to determine if*  
35 *the operation is in compliance with this chapter and Section 2207.*  
36 *In conducting the inspection, the lead agencies or the State Mine*  
37 *Inspector shall determine all of the following:*

38 *(1) If the mining operation is in compliance with its approved*  
39 *reclamation plan.*

1     (2) *If adequate and appropriate financial assurances have been*  
2 *established for the mining operation.*

3     (3) *If the mining operation has complied with any notice of*  
4 *violation or order to correct.*

5     (d) (1) The director shall have 30 days from the date of receipt  
6 of a reclamation plan or plan amendments submitted pursuant to  
7 subdivision (c), and 45 days from the date of receipt of financial  
8 assurances submitted pursuant to subdivision (c), to prepare written  
9 comments, if the director so chooses. The lead agency shall  
10 evaluate written comments received from the director relating to  
11 the reclamation plan, plan amendments, or financial assurances  
12 within a reasonable amount of time.

13     (2) The lead agency shall prepare a written response to the  
14 director's comments describing the disposition of the major issues  
15 raised by the director's comments, and submit the lead agency's  
16 proposed response to the director at least 30 days prior to approval  
17 of the reclamation plan, plan amendment, or financial assurance.  
18 The lead agency's response to the director's comments shall  
19 describe whether the lead agency proposes to adopt the director's  
20 comments to the reclamation plan, plan amendment, or financial  
21 assurance. If the lead agency does not propose to adopt the  
22 director's comments, the lead agency shall specify, in detail, why  
23 the lead agency proposes not to adopt the comments. Copies of  
24 any written comments received and responses prepared by the lead  
25 agency shall be forwarded to the operator. The lead agency shall  
26 also give the director at least 30 days' notice of the time, place,  
27 and date of the hearing before the lead agency at which time the  
28 reclamation plan, plan amendment, or financial assurance is  
29 scheduled to be approved by the lead agency. If no hearing is  
30 required by this chapter, or by the local ordinance, or other state  
31 law, then the lead agency shall provide 30 days' notice to the  
32 director that it intends to approve the reclamation plan, plan  
33 amendment, or financial assurance. The lead agency shall send to  
34 the director its final response to the director's comments within  
35 30 days following its approval of the reclamation plan, plan  
36 amendment, or financial assurance during which period the  
37 department retains all powers, duties, and authorities of this  
38 chapter.

39     (3) To the extent that there is a conflict between the comments  
40 of a trustee agency or a responsible agency that are based on the

1 agency's statutory or regulatory authority and the comments of  
2 other commenting agencies which are received by the lead agency  
3 pursuant to the California Environmental Quality Act (Division  
4 13 (commencing with Section 21000)) regarding a reclamation  
5 plan or plan amendments, the lead agency shall consider only the  
6 comments of the trustee agency or responsible agency.

7 (e) A lead agency shall notify the director of the filing of an  
8 application for a permit to conduct surface mining operations  
9 within 30 days of an application being filed with the lead agency.  
10 By July 1, 1991, each lead agency shall submit to the director for  
11 every active or idle mining operation within its jurisdiction, a copy  
12 of the mining permit required pursuant to Section 2774, and any  
13 conditions or amendments to those permits. By July 1 of each  
14 subsequent year, the lead agency shall submit to the director for  
15 each active or idle mining operation a copy of any permit or  
16 reclamation plan amendments, as applicable, or a statement that  
17 there have been no changes during the previous year. Failure to  
18 file with the director the information required under this section  
19 shall be cause for action under Section 2774.4.

20 *SEC. 8. Section 2780 is added to the Public Resources Code,*  
21 *to read:*

22 *2780. A lead agency may unilaterally and voluntarily relinquish*  
23 *any or all of its duties and responsibilities under this chapter. The*  
24 *State Mine Inspector shall assume the duties and responsibilities*  
25 *relinquished by the lead agency.*