

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 209

Introduced by Senator Pavley

February 11, 2015

An act to amend Sections 607, 2207, 2714, 2733, 2770, 2772, 2773.1, and 2774, 2774.1, 2774.4, and 2776 of, and to add ~~Section~~ Sections 2006.5, 2736, 2772.1, and 2773.4 to, the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Pavley. Surface mining: ~~inspections and inspections~~: financial assurances: *reclamation plans*.

(1) Existing law establishes the Office of Mine Reclamation within the Department of Conservation. *Existing law requires the State Mining and Geology Board to impose, by regulation, an annual reporting fee on the operators of all active and idle mining operations. Existing law requires the maximum amount of the annual fee imposed on each mining operation to not exceed \$4,000. Existing law limits the maximum amount of the total revenue generated from the reporting fee to no more than \$3,500,000, as specified.*

This bill would instead establish the Division of Mines within the department under the direction of the ~~State Mine Inspector~~. *Supervisor of Mines and Reclamation. The bill also would raise the maximum amount of the annual reporting fee to \$10,000 per mining operation, except as specified. The bill would raise the maximum amount of the*

total revenue generated from the reporting fee to \$8,000,000, as specified.

~~(2) Existing law requires the owner or operator of a surface 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 and proof of financial assurances. The Surface Mining and Reclamation Act of 1975 requires the owner or operator of a surface mining operation to file with the lead agency a reclamation plan 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 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 surface 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 department and approved 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 inspection.~~

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

(2) *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 final 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 final 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 also would require a lead agency or the board to conduct a specified public hearing if the lead agency has evidence that an operator is 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.

This bill would revise and recast provisions of the act related to the proof of financial assurances, as defined, and, among other things, would require an operator to establish an appropriate financial assurance mechanism within 30 days of a sale or transfer of a surface mining operation; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate with a specified report 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 a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would require the Department of Conservation and the board, in consultation with Board of Professional Engineers and Land Surveyors, to adopt regulations that set forth the minimum qualifications for a person conducting an inspection of a surface mining operation, as specified. The bill also would require the department to establish,

no later than July 1, 2016, a training program for all surface mine inspectors, as specified.

(3) 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: ~~no~~-yes.

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

1 SECTION 1. ~~It is the intent of the Legislature to modernize~~
2 ~~the 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~~
6 ~~operators to local governments. Issues that have been raised~~
7 ~~include, but are not limited to, the following:~~

8 (a) ~~A fair and adequate fee structure to support the Office of~~
9 ~~Mine Reclamation.~~

10 (b) ~~Improving compliance with the annual inspection~~
11 ~~requirement and enforcement.~~

12 (c) ~~Training to local governments that often serve as the lead~~
13 ~~agency for surface mines.~~

14 (d) ~~Ensuring the adequacy of financial assurances and~~
15 ~~reclamation plans.~~

16 (e) ~~Improving the professionalism of the Office of Mine~~
17 ~~Reclamation and improving administrative efficiency and appeals~~
18 ~~processes within the act.~~

19 SEC. 2.

20 SECTION 1. Section 607 of the Public Resources Code is
21 amended to read:

22 607. The work of the department shall be divided into at least
23 the following:

24 (a) California Geological Survey.

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

26 (c) Division of Land Resource Protection.

27 (d) Division of Mines.

1 ~~SEC. 3.~~

2 *SEC. 2.* Section 2006.5 is added to the Public Resources Code,
3 to read:

4 2006.5. ~~“State Mine Inspector”~~ *“Supervisor of Mines and*
5 *Reclamation”* means the individual directing the Division of Mines
6 established pursuant to subdivision (d) of Section 607.

7 ~~SEC. 4.~~

8 *SEC. 3.* Section 2207 of the Public Resources Code is amended
9 to read:

10 2207. (a) The owner or the operator of a mining operation
11 within the state shall forward to the director annually, not later
12 than a date established by the director, upon forms approved by
13 the board from time to time, a report that identifies all of the
14 following:

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

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

21 (3) The location of the mining operation, its name, its mine
22 number as issued by the Division of Mines or the director, its
23 section, township, range, latitude, longitude, and approximate
24 boundaries of the mining operation marked on a United States
25 Geological Survey 7 ½-minute or 15-minute quadrangle map.

26 (4) The lead agency.

27 (5) The approval date of the mining operation’s reclamation
28 plan.

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

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

33 (8) ~~(A)~~ Proof of annual inspection by the lead agency.

34 ~~(B) It is the intent of the Legislature to develop a separate~~
35 ~~procedure for county-owned borrow pits and similar sites and the~~
36 ~~training necessary to inspect them.~~

37 (9) Proof of the most recently approved financial cost estimate
38 and the approved financial assurance cost mechanism.

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

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

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

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

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

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

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

17 (b) (1) Every year, not later than the date established by the
18 director, the person submitting the report pursuant to subdivision
19 (a) shall forward to the lead agency, upon forms furnished by the
20 board, a report that provides all of the information specified in
21 subdivision (a).

22 (2) The owner or operator of a mining operation shall allow
23 access to the property to any governmental agency or the agent of
24 any company providing financial assurances in connection with
25 the reclamation plan in order that the reclamation can be carried
26 out by the entity or company, in accordance with the provisions
27 of the reclamation plan.

28 (c) Subsequent reports shall include only changes in the
29 information submitted for the items described in subdivision (a),
30 except that, instead of the approved reclamation plan, the reports
31 shall include any reclamation plan amendments approved during
32 the previous year. The reports shall state whether review of a
33 reclamation plan, financial assurances, or an interim management
34 plan is pending under subdivision ~~(b), (e), (d)~~, (b) or (h) of Section
35 2770, or whether an appeal before the board or lead agency
36 governing body is pending under subdivision (e) or (h) of Section
37 2770. The director shall notify the person submitting the report
38 and the owner's designated agent in writing that the report and the
39 fee required pursuant to subdivision (d) have been received, specify
40 the mining operation's mine number if one has not been issued by

1 the Division of Mines, and notify the person and agent of any
2 deficiencies in the report within 90 days of receipt. That person
3 or agent shall have 30 days from receipt of the notification to
4 correct the noted deficiencies and forward the revised report to the
5 director and the lead agency. Any person who fails to comply with
6 this section, or knowingly provides incorrect or false information
7 in reports required by this section, may be subject to an
8 administrative penalty as provided in subdivision (c) of Section
9 2774.1.

10 (d) (1) The board shall impose, by regulation, pursuant to
11 paragraph (2), an annual reporting fee on, and method for collecting
12 annual fees from, each active or idle mining operation. The
13 maximum fee for any single mining operation may not exceed ~~four~~
14 *ten thousand dollars (\$4,000) (\$10,000)* annually and may not be
15 less than one hundred dollars (\$100) annually, as adjusted for the
16 cost of living as measured by the California Consumer Price Index
17 for all urban consumers, calendar year averages, using the
18 percentage change in the previous year, ~~beginning with the~~
19 ~~2005–06 fiscal year and annually thereafter.~~ *except that the*
20 *maximum fee for any single mining operation shall not exceed six*
21 *thousand dollars (\$6,000) in the 2016–17 fiscal year and eight*
22 *thousand dollars (\$8,000) in the 2017–18 fiscal year.*

23 (2) (A) The board shall adopt, by regulation, a schedule of fees
24 authorized under paragraph (1) to cover the department’s cost in
25 carrying out this section and Chapter 9 (commencing with Section
26 2710), as reflected in the Governor’s proposed Budget, and may
27 adopt those regulations as emergency regulations. In establishing
28 the schedule of fees to be paid by each active and idle mining
29 operation, the fees shall be calculated on an equitable basis
30 reflecting the size and type of operation. The board shall also
31 consider the total assessed value of the mining operation, the
32 acreage disturbed by mining activities, and the acreage subject to
33 the reclamation plan.

34 (B) Regulations adopted pursuant to this subdivision shall be
35 adopted by the board in accordance with the Administrative
36 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
37 Part 1 of Division 3 of Title 2 of the Government Code). The
38 adoption of any emergency regulations pursuant to this subdivision
39 shall be considered necessary to address an emergency and shall
40 be considered by the Office of Administrative Law to be necessary

1 for the immediate preservation of the public peace, health, safety,
2 and general welfare.

3 (3) The total revenue generated by the reporting fees may not
4 exceed, and may be less than, the amount of ~~three million five~~
5 ~~hundred thousand~~ *eight million* dollars ~~(\$3,500,000)~~ *(\$8,000,000)*,
6 as adjusted for the cost of living as measured by the California
7 Consumer Price Index for all urban consumers, calendar year
8 averages, using the percentage change in the previous year,
9 beginning with the ~~2005–06~~ *2016–17* fiscal year and annually
10 thereafter. If the director determines that the revenue collected
11 during the preceding fiscal year was greater or less than the cost
12 to operate the program, the board shall adjust the fees to
13 compensate for the overcollection or undercollection of revenues.

14 (4) (A) The reporting fees established pursuant to this
15 subdivision shall be deposited in the Mine Reclamation Account,
16 which is hereby created. Any fees, penalties, interest, fines, or
17 charges collected by the director or board pursuant to this chapter
18 or Chapter 9 (commencing with Section 2710) shall be deposited
19 in the Mine Reclamation Account. The money in the account shall
20 be available to the department and board, upon appropriation by
21 the Legislature, for the purpose of carrying out this section and
22 complying with Chapter 9 (commencing with Section 2710), which
23 includes, but is not limited to, classification and designation of
24 areas with mineral resources of statewide or regional significance,
25 reclamation plan and financial assurance review, mine inspection,
26 and enforcement.

27 (B) (i) In addition to reporting fees, the board shall collect five
28 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
29 silver mined within the state and shall deposit the fees collected
30 in the Abandoned Mine Reclamation and Minerals Fund
31 Subaccount, which is hereby created in the Mine Reclamation
32 Account. The department may expend the moneys in the
33 subaccount, upon appropriation by the Legislature, for only the
34 purposes of Section 2796.5 and as authorized herein for the
35 remediation of abandoned mines.

36 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
37 collected pursuant to clause (i) may also be used to remediate
38 features of historic abandoned mines and lands that they impact.
39 For the purposes of this section, historic abandoned mines are
40 mines for which operations have been conducted before January

1 1, 1976, and include, but are not limited to, historic gold and silver
2 mines.

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

13 (e) The lead agency, or the board when acting as the lead agency,
14 may impose a fee upon each mining operation to cover the
15 reasonable costs incurred in implementing this chapter and Chapter
16 9 (commencing with Section 2710).

17 (f) For purposes of this section, “mining operation” means a
18 mining operation of any kind or character whatever in this state,
19 including, but not limited to, a mining operation that is classified
20 as a “surface mining operation” as defined in Section 2735, unless
21 excepted by Section 2714. For the purposes of fee collections only,
22 “mining operation” may include one or more mines operated by
23 a single operator or mining company on one or more sites, if the
24 total annual combined mineral production for all sites is less than
25 100 troy ounces for precious metals, if precious metals are the
26 primary mineral commodity produced, or less than 100,000 short
27 tons if the primary mineral commodity produced is not precious
28 metals.

29 (g) Any information in reports submitted pursuant to subdivision
30 (a) that includes or otherwise indicates the total mineral production,
31 reserves, or rate of depletion of any mining operation may not be
32 disclosed to any member of the public, as defined in subdivision
33 (b) of Section 6252 of the Government Code. Other portions of
34 the reports are public records unless excepted by statute. Statistical
35 bulletins based on these reports and published under Section 2205
36 shall be compiled to show, for the state as a whole and separately
37 for each lead agency, the total of each mineral produced therein.
38 In order not to disclose the production, reserves, or rate of depletion
39 from any identifiable mining operation, no production figure shall
40 be published or otherwise disclosed unless that figure is the

1 aggregated production of not less than three mining operations. If
 2 the production figure for any lead agency would disclose the
 3 production, reserves, or rate of depletion of less than three mining
 4 operations or otherwise permit the reasonable inference of the
 5 production, reserves, or rate of depletion of any identifiable mining
 6 operation, that figure shall be combined with the same figure of
 7 not less than two other lead agencies without regard to the location
 8 of the lead agencies. The bulletin shall be published annually by
 9 June 30 or as soon thereafter as practicable.

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

15 *SEC. 4. Section 2714 of the Public Resources Code is amended*
 16 *to read:*

17 2714. This chapter does not apply to any of the following
 18 activities:

19 (a) Excavations or grading of lands conducted for farming.

20 (b) Onsite excavation and onsite earthmoving activities that are
 21 ~~an integral and necessary part of a~~ *for the construction project of*
 22 *structures* and that are undertaken to prepare a site for *the*
 23 *construction of those structures, landscaping, including landscaping*
 24 *or other land improvements associated with those structures,*
 25 *including the related excavation, grading, compaction, or the*
 26 *creation of fills, road cuts, and embankments, whether or not*
 27 *surplus materials are exported from the site, subject to all of the*
 28 *following conditions:*

29 (1) All required permits for the ~~construction, landscaping,~~
 30 *construction and any associated landscaping* or related land
 31 improvements have been approved by a public agency in
 32 accordance with applicable provisions of state law and locally
 33 adopted plans and ordinances, including, but not limited to,
 34 ~~Division the California Environmental Quality Act (Division 13~~
 35 *(commencing with Section 21000); 21000)).*

36 (2) The lead agency's approval of the construction project
 37 included consideration of the onsite excavation and onsite
 38 earthmoving activities pursuant to ~~Division the California~~
 39 *Environmental Quality Act (Division 13 (commencing with Section*
 40 *21000); 21000)).*

1 (3) The approved construction project is consistent with the
2 general plan or zoning of the site.

3 (4) Surplus materials shall not be exported from the site unless
4 and until actual construction work has commenced and shall cease
5 if it is determined that construction activities have terminated, have
6 been indefinitely suspended, or are no longer being actively
7 pursued.

8 (c) Operation of a plant site used for mineral processing,
9 including associated onsite structures, equipment, machines, tools,
10 or other materials, including the onsite stockpiling and onsite
11 recovery of mined materials, subject to all of the following
12 conditions:

13 (1) The plant site is located on lands designated for industrial
14 or commercial uses in the applicable county or city general plan.

15 (2) The plant site is located on lands zoned industrial or
16 ~~commercial~~; *commercial* or are contained within a zoning category
17 intended exclusively for industrial activities by the applicable city
18 or county.

19 (3) None of the minerals being processed are being extracted
20 onsite.

21 (4) All reclamation work has been completed pursuant to the
22 approved reclamation plan for any mineral extraction activities
23 that occurred onsite after January 1, 1976.

24 (d) Prospecting ~~for~~, *for* or the extraction ~~of~~, *of* minerals for
25 commercial purposes where the removal of overburden or mineral
26 product totals less than 1,000 cubic yards in any one ~~location~~;
27 *location* and the total surface area disturbed is less than one acre.

28 (e) Surface mining operations that are required by federal law
29 in order to protect a mining claim, if those operations are conducted
30 solely for that purpose.

31 (f) Any other surface mining operations that the ~~board~~, as
32 ~~defined by Section 2008~~; *board* determines to be of an infrequent
33 nature and that involve only minor surface disturbances.

34 (g) The solar evaporation of sea water or bay water for the
35 production of salt and related minerals.

36 (h) Emergency excavations or grading conducted by the
37 Department of Water Resources or the Reclamation *Central Valley*
38 *Flood Protection* Board for the purpose of averting, alleviating,
39 repairing, or restoring damage to property due to imminent or
40 recent floods, disasters, or other emergencies.

1 (i) (1) Surface mining operations conducted on lands owned
2 or leased, or upon which easements or rights-of-way have been
3 obtained, by the Department of Water Resources for the purpose
4 of the State Water Resources Development System or flood control,
5 and surface mining operations on lands owned or leased, or upon
6 which easements or rights-of-way have been obtained, by the
7 ~~Reclamation~~ *Central Valley Flood Protection* Board for the purpose
8 of flood control, if the Department of Water Resources adopts,
9 after submission to and consultation with, the ~~Department of~~
10 ~~Conservation, department,~~ a reclamation plan for lands affected
11 by these activities, and those lands are reclaimed in conformance
12 with the standards specified in regulations of the board adopted
13 pursuant to this chapter. The Department of Water Resources shall
14 provide an annual report to the ~~Department of Conservation~~
15 ~~department~~ by the date specified by the ~~Department of~~
16 ~~Conservation department~~ on these mining activities.

17 (2) Nothing in this subdivision shall require the Department of
18 Water Resources or the ~~Reclamation~~ *Central Valley Flood*
19 *Protection* Board to obtain a permit or secure approval of a
20 reclamation plan from any city or county in order to conduct
21 surface mining operations specified in paragraph (1). Nothing in
22 this subdivision shall preclude the bringing of an enforcement
23 action pursuant to Section 2774.1, if it is determined that a surface
24 mine operator, acting under contract with the Department of Water
25 Resources or the *Reclamation Central Valley Flood Protection*
26 Board on lands other than those owned or leased, or upon which
27 easements or rights-of-way have been obtained, by the Department
28 of Water Resources or the *Reclamation Central Valley Flood*
29 *Protection* Board, is otherwise not in compliance with this chapter.

30 (j) (1) Excavations or grading for the exclusive purpose of
31 obtaining materials for roadbed construction and maintenance
32 conducted in connection with timber operations or forest
33 management on land owned by the same person or entity. This
34 exemption is limited to excavation and grading that is conducted
35 adjacent to timber operation or forest management roads and shall
36 not apply to onsite excavation or grading that occurs within 100
37 feet of a Class One watercourse or 75 feet of a Class Two
38 watercourse, or to excavation for materials that are, or have been,
39 sold for commercial purposes.

1 (2) This exemption shall be available only if slope stability and
2 erosion are controlled in accordance with subdivision (f) of Section
3 3704 and subdivision (d) of Section 3706 of Title 14 of the
4 California Code of Regulations and, upon closure of the site, the
5 person closing the site implements, where necessary, revegetation
6 measures and postclosure uses in consultation with the Department
7 of Forestry and Fire Protection.

8 (k) Excavations, grading, or other earthmoving activities in an
9 oil or gas field that are integral ~~to, to~~ and necessary ~~for, for~~ ongoing
10 operations for the extraction of oil or gas that comply with all of
11 the following conditions:

12 (1) The operations are being conducted in accordance with
13 Division 3 (commencing with Section 3000).

14 (2) The operations are consistent with any general plan or zoning
15 applicable to the site.

16 (3) The earthmoving activities are within oil or gas field
17 properties under a common owner or operator.

18 (4) No excavated materials are sold for commercial purposes.

19 (l) (1) The immediate excavation or grading of lands affected
20 by a natural disaster for the purpose of restoring those lands to
21 their prior condition.

22 (2) The immediate removal of material deposited by a flood
23 onto lands being farmed for the purpose of restoring those lands
24 to their prior condition.

25 *SEC. 5. Section 2733 of the Public Resources Code is amended*
26 *to read:*

27 2733. “Reclamation” means the combined process of land
28 treatment that minimizes water degradation, air pollution, damage
29 to aquatic or wildlife habitat, flooding, erosion, and other adverse
30 effects from surface mining operations, including adverse surface
31 effects incidental to underground mines, so that mined lands are
32 reclaimed to a usable condition ~~which~~ *that* is readily adaptable for
33 alternate land uses and create no danger to public health or safety.
34 The process may extend to affected lands surrounding mined lands,
35 and may require backfilling, grading, resoiling, revegetation, soil
36 compaction, *slope* stabilization, or other measures.

37 *SEC. 6. Section 2736 is added to the Public Resources Code,*
38 *to read:*

39 2736. “Financial assurance” means an approved current
40 *financial assurance cost estimate and a financial assurance*

1 mechanism that is at least equal to the current approved financial
2 assurance cost estimate.

3 SEC. 7. Section 2770 of the Public Resources Code is amended
4 to read:

5 2770. (a) Except as provided in this section, a person shall not
6 conduct surface mining operations unless a permit is obtained
7 from, a reclamation plan has been submitted to and approved by,
8 and financial assurances for reclamation have been approved by,
9 by the lead agency for the operation pursuant to this article.

10 (b) A person with an existing surface mining operation who has
11 vested rights pursuant to Section 2776 and who does not have an
12 approved reclamation plan shall submit a reclamation plan to the
13 lead agency not later than March 31, 1988. If a reclamation plan
14 application is not on file by March 31, 1988, the continuation of
15 the surface mining operation is prohibited until a reclamation plan
16 is submitted to the lead agency. For purposes of this subdivision,
17 a reclamation plan may consist of all or the appropriate sections
18 of any plans or written agreements previously approved by the
19 lead agency or another agency, together with any additional
20 documents needed to substantially meet the requirements of
21 Sections 2772 and 2773 and the lead agency surface mining
22 ordinance adopted pursuant to subdivision (a) of Section 2774,
23 provided that all documents which together were proposed to serve
24 as the reclamation plan are submitted for approval to the lead
25 agency in accordance with this chapter.

26 (c) If a person with an existing surface mining operation has
27 received lead agency approval of its financial assurances for
28 reclamation prior to January 1, 1991, the lead agency shall
29 administratively review those existing financial assurances in
30 accordance with subdivision (d) prior to January 1, 1992. The
31 review of existing financial assurances shall not be considered a
32 project for purposes of Division 13 (commencing with Section
33 21000). A person with an existing surface mining operation that
34 does not have financial assurances that received lead agency
35 approval prior to January 1, 1991, shall submit financial assurances
36 for reclamation for review in accordance with subdivision (d).

37 (d) The lead agency's review of a reclamation plan submitted
38 pursuant to subdivision (b) or of financial assurances pursuant to
39 subdivision (c) is limited to whether the plan or the financial
40 assurances substantially meet the applicable requirements of

1 Sections ~~2772, 2773, and 2773.1~~, and the lead agency surface
2 mining ordinance adopted pursuant to subdivision (a) of Section
3 ~~2774~~, but, in any event, the lead agency shall require that financial
4 assurances for reclamation be sufficient to perform reclamation
5 of lands remaining disturbed. Reclamation plans or financial
6 assurances determined to substantially meet these requirements
7 shall be approved by the lead agency for purposes of this chapter.
8 Reclamation plans or financial assurances determined not to
9 substantially meet these requirements shall be returned to the
10 operator within 60 days. The operator has 60 days to revise the
11 plan or financial assurances to address identified deficiencies, at
12 which time the revised plan or financial assurances shall be
13 returned to the lead agency for review and approval. Except as
14 specified in subdivision (e) or (i), unless the operator has filed on
15 or before July 1, 1990, an appeal pursuant to subdivision (e) with
16 regard to nonapproval of the reclamation plan, or has filed on or
17 before January 1, 1994, an appeal pursuant to subdivision (e) with
18 regard to nonapproval of financial assurances, and that appeal is
19 pending before the board, the continuation of the surface mining
20 operation is prohibited until a reclamation plan and financial
21 assurances for reclamation are approved by the lead agency.

22 (c) *[Reserved]*

23 (d) *[Reserved]*

24 (e) A person who, based on the evidence of the record, can
25 substantiate that a lead agency has either (1) failed to act according
26 to due process or has relied on considerations not related to the
27 specific applicable requirements of Sections 2772, 2773, and
28 2773.1, and the lead agency surface mining ordinance adopted
29 pursuant to subdivision (a) of Section 2774, in reaching a decision
30 to deny approval of a reclamation plan or financial assurances for
31 reclamation, *or* (2) failed to act within a reasonable time of receipt
32 of a completed application, *or* (3) failed to review and approve
33 reclamation plans or financial assurances as required by
34 subdivisions (e) and (d), may appeal that action or inaction to the
35 board.

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

39 (g) Appeals that the board does not decline to hear shall be
40 scheduled and heard at a public hearing within 45 days of the filing

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

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

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

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

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

1 (3) The financial assurances required by Section 2773.1 shall
2 remain in effect during the period that the surface mining operation
3 is idle. If the surface mining operation is still idle after the
4 expiration of its interim management plan, the surface mining
5 operation shall commence reclamation in accordance with its
6 approved reclamation plan.

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

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

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

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

39 ~~SEC. 5. Section 2772 of the Public Resources Code is amended~~
40 ~~to read:~~

1 ~~2772. (a) Reclamation plans and amended reclamation plans~~
2 ~~shall be filed with the lead agency, on a form developed by the~~
3 ~~department and approved by the board, with provisions for~~
4 ~~additional information required at the discretion of the lead agency,~~
5 ~~by any person or company that plans to conduct surface mining~~
6 ~~operations on any land.~~

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

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 ~~surface mining operation.~~

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

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

30 ~~(6) A description of, and a plan for, the type of surface mining~~
31 ~~to be employed, and a time schedule that will provide for the~~
32 ~~completion of surface mining on each segment of the mined lands~~
33 ~~so that reclamation can be initiated at the earliest possible time on~~
34 ~~those portions of the mined lands that will not be subject to further~~
35 ~~disturbance by the surface mining operation.~~

36 ~~(7) A description of the proposed use or potential uses of the~~
37 ~~mined lands after reclamation and evidence that all owners of a~~
38 ~~possessory interest in the land have been notified of the proposed~~
39 ~~use or potential uses.~~

1 ~~(8) A description of the manner in which reclamation, adequate~~
2 ~~for the proposed use or potential uses will be accomplished,~~
3 ~~including both of the following:~~

4 ~~(A) A description of the manner in which contaminants will be~~
5 ~~controlled, and mining waste will be disposed.~~

6 ~~(B) A description of the manner in which affected streambed~~
7 ~~channels and streambanks will be rehabilitated to a condition~~
8 ~~minimizing erosion and sedimentation will occur.~~

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

11 ~~(10) A statement that the person submitting the reclamation~~
12 ~~plan accepts responsibility for reclaiming the mined lands in~~
13 ~~accordance with the reclamation plan.~~

14 ~~(11) A schedule with time limits for completing reclamation,~~
15 ~~in accordance with the reclamation plan, to be reviewed and~~
16 ~~confirmed by the lead agency during the annual inspection.~~

17 ~~(12) Any other information that the lead agency may require~~
18 ~~by ordinance.~~

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

32 ~~(e) This section does not limit or expand the State Mine~~
33 ~~Inspector's authority or responsibility to review a document in~~
34 ~~accordance with the California Environmental Quality Act~~
35 ~~(Division 13 (commencing with Section 21000)).~~

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

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

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

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

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

13 (3) The proposed dates for the initiation of *mining operations*
14 and ~~termination~~ *the completion of mining and reclamation* of the
15 surface mining operation.

16 (4) The maximum anticipated depth of the surface mining
17 operation.

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

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

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

34 (B) *Clearly defined and accurately drawn property lines,*
35 *setbacks, easements, and the reclamation plan boundary.*

36 (C) *Existing topography and final topography depicted with*
37 *contour lines drawn at appropriate intervals for the site's*
38 *conditions.*

39 (D) *Detailed geologic description of the area of the surface*
40 *mining operation.*

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

4 (F) All maps, diagrams, or calculations that require preparation
5 in accordance with the Professional Engineers Act (Chapter 7
6 commencing with Section 6700) of Division 3 of the Business and
7 Professions Code), the Geologist and Geophysicist Act (Chapter
8 12.5 commencing with Section 7800) of Division 3 of the Business
9 and Professions Code), or the Professional Land Surveyors' Act
10 (Chapter 15 commencing with Section 8700) of Division 3 of the
11 Business and Professions Code) shall be prepared by a
12 California-licensed professional, shall include his or her license
13 number and name, and shall bear the signature and seal of the
14 licensee.

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

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

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

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

30 (B) A description of the manner in which affected streambed
31 channels and streambanks will be rehabilitated to a condition
32 ~~minimizing that minimizes~~ erosion and ~~sedimentation will occur.~~
33 *sedimentation*.

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

36 (10) A statement that the person submitting the reclamation
37 plan accepts responsibility for reclaiming the mined lands in
38 accordance with the reclamation plan.

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

1 (d) An item of information or a document required pursuant to
 2 *this chapter, including* subdivision ~~(e)~~ (c), that has already been
 3 prepared as part of a permit application for the surface mining
 4 operation, or as part of an environmental document prepared for
 5 the project pursuant to ~~Division~~ *the California Environmental*
 6 *Quality Act (Division 13 (commencing with Section 21000), may*
 7 *21000)), or required as a condition of approval, shall be included*
 8 ~~in the reclamation plan by reference, if that item of information~~
 9 ~~or that document is attached to the reclamation plan when the lead~~
 10 ~~agency submits the reclamation plan to the director for review.~~
 11 ~~plan. Regulatory aspects that are solely of a local concern shall~~
 12 ~~not be included in the reclamation plan. To the extent that the~~
 13 ~~information or document referenced in the reclamation plan is used~~
 14 ~~to meet the requirements of this chapter, including~~ subdivision
 15 (c), the information or document shall become part of the
 16 reclamation plan and shall be subject to all other requirements of
 17 ~~this article; chapter.~~

18 (e) ~~Nothing in this section is intended to~~ *This section does not*
 19 ~~limit or expand the department's~~ *Supervisor of Mines and*
 20 *Reclamation's* authority or responsibility to review a document in
 21 accordance with ~~Division~~ *the California Environmental Quality*
 22 *Act (Division 13 (commencing with Section 21000): 21000)).*

23 ~~SEC. 6. Section 2773.1 of the Public Resources Code is~~
 24 ~~amended to read:~~

25 ~~2773.1. (a) All surface mining operations subject to this chapter~~
 26 ~~shall have financial assurances approved pursuant to this chapter~~
 27 ~~to ensure reclamation can be completed at any time during surface~~
 28 ~~mining operations in accordance with this chapter and the surface~~
 29 ~~mining operation's reclamation plan. For purposes of this section,~~
 30 ~~"financial assurances" are the combination of an approved current~~
 31 ~~financial assurance cost estimate and a financial assurance~~
 32 ~~mechanism that is equal to or greater than the current financial~~
 33 ~~assurance cost estimate.~~

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

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

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

6 ~~(3) The amount of financial assurances required of a surface~~
7 ~~mining operation for any one year shall be adjusted annually to~~
8 ~~account for new lands disturbed by surface mining operations,~~
9 ~~inflation, and reclamation of lands accomplished in accordance~~
10 ~~with the approved reclamation plan.~~

11 ~~(4) The financial assurance mechanism shall be made payable~~
12 ~~to the lead agency and the department and shall not be reduced or~~
13 ~~released without mutual written consent.~~

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

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

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

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

33 ~~(4) Use the proceeds from the forfeited financial assurances to~~
34 ~~conduct and complete reclamation in accordance with the approved~~
35 ~~reclamation plan. The financial assurances shall not be used for~~
36 ~~any other purpose. The operator is responsible for the costs of~~
37 ~~conducting and completing reclamation in accordance with the~~
38 ~~approved reclamation plan that are in excess of the proceeds from~~
39 ~~the forfeited financial assurances.~~

1 ~~(e) Financial assurances shall no longer be required of a surface~~
2 ~~mining operation, and shall be released, upon written notification~~
3 ~~by the lead agency, which shall be forwarded to the operator and~~
4 ~~the director, that reclamation has been completed in accordance~~
5 ~~with the approved reclamation plan. If a mining operation is sold~~
6 ~~or ownership is transferred to another person, the existing financial~~
7 ~~assurances shall remain in force and shall not be released by the~~
8 ~~lead agency until new financial assurances are secured from the~~
9 ~~new owner and have been approved by the lead agency in~~
10 ~~accordance with Section 2770.~~

11 ~~(d) The lead agency shall have primary responsibility to seek~~
12 ~~forfeiture of financial assurances and to reclaim mine sites under~~
13 ~~subdivision (b). However, in cases where the board is not the lead~~
14 ~~agency pursuant to Section 2774.4, the director may act to seek~~
15 ~~forfeiture of financial assurances and reclaim mine sites pursuant~~
16 ~~to subdivision (b) only if both of the following occurs:~~

17 ~~(1) The financial incapability of the operator or the abandonment~~
18 ~~of the mining operation has come to the attention of the director.~~

19 ~~(2) The lead agency has been notified in writing by the director~~
20 ~~of the financial incapability of the operator or the abandonment~~
21 ~~of the mining operation for at least 15 days, the lead agency has~~
22 ~~not taken appropriate measures to seek forfeiture of the financial~~
23 ~~assurances and reclaim the mine site, and one of the following has~~
24 ~~occurred:~~

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

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

32 ~~(C) The lead agency notifies the director in writing that its good~~
33 ~~faith attempts to seek forfeiture of the financial assurances have~~
34 ~~not been successful.~~

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

37 ~~(e) The board may adopt regulations specifying financial~~
38 ~~assurance mechanisms other than surety bonds, irrevocable letters~~
39 ~~of credit, and trust funds, which the board determines are~~
40 ~~reasonably available and adequate to ensure reclamation pursuant~~

1 to this chapter, but these mechanisms shall not include financial
2 tests, or surety bonds executed by one or more personal sureties.
3 These mechanisms may include reclamation bond pool programs.

4 (f) On or before March 1, 1993, the board shall adopt guidelines
5 to implement this section. The guidelines are exempt from the
6 requirements of the Administrative Procedure Act (Chapter 3.5
7 (commencing with Section 11340) of Part 1 of Division 3 of Title
8 2 of the Government Code), and are not subject to review by the
9 Office of Administrative Law.

10 *SEC. 9. Section 2772.1 is added to the Public Resources Code,*
11 *to read:*

12 *2772.1. (a) (1) Prior to approving a surface mining*
13 *operation's reclamation plan or plan amendments, the lead agency*
14 *shall submit the proposed final reclamation plan or amendments*
15 *to the director for review. All documentation for the submission*
16 *shall be submitted to the director at one time.*

17 *(2) An item of information or a document required pursuant to*
18 *this chapter, including subdivision (c) of Section 2772, that has*
19 *been prepared as part of a permit application for the surface*
20 *mining operation, not including aspects that are solely of a local*
21 *concern, or as part of an environmental document prepared for*
22 *the project pursuant to the California Environmental Quality Act*
23 *(Division 13 (commencing with Section 21000)) shall be*
24 *incorporated into the proposed final reclamation plan. An item of*
25 *information or a document that is incorporated shall be inserted*
26 *into the corresponding section of the proposed final reclamation*
27 *plan or attached to the proposed final reclamation plan with a*
28 *specific reference in the corresponding section of the proposed*
29 *final reclamation plan. Any information or document incorporated*
30 *into the proposed final reclamation plan shall become part of the*
31 *approved reclamation plan and shall be subject to all other*
32 *requirements of this article.*

33 *(3) The lead agency shall certify to the director that the*
34 *proposed final reclamation plan is a complete submission and is*
35 *in compliance with all of the following:*

36 *(A) The applicable requirements of this chapter, including*
37 *subdivision (c) of Section 2772.*

38 *(B) Article 1 (commencing with Section 3500) of Chapter 8 of*
39 *Division 2 of Title 14 of the California Code of Regulations.*

1 (C) *The lead agency's surface mining ordinance in effect at the*
2 *time that the proposed final reclamation plan is submitted to the*
3 *director for review.*

4 (b) (1) *The director shall have 30 days from the date of receipt*
5 *of a proposed final reclamation plan or plan amendments submitted*
6 *pursuant to subdivision (a) to prepare written comments if the*
7 *director chooses.*

8 (2) *If the director determines that the lead agency's submission*
9 *pursuant to this subdivision (a) is incomplete or that the submission*
10 *includes maps, diagrams or calculations that require preparation*
11 *by a California licensed professional, the director shall return the*
12 *submission to the lead agency. The director shall identify the*
13 *incomplete components or those maps, diagrams, or calculations*
14 *that require completion by a California licensed professional. The*
15 *review by the director pursuant to paragraph (1) shall not begin*
16 *until the director receives a complete submission, including maps,*
17 *diagrams, or calculations prepared by a California licensed*
18 *professional.*

19 (3) (A) *The lead agency shall review and evaluate and prepare*
20 *a written response to the director's comments received pursuant*
21 *to paragraph (1) describing the disposition of the major issues*
22 *raised by the comments. The lead agency shall submit the lead*
23 *agency's response to the director at least 30 days prior to the*
24 *intended approval of the proposed final reclamation plan or plan*
25 *amendment. The lead agency's response shall include either of*
26 *the following:*

27 (i) *A description of how the lead agency proposes to adopt the*
28 *director's comments to the proposed final reclamation plan or*
29 *plan amendment.*

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

32 (B) *Copies of any written comments received and responses*
33 *prepared by the lead agency pursuant to subparagraph (A) shall*
34 *be forwarded to the operator.*

35 (C) (i) *The lead agency shall give the director at least 30 days'*
36 *notice of the time, place, and date of the hearing at which the*
37 *proposed final reclamation plan or plan amendment is scheduled*
38 *to be approved by the lead agency.*

39 (ii) *If no hearing is required by this chapter, the local ordinance,*
40 *or other state law, the lead agency shall provide 30 days' notice*

1 *to the director that the lead agency intends to approve the proposed*
2 *final reclamation plan or plan amendment.*

3 *(D) Within 30 days following approval of the reclamation plan,*
4 *the lead agency shall provide the director notice of the approval*
5 *and a statement that identifies any additional conditions or other*
6 *permit requirements imposed upon the surface mining operation.*
7 *During that time, the department shall retain all of its powers,*
8 *duties, and authorities pursuant to this chapter. The lead agency*
9 *shall provide, as soon as practicable, but no later than 60 days*
10 *after approval of the reclamation plan, both of the following:*

11 *(i) Certified copies of all maps, diagrams, or calculations signed*
12 *and sealed by a California-licensed professional.*

13 *(ii) A certified copy of the approved reclamation plan*
14 *incorporating all approved modifications to the proposed final*
15 *reclamation plan.*

16 *(4) 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 *(c) A lead agency shall notify the director of the filing of an*
25 *application for a permit to conduct surface mining operations*
26 *within 30 days of an application being filed with the lead agency.*
27 *By July 1, 1991, each lead agency shall submit to the director for*
28 *every active or idle mining operation within its jurisdiction, a copy*
29 *of the mining permit required pursuant to Section 2774, and any*
30 *conditions or amendments to those permits. By July 1 of each*
31 *subsequent year, the lead agency shall submit to the director for*
32 *each active or idle mining operation a copy of any permit or*
33 *reclamation plan amendments, as applicable, or a statement that*
34 *there have been no changes during the previous year. Failure to*
35 *file with the director the information required under this section*
36 *shall be cause for action under Section 2774.4.*

37 *(d) This section does not limit or expand the Supervisor of Mines*
38 *and Reclamation's authority or responsibility to review a document*
39 *in accordance with the California Environmental Quality Act*
40 *(Division 13 (commencing with Section 21000)).*

1 *SEC. 10. Section 2773.1 of the Public Resources Code is*
2 *amended to read:*

3 2773.1. (a) Lead agencies shall require financial assurances
4 of each surface mining operation to ensure reclamation is
5 performed in accordance with the surface mining operation's
6 approved reclamation plan, as follows:

7 (1) ~~Financial assurances~~ *assurance mechanisms* may take the
8 form of surety bonds executed by an admitted surety insurer, as
9 defined in subdivision (a) of Section 995.120 of the Code of Civil
10 Procedure, irrevocable letters of credit, trust funds, or other forms
11 of financial assurances specified by the board pursuant to
12 subdivision ~~(e)~~, *which (e) that are at least equal to the annual*
13 *financial assurance cost estimate that the lead agency reasonably*
14 determines are adequate to perform reclamation in accordance
15 with the surface mining operation's approved reclamation plan.

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

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

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

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

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

11 *(b) (1) If the lead agency has evidence that an operator is*
12 *financially incapable of performing reclamation in accordance*
13 *with its approved reclamation land or that the operator has*
14 *abandoned the surface mining operation without completing*
15 *reclamation, the lead agency or the board shall conduct a public*
16 *hearing with notice of the hearing provided to the operator and*
17 *the department at least 30 days prior to the hearing.*

18 *(2) If the lead agency or the board, following the public hearing,*
19 *determines that the operator is financially incapable of performing*
20 *reclamation in accordance with its approved reclamation plan,*
21 *or has abandoned its surface mining operation without completing*
22 *reclamation, either the lead agency or the director shall do all of*
23 *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~~ *seize* the financial assurances and specify the reasons for
28 so 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) Proceed to take appropriate action to require forfeiture of~~
36 ~~the financial assurances if the operator does not substantially~~
37 ~~comply with paragraph (2).~~

38 ~~(4) Use the proceeds from the forfeited financial assurances to~~
39 ~~conduct and complete reclamation in accordance with the approved~~
40 ~~reclamation plan. In no event shall the financial assurances be used~~

1 for any other purpose. The operator is responsible for the costs of
2 conducting and completing reclamation in accordance with the
3 approved reclamation plan which are in excess of the proceeds
4 from the forfeited financial assurances.

5 (e) ~~Financial assurances shall no longer be required of a surface
6 mining operation, and shall be released, upon written notification
7 by the lead agency, which shall be forwarded to the operator and
8 the director, that reclamation has been completed in accordance
9 with the approved reclamation plan. If a mining operation is sold
10 or ownership is transferred to another person, the existing financial
11 assurances shall remain in force and shall not be released by the
12 lead agency until new financial assurances are secured from the
13 new owner and have been approved by the lead agency in
14 accordance with Section 2770.~~

15 (B) (i) *Proceed to take appropriate action to seize the financial
16 assurances and use the proceeds from the financial assurances to
17 conduct and complete reclamation in accordance with the approved
18 reclamation plan.*

19 (ii) *If the surface mining operation cannot be reclaimed in
20 accordance with its approved reclamation plan or the financial
21 assurances are inadequate to reclaim in accordance with the
22 approved reclamation plan, the lead agency or the director may
23 use the proceeds of the financial assurances to reclaim or
24 remediate mining disturbances as appropriate for the site
25 conditions, as determined by the lead agency and the director. The
26 proceeds of the financial assurances shall not be used for any
27 other purpose.*

28 (iii) *The operator is responsible for the costs of conducting and
29 completing reclamation in accordance with the approved
30 reclamation plan or a remediation plan developed pursuant to this
31 section, as determined to be appropriate by the lead agency and
32 director, that are in excess of the proceeds of the financial
33 assurances.*

34 (c) *Financial assurances shall no longer be required of a surface
35 mining operation, and shall be released, upon written concurrence
36 by the lead agency and the director, which shall be forwarded to
37 the operator, that reclamation has been completed in accordance
38 with the approved reclamation plan. If a mining operation is sold
39 or ownership is transferred to another person, the existing financial
40 assurances shall remain in force and shall not be released by the*

1 *lead agency and the director until new financial assurances are*
2 *secured from the new owner and have been approved by the lead*
3 *agency in accordance with Sections 2770 and 2773.1. Within 30*
4 *days of the sale or transfer of the surface mining operation, the*
5 *new operator shall establish an appropriate financial assurance*
6 *mechanism and sign a new statement pursuant to paragraph (10)*
7 *of subdivision (c) of Section 2772.*

8 (d) The lead agency shall have primary responsibility to ~~seek~~
9 ~~forfeiture of~~ *seize* financial assurances and to reclaim mine sites
10 under subdivision (b). However, in cases where the board is not
11 the lead agency pursuant to Section 2774.4, the director may act
12 to ~~seek forfeiture of~~ *seize* financial assurances and reclaim mine
13 sites pursuant to subdivision (b) only if both of the following
14 ~~occurs:~~ *occur:*

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

17 (2) The lead agency has been notified in writing by the director
18 of the financial incapability of the operator or the abandonment
19 of the mining operation for at least 15 days, ~~and the lead agency~~
20 has not taken appropriate measures to ~~seek forfeiture of~~ *seize* the
21 financial assurances and reclaim the mine ~~site;~~ *site*, and one of the
22 following has occurred:

23 (A) The lead agency has been notified in writing by the director
24 that failure to take appropriate measures to ~~seek forfeiture of~~ *seize*
25 the financial assurances or to reclaim the mine site shall result in
26 actions being taken against the lead agency under Section 2774.4.

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

30 (C) The lead agency notifies the director in writing that its good
31 faith attempts to ~~seek forfeiture of~~ *seize* the financial assurances
32 have not been successful.

33 The director shall comply with subdivision (b) in ~~seeking~~
34 ~~forfeiture of~~ *seizing the* financial assurances and reclaiming mine
35 sites.

36 (e) The board may adopt regulations specifying financial
37 assurance mechanisms other than surety bonds, irrevocable letters
38 of credit, and trust funds, ~~which~~ *that* the board determines are
39 reasonably available and adequate to ensure reclamation pursuant
40 to this chapter, but these mechanisms ~~may~~ *shall* not include *solely*

1 financial ~~tests~~, *tests* or surety bonds executed by one or more
 2 personal sureties. These mechanisms may include reclamation
 3 bond pool ~~programs~~, *programs or corporate financial tests, as*
 4 *described in subdivision (f), combined with additional financial*
 5 *assurance mechanisms, as identified in this section, that together*
 6 *ensure the completion of reclamation in accordance with the*
 7 *approved reclamation plan.*

8 (f) (1) *Corporate financial tests shall provide for no more than*
 9 *75 percent of the financial assurance cost estimate approved within*
 10 *the last year. Use of a financial test shall meet all of the following*
 11 *requirements:*

12 (A) *Be annually approved by both the lead agency and the*
 13 *director and may be disallowed by either the lead agency or the*
 14 *director.*

15 (B) *Include an assessment from an independent certified public*
 16 *accountant using generally accepted accounting principles in the*
 17 *United States.*

18 (2) *Corporate financial tests shall only be allowed after the*
 19 *board adopts a regulation that establishes a comprehensive*
 20 *analysis of a corporation's financial status that includes financial*
 21 *net worth; income; liabilities, including other environmental*
 22 *assurances; and assets located within the United States. The*
 23 *regulation shall include additional measures to provide the lead*
 24 *agency or the director with recovery of costs associated with the*
 25 *full collection and satisfaction of the financial assurance*
 26 *mechanisms.*

27 (3) *A surface mining operation shall have at least 25 percent*
 28 *of the financial assurance cost estimate or four million dollars*
 29 *(\$4,000,000), whichever is greater, in an acceptable financial*
 30 *assurance mechanism other than a corporate financial test.*

31 (f)

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

38 *SEC. 11. Section 2773.4 is added to the Public Resources Code,*
 39 *to read:*

1 2773.4. (a) (1) *Prior to approving the financial assurances*
2 *of a surface mining operation pursuant to Sections 2770 and*
3 *2773.1, the lead agency shall submit the proposed financial*
4 *assurance cost estimate, with a statement that it is adequate to*
5 *reclaim the surface mining operation in accordance with the*
6 *approved reclamation plan, to the director for review. All*
7 *documentation for that submission shall be complete and submitted*
8 *to the director at one time.*

9 (2) *If the director determines that the lead agency's submission*
10 *pursuant to paragraph (1) is incomplete, the director shall return*
11 *the submission to the lead agency, specifically noting those*
12 *elements of the cost estimate that are incomplete. The review by*
13 *the director pursuant to subdivision (b) shall not begin until the*
14 *director receives a complete submission.*

15 (b) *The director shall have 45 days from the date of receipt of*
16 *a complete financial assurances cost estimate pursuant to*
17 *subdivision (a) to prepare written comments or request a*
18 *reassessment if the director chooses.*

19 (c) (1) (A) *If the director can demonstrate that the proposed*
20 *financial assurance cost estimate is inadequate to reclaim the*
21 *surface mining operation in accordance with the approved*
22 *reclamation plan, the director may request a reassessment by the*
23 *lead agency.*

24 (B) *If the director requests a reassessment of a financial*
25 *assurance cost estimate, the lead agency shall reassess and*
26 *resubmit the proposed financial assurance cost estimate within*
27 *45 days of the director's request.*

28 (2) *If the lead agency or operator disagrees with the director's*
29 *request for reassessment, or the director determines that a financial*
30 *assurance cost estimate resubmitted pursuant to this subdivision*
31 *remains inadequate, the lead agency, operator, or director may*
32 *request a review hearing by the board.*

33 (3) *Financial assurance costs estimates shall not be approved*
34 *pending the director's request for reassessment pursuant to this*
35 *subdivision.*

36 (4) *Financial assurance cost estimates determined to be*
37 *inadequate by the board shall be returned to the lead agency for*
38 *reassessment and resubmission to the director pursuant to this*
39 *section. Financial assurance cost estimates determined to be*
40 *adequate by the board may be approved by the lead agency.*

1 (d) (1) *The lead agency shall prepare a written response to the*
2 *director's comments, if any, describing the disposition of the major*
3 *issues raised by the director's comments. The lead agency shall*
4 *submit its proposed response to the director at least 30 days prior*
5 *to approval of the financial assurance cost estimate and shall*
6 *include either of the following:*

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

9 (B) *A detailed description of the reasons why the lead agency*
10 *proposes not to adopt the director's comments.*

11 (2) *Copies of any written comments received and responses*
12 *prepared by the lead agency pursuant to paragraph (1) shall be*
13 *provided to the operator.*

14 (3) (A) *The lead agency shall give the director at least 30 days'*
15 *notice of the time, place, and date of the hearing at which the*
16 *financial assurance cost estimate is scheduled to be approved by*
17 *the lead agency.*

18 (B) *If no hearing is required by this chapter, the local ordinance,*
19 *or other state law, then the lead agency shall provide 30 days'*
20 *notice to the director that it intends to approve the financial*
21 *assurance cost estimate.*

22 (4) *The lead agency shall send to the director its final response*
23 *to the director's comments within 30 days of its approval of the*
24 *financial assurance cost estimate during which time the department*
25 *retains all of its powers, duties, and authorities pursuant to this*
26 *chapter.*

27 (e) (1) *Within 30 days of lead agency approval of the financial*
28 *assurance cost estimate, the operator shall provide the lead agency*
29 *and the director an appropriate financial assurance mechanism*
30 *that is at least equal to the approved financial assurance cost*
31 *estimate.*

32 (2) *Within 15 days of receipt of a financial assurance*
33 *mechanism, the lead agency and the director shall review the*
34 *financial assurance mechanism to determine if the type of*
35 *mechanism, including release instructions, complies with the*
36 *requirements of this chapter.*

37 (3) *Financial assurance mechanisms determined to be*
38 *noncompliant with this chapter shall be returned to the operator,*
39 *with instructions on how to correct the type or release instructions*
40 *of the financial assurance mechanism.*

1 (f) To the extent there is a conflict between the comments of a
2 trustee agency or a responsible agency that are based on that
3 agency's statutory or regulatory authority and the comments of
4 other commenting agencies that are received by the lead agency
5 pursuant to the California Environmental Quality Act (Division
6 13 (commencing with Section 21000)) regarding a financial
7 assurance cost estimate or financial assurance mechanism, the
8 lead agency shall consider only the comments of the trustee agency
9 or responsible agency.

10 (g) The review of existing financial assurances shall not be
11 considered a project for the purposes of the California
12 Environmental Quality Act (Division 13 (commencing with Section
13 21000)).

14 ~~SEC. 7. Section 2774 of the Public Resources Code is amended~~
15 ~~to read:~~

16 ~~2774. (a) Every lead agency shall adopt ordinances in~~
17 ~~accordance with state policy that establish procedures for the~~
18 ~~review and approval of reclamation plans and financial assurances~~
19 ~~and the issuance of a permit to conduct surface mining operations;~~
20 ~~except that any lead agency without an active surface mining~~
21 ~~operation in its jurisdiction may defer adopting an implementing~~
22 ~~ordinance until the filing of a permit application. The ordinances~~
23 ~~shall establish procedures requiring at least one public hearing and~~
24 ~~shall be periodically reviewed by the lead agency and revised, as~~
25 ~~necessary, to ensure that the ordinances continue to be in~~
26 ~~accordance with state policy.~~

27 ~~(b) (1) (A) The lead agency shall conduct an inspection of a~~
28 ~~surface mining operation within six months of receipt by the lead~~
29 ~~agency of the surface mining operation's report submitted pursuant~~
30 ~~to Section 2207, solely to determine whether the surface mining~~
31 ~~operation is in compliance with this chapter. In no event shall a~~
32 ~~lead agency inspect a surface mining operation less than once in~~
33 ~~any calendar year. The lead agency shall cause an inspection to~~
34 ~~be conducted by a state licensed geologist, state licensed civil~~
35 ~~engineer, or state licensed geophysicist, who is experienced in land~~
36 ~~reclamation and who has not been employed by a surface mining~~
37 ~~operation within the jurisdiction of the lead agency in any capacity~~
38 ~~during the previous 12 months. If a lead agency operates a surface~~
39 ~~mining operation, the inspector shall not have been an employee~~
40 ~~of the lead agency in any capacity during the previous 12 months~~

1 unless, beginning January 1, 2018, the lead agency employee has
2 become certified as a surface mining operation inspector within
3 the previous two years pursuant to paragraph (2). All inspections
4 shall be conducted using a form developed by the department and
5 approved by the board that includes the professional licensing and
6 disciplinary information of the person who conducted the
7 inspection. The operator shall be solely responsible for the
8 reasonable cost of the inspection. The lead agency shall notify the
9 director within 30 days of the date of completion of the inspection
10 that the inspection has been conducted. The notice shall contain a
11 statement regarding the surface mining operation's compliance
12 with this chapter, shall include a copy of the completed inspection
13 form, and shall specify which aspects of the surface mining
14 operations, if any, are inconsistent with this chapter. If the surface
15 mining operation has a review of its reclamation plan, financial
16 assurances, or an interim management plan pending under
17 subdivision (b), (c), (d), or (h) of Section 2770, or an appeal
18 pending before the board or lead agency governing body under
19 subdivision (e) or (h) of Section 2770, the notice shall so indicate.
20 The lead agency shall forward to the operator a copy of the notice,
21 a copy of the completed inspection form, and any supporting
22 documentation, including, but not limited to, any inspection report
23 prepared by the geologist, civil engineer, or geophysicist, who
24 conducted the inspection.

25 (B) It is the intent of the Legislature to define which aspects of
26 an inspection constitute the professional practice of geology and
27 engineering requiring certification by an appropriate professional.

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

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

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

39 (2) If adequate and appropriate financial assurances have been
40 established for the surface mining operation.

1 ~~(3) If the surface mining operation has complied with any notice~~
2 ~~of violation or order to correct.~~

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

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

37 ~~(3) To the extent there is a conflict between the comments of a~~
38 ~~trustee agency or a responsible agency that are based on the~~
39 ~~agency's statutory or regulatory authority and the comments of~~
40 ~~other commenting agencies that are received by the lead agency~~

1 pursuant to the California Environmental Quality Act (Division
 2 13 (commencing with Section 21000)) regarding a reclamation
 3 plan or plan amendments, the lead agency shall consider only the
 4 comments of the trustee agency or responsible agency.

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

18 *SEC. 12. Section 2774 of the Public Resources Code is*
 19 *amended to read:*

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

31 (b) (1) ~~(A)~~ The lead agency shall conduct an inspection of a
 32 surface mining operation within six months of receipt by the lead
 33 agency of the surface mining operation's report submitted pursuant
 34 to Section 2207, solely to determine whether the surface mining
 35 operation is in compliance with this chapter. ~~In no event shall a A~~
 36 *lead agency shall not* inspect a surface mining operation less than
 37 once in any calendar year. The lead agency shall cause an
 38 inspection to be conducted by *an individual who qualified pursuant*
 39 *to paragraph (2), including, but not limited to,* a state licensed
 40 ~~geologist, geologist or state licensed civil engineer, or state licensed~~

1 geophysicist, who is experienced in land reclamation and who has
2 not been employed by a surface mining operation within the
3 jurisdiction of the lead agency in any capacity during the previous
4 12 months. If a lead agency operates a surface mining operation,
5 the inspector shall not have been an employee of the lead agency
6 in any capacity during the previous 12 months unless, beginning
7 January 1, 2018, the lead agency employee has become certified
8 as a surface mining operation inspector within the previous two
9 years pursuant to paragraph (2). months, except that a lead agency
10 employee who is not an independent contractor may inspect surface
11 mining operations within the local agency provided the employee
12 satisfies the provisions of paragraph (2) and subdivision (c). All
13 inspections shall be conducted using a form developed by the
14 department and approved by the board that ~~shall include~~ includes
15 the relevant professional licensing and disciplinary information
16 of the person qualified pursuant to paragraph (2) who conducted
17 the inspection. The operator shall be solely responsible for the
18 reasonable cost of the inspection. The lead agency shall notify the
19 director within ~~30~~ 60 days of the date of completion of the
20 inspection that the inspection has been conducted. The inspection
21 notice shall contain a statement regarding the surface mining
22 operation's compliance with this chapter, shall include a copy of
23 the completed inspection form, and shall specify which aspects of
24 the surface mining operations, if any, are inconsistent with this
25 ~~chapter.~~ chapter and those noncompliant aspects that have been
26 corrected following the inspection, with proof of correction. For
27 each remaining noncompliant aspect, the lead agency shall provide
28 to the director a copy of the notice of violation, the notice of
29 violation combined with an order to comply pursuant to Section
30 2774.1, or a statement that indicates the lead agency does not
31 intend to initiate an enforcement action pursuant to Section 2774.1.
32 If the surface mining operation has a review of its reclamation
33 plan, financial assurances, or an interim management plan pending
34 under subdivision ~~(b), (c), (d),~~ (b) or (h) of Section 2770, or an
35 appeal pending before the board or lead agency governing body
36 under subdivision (e) or (h) of Section 2770, the inspection notice
37 shall so indicate. The lead agency shall forward to the operator a
38 copy of the inspection notice, a copy of the completed inspection
39 form, and any supporting documentation, including, but not limited to,
40 to, any inspection report prepared by the geologist, civil engineer,

1 or geophysicist, who conducted the inspection: *individual qualified*
2 *pursuant to paragraph (2).*

3 ~~(B) It is the intent of the Legislature to define which aspects of~~
4 ~~an inspection constitute the professional practice of geology and~~
5 ~~engineering requiring certification by an appropriate professional.~~

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

10 ~~(e) In addition to subdivision (a), lead agencies or the State~~
11 ~~Mine Inspector may inspect all mining operations to determine if~~
12 ~~the operation is in compliance with this chapter and Section 2207.~~
13 ~~In conducting the inspection, the lead agencies or the State Mine~~
14 ~~Inspector shall determine all of the following:~~

15 ~~(1) If the mining operation is in compliance with its approved~~
16 ~~reclamation plan.~~

17 ~~(2) If adequate and appropriate financial assurances have been~~
18 ~~established for the mining operation.~~

19 ~~(3) If the mining operation has complied with any notice of~~
20 ~~violation or order to correct.~~

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

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

1 agency shall be forwarded to the operator. The lead agency shall
2 also give the director at least 30 days' notice of the time, place,
3 and date of the hearing before the lead agency at which time the
4 reclamation plan, plan amendment, or financial assurance is
5 scheduled to be approved by the lead agency. If no hearing is
6 required by this chapter, or by the local ordinance, or other state
7 law, then the lead agency shall provide 30 days' notice to the
8 director that it intends to approve the reclamation plan, plan
9 amendment, or financial assurance. The lead agency shall send to
10 the director its final response to the director's comments within
11 30 days following its approval of the reclamation plan, plan
12 amendment, or financial assurance during which period the
13 department retains all powers, duties, and authorities of this
14 chapter.

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

23 (e) A lead agency shall notify the director of the filing of an
24 application for a permit to conduct surface mining operations
25 within 30 days of an application being filed with the lead agency.
26 By July 1, 1991, each lead agency shall submit to the director for
27 every active or idle mining operation within its jurisdiction, a copy
28 of the mining permit required pursuant to Section 2774, and any
29 conditions or amendments to those permits. By July 1 of each
30 subsequent year, the lead agency shall submit to the director for
31 each active or idle mining operation a copy of any permit or
32 reclamation plan amendments, as applicable, or a statement that
33 there have been no changes during the previous year. Failure to
34 file with the director the information required under this section
35 shall be cause for action under Section 2774.4.

36 (2) (A) *The department and the board, in consultation with the*
37 *Board of Professional Engineers and Land Surveyors, shall adopt*
38 *regulations that set forth the minimum qualifications for a person*
39 *conducting an inspection of a surface mining operation pursuant*
40 *to this chapter. The regulations shall delineate those aspects of*

1 *an inspection that require the inspector to meet state licensure*
2 *requirements.*

3 *(B) Beginning January 1 of the year following adoption of the*
4 *regulations required pursuant to subparagraph (A), but not less*
5 *than 180 days after adoption, all surface mine inspections shall*
6 *be performed by a qualified individual.*

7 *(c) (1) On or before July 1, 2016, the department shall establish*
8 *a training program for all surface mine inspectors. The program*
9 *shall be designed to include a guidance document, developed by*
10 *the department and approved by the board, to provide instruction*
11 *and recommendations to surface mine inspectors performing*
12 *inspections pursuant to subdivision (b).*

13 *(2) The training program shall include no less than four*
14 *inspection workshops per year, offered by the department, in*
15 *different regions of the state, to provide practical application of*
16 *the guidance document material.*

17 *(3) On and after January 1, 2019, all inspectors shall have on*
18 *file with the lead agency and the department a certificate of*
19 *completion of an inspection workshop. An inspector shall attend*
20 *a workshop no later than five years after the date of his or her*
21 *most recent certificate.*

22 *(d) In addition to subdivision (b), lead agencies or the*
23 *Supervisor of Mines and Reclamation may inspect at any time all*
24 *surface mining operations to determine if the operation is in*
25 *compliance with this chapter and Section 2207.*

26 *(e) The approval of the guidance document by the board*
27 *pursuant to subdivision (c) is not the adoption of a regulation for*
28 *the purposes of the Administrative Procedure Act (Chapter 3.5*
29 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
30 *2 of the Government Code) and is not subject to that chapter.*

31 *SEC. 13. Section 2774.1 of the Public Resources Code is*
32 *amended to read:*

33 *2774.1. (a) Except as provided in subdivision (i) of Section*
34 *2770, if the lead agency or the director determines, based upon an*
35 *annual inspection pursuant to Section 2774, or otherwise confirmed*
36 *by an inspection of the mining operation, that a surface mining*
37 *operation is not in compliance with this chapter, the lead agency*
38 *or the director may notify the operator of that violation by personal*
39 *service or certified mail. If the lead agency or the director*
40 *determines that the noted violations cannot be corrected within*

1 *30 days of the notice, the lead agency shall or the director may*
2 *combine the notice of violation with an order to comply.* If the
3 violation extends beyond 30 days after the date of the lead agency's
4 or the director's notification, the lead agency or the director may
5 issue an order by personal service or certified mail requiring the
6 operator to comply with this chapter or, if the operator does not
7 have an approved reclamation plan or financial assurances, cease
8 all further mining activities.

9 (b) An order *to comply* issued under subdivision (a) shall ~~not~~
10 take effect ~~until 30 days following service unless the operator has~~
11 ~~been provided within that 30-day period requests~~ a hearing before
12 the lead agency for orders issued by the lead agency, or *the board*
13 for orders issued by the director, concerning the alleged violation.
14 An order ~~issued under subdivision (a) to comply~~ shall specify which
15 aspects of the surface mine's activities or operations are
16 inconsistent with this chapter, shall specify a time for compliance
17 that the lead agency or director determines is reasonable, *not to*
18 *exceed two years*, taking into account the seriousness of the
19 violation and any good faith efforts to comply with applicable
20 requirements, and ~~shall set a date for the hearing, which shall not~~
21 ~~be sooner than 30 days after the date of the order.~~ *may include an*
22 *administrative penalty imposed pursuant to subdivision (c).* *If a*
23 *lead agency or the director determines compliance with an order*
24 *to comply will exceed two years, the board may specify a longer*
25 *period based on an application and showing of good cause.*

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

1 ~~effective upon issuance of the order and payment shall be made~~
2 ~~to the lead agency or the director within 30 days, unless the~~
3 ~~operator petitions the legislative body of the lead agency, the board,~~
4 ~~or the superior court for review as provided in Section 2774.2. An~~
5 ~~order shall be served by personal service or by certified mail upon~~
6 ~~the operator. Penalties collected by the director shall not be used~~
7 ~~for purposes other than to cover the reasonable costs incurred by~~
8 ~~the director in implementing this chapter or Section 2207.~~

9 *(c) (1) In an order to comply pursuant to subdivision (b), the*
10 *lead agency or the director may impose an administrative penalty*
11 *of not more than five thousand dollars (\$5,000) per day, assessed*
12 *from the original date of noncompliance with this chapter. The*
13 *penalty may be imposed administratively by the lead agency or*
14 *the director. In determining the amount of the administrative*
15 *penalty, the lead agency or the director shall take into*
16 *consideration the nature, circumstances, extent, and gravity of the*
17 *violation or violations, any prior history of violations, the degree*
18 *of culpability, economic savings, if any, resulting from the*
19 *violation, and any other matters justice may require.*

20 *(2) If an operator fails to comply with an order to comply that*
21 *did not originally impose an administrative penalty, or if an*
22 *operator fails to submit a report or pay annual fees to the director*
23 *or lead agency pursuant to Section 2207, the lead agency or*
24 *director may impose an administrative penalty pursuant to this*
25 *paragraph. The administrative penalty shall become effective upon*
26 *issuance of the assessment and payment shall be made to the lead*
27 *agency or the director within 30 days, unless the operator petitions*
28 *the legislative body of the lead agency, the board, or the superior*
29 *court for review as provided in Section 2774.2. An assessment*
30 *shall be served by personal service or by certified mail upon the*
31 *operator.*

32 *(3) Penalties collected by the director shall not be used for*
33 *purposes other than to cover the reasonable costs incurred by the*
34 *director in implementing this chapter or Section 2207.*

35 *(d) If the lead agency or the director determines that the surface*
36 *mine is not in compliance with this chapter, so that the surface*
37 *mine presents an imminent and substantial endangerment to the*
38 *public health or the environment, the lead agency or the Attorney*
39 *General, on behalf of the director, may seek an order from a court*
40 *of competent jurisdiction enjoining that operation.*

1 (e) Upon a complaint by the director, the department, or the
2 board, the Attorney General may bring an action to recover
3 administrative penalties under this section, and penalties under
4 Section 2207, in any court of competent jurisdiction in this state
5 against any person violating any provision of this chapter or Section
6 2207, or any regulation adopted pursuant to this chapter or Section
7 2207. The Attorney General may bring this action on his or her
8 own initiative if, after examining the complaint and the evidence,
9 he or she believes a violation has occurred. The Attorney General
10 may also seek an order from a court of competent jurisdiction
11 compelling the operator to comply with this chapter and Section
12 2207.

13 (f) (1) The lead agency has primary responsibility for enforcing
14 this chapter and Section 2207. In cases where the board is not the
15 lead agency pursuant to Section 2774.4, enforcement actions may
16 be initiated by the director pursuant to this section only after the
17 violation has come to the attention of the director and either of the
18 following occurs:

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

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

27 (2) The director shall comply with this section in initiating
28 enforcement actions.

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

31 *SEC. 14. Section 2774.4 of the Public Resources Code is*
32 *amended to read:*

33 2774.4. (a) ~~If~~*The board shall exercise some or all of a lead*
34 *agency's powers under this chapter pursuant to subdivision (c),*
35 *except for permitting authority and vested rights determinations*
36 *pursuant to Section 2776, if the board finds that a lead agency*
37 *either has (1) approved reclamation plans or financial assurances*
38 *which are not consistent with this chapter, (2) failed to inspect or*
39 *cause the inspection of surface mining operations as required by*
40 *this chapter, (3) failed to seek forfeiture of financial assurances*

1 and to carry out reclamation of surface mining operations as
 2 required by this chapter, (4) failed to take appropriate enforcement
 3 actions as required by this chapter, (5) intentionally misrepresented
 4 the results of inspections required under this chapter, or (6) failed
 5 to submit information to the department as required by this chapter,
 6 the board shall exercise any of the powers of that lead agency
 7 under this chapter, except for permitting authority. *done any of the*
 8 *following:*

9 (1) *Approved reclamation plans or financial assurances that*
 10 *are not consistent with this chapter.*

11 (2) *Failed to inspect or cause the inspection of surface mining*
 12 *operations as required by this chapter.*

13 (3) *Failed to seize the financial assurances and to carry out the*
 14 *reclamation of surface mining operations as required by this*
 15 *chapter.*

16 (4) *Failed to take appropriate enforcement actions as required*
 17 *by this chapter.*

18 (5) *Intentionally misrepresented the results of inspections*
 19 *required under this chapter.*

20 (6) *Failed to submit information to the department as required*
 21 *by this chapter.*

22 (b) ~~If,~~ *The board shall conduct a public hearing no sooner than*
 23 *three years after the board has taken action pursuant to subdivision*
 24 ~~(a), the board finds, after a public hearing, that~~ *(a) to determine if*
 25 *a lead agency has corrected its deficiencies in implementing and*
 26 *enforcing this chapter, chapter and the rules and regulations*
 27 *adopted pursuant to this chapter, chapter or has developed a*
 28 *program that will adequately administer this chapter and Section*
 29 *2207. If the board finds sufficient evidence of correction or the*
 30 *development of a program to adequately implement this chapter*
 31 *and Section 2207, the board shall restore to the lead agency some*
 32 *or all of the powers assumed by the board pursuant to subdivision*
 33 *(a).*

34 (c) Before taking any action pursuant to subdivision (a), the
 35 board shall first ~~notify the lead agency of the identified~~
 36 ~~deficiencies, and allow the lead agency 45 days to correct the~~
 37 ~~deficiencies to the satisfaction of the board. If the lead agency has~~
 38 ~~not corrected the deficiencies to the satisfaction of the board within~~
 39 ~~the 45-day period, the board shall hold a public hearing within the~~
 40 ~~lead agency's area of jurisdiction, upon a 45-day written notice~~

1 given to the public in at least one newspaper of general circulation
2 within the city or county, and directly mailed to the lead agency
3 and to all surface mining operators within the lead agency's
4 jurisdiction who have submitted reports as required by Section
5 2207: conduct a hearing, providing 30 days' notice to the lead
6 agency, and shall determine if the lead agency has engaged in
7 conduct described in subdivision (a). If the board finds that the
8 lead agency has engaged in conduct described in subdivision (a),
9 the board shall do either of the following:

10 (1) (A) Require the lead agency to develop a remedial plan to
11 correct the noted deficiencies. The remedial plan shall describe
12 specific objectives and corresponding processes designed to
13 address, at a minimum, the noted deficiencies and a time that the
14 remedial plan will be fully implemented.

15 (B) The board shall set a hearing to review the completion of
16 the remedial plan consistent with paragraph (2) and subdivisions
17 (d) and (e).

18 (2) Take immediate action pursuant to subdivision (a) and hold
19 a public hearing within the lead agency's area of jurisdiction,
20 upon a 45-day written notice given to the public in at least one
21 newspaper of general circulation within the city or county and
22 directly mailed to the lead agency and to all operators within the
23 lead agency's jurisdiction who have submitted reports as required
24 by Section 2207.

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

31 (e) ~~If, after conducting the public hearing required by~~
32 ~~subdivision (e), the~~ (1) The board decides to take action pursuant
33 to subdivision ~~(a)~~, (a) and exercise some or all of a lead agency's
34 powers pursuant to this chapter, except for permitting authority
35 and vested rights determinations pursuant to Section 2776, the
36 board shall, based on the record of the public hearing, adopt written
37 findings ~~which~~ that explain all of the following:

38 (1)

39 (A) The action to be taken by the board.

40 (2)

1 (B) Why the board decided to take the action.

2 ~~(3)~~

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

5 (2) In addition, the findings shall address the significant issues
6 ~~raised~~, raised or written evidence ~~presented~~, presented by affected
7 ~~surface mining~~ operators, interested persons, ~~or the lead agency.~~
8 *agency, or the department and findings from any review of the*
9 *lead agency’s administrative and enforcement program.* The
10 transcript of testimony and exhibits, together with all papers and
11 requests filed in the proceedings, shall constitute the exclusive
12 record for decision by the board.

13 (f) *If the board finds that the lead agency has not satisfactorily*
14 *completed the remedial plan prepared pursuant to paragraph (1)*
15 *of subdivision (c), the board shall follow the procedures set forth*
16 *in paragraph (2) of subdivision (c) and subdivisions (d) and (e).*

17 ~~(f)~~

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

30 *SEC. 15. Section 2776 of the Public Resources Code is*
31 *amended to read:*

32 2776. (a) ~~No~~(1) A person who has obtained a vested right to
33 conduct surface mining operations prior to January 1, 1976, shall
34 *not* be required to secure a permit pursuant to this chapter as long
35 as the vested right continues and as long as no substantial changes
36 are made in the operation except in accordance with this chapter.
37 A person shall be deemed to have vested rights if, prior to January
38 1, 1976, the person has, in good faith and in reliance upon a permit
39 or other authorization, if the permit or other authorization was
40 required, diligently commenced surface mining operations and

1 incurred substantial liabilities for work and materials necessary
2 for the surface mining operations. Expenses incurred in obtaining
3 the enactment of an ordinance in relation to a particular operation
4 or the issuance of a permit shall not be deemed liabilities for work
5 or materials.

6 (2) *A lead agency shall maintain records associated with a*
7 *vested right determination.*

8 (b) The reclamation plan required to be filed ~~under~~ pursuant to
9 subdivision (b) of Section ~~2770~~, 2770 shall apply to operations
10 conducted after January 1, 1976, or to be conducted.

11 (c) Nothing in this chapter shall be construed as requiring the
12 filing of a reclamation plan ~~for~~, for or the reclamation ~~of~~, of mined
13 lands on which surface mining operations were conducted prior
14 to January 1, 1976.

15 *SEC. 16. No reimbursement is required by this act pursuant*
16 *to Section 6 of Article XIII B of the California Constitution because*
17 *a local agency or school district has the authority to levy service*
18 *charges, fees, or assessments sufficient to pay for the program or*
19 *level of service mandated by this act, within the meaning of Section*
20 *17556 of the Government Code.*