

AMENDED IN ASSEMBLY SEPTEMBER 2, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MARCH 19, 2015

**SENATE BILL**

**No. 209**

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**Introduced by Senator Pavley**

February 11, 2015

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An act to amend Sections 607, 2207, 2714, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.4, and 2776 of, and to add 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: 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 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) 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 the Board for Professional Engineers, Land Surveyors, and Geologists, 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.

(4) *This bill would make its operation contingent on the enactment of Assembly Bill 1142 of the 2015–16 Regular Session.*

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

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

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

3 607. The work of the department shall be divided into at least  
4 the following:

- 5 (a) California Geological Survey.
- 6 (b) Division of Oil, Gas, and Geothermal Resources.
- 7 (c) Division of Land Resource Protection.
- 8 (d) Division of Mines.

9 SEC. 2. Section 2006.5 is added to the Public Resources Code,  
10 to read:

11 2006.5. “Supervisor of Mines and Reclamation” means the  
12 individual directing the Division of Mines established pursuant to  
13 subdivision (d) of Section 607.

14 SEC. 3. Section 2207 of the Public Resources Code is amended  
15 to read:

16 2207. (a) The owner or the operator of a mining operation  
17 within the state shall forward to the director annually, not later  
18 than a date established by the director, upon forms approved by  
19 the board from time to time, a report that identifies all of the  
20 following:

- 1 (1) The name, address, and telephone number of the person,  
2 company, or other owner of the mining operation.
- 3 (2) The name, address, and telephone number of a designated  
4 agent who resides in this state, and who will receive and accept  
5 service of all orders, notices, and processes of the lead agency,  
6 board, director, or court.
- 7 (3) The location of the mining operation, its name, its mine  
8 number as issued by the Division of Mines or the director, its  
9 section, township, range, latitude, longitude, and approximate  
10 boundaries of the mining operation marked on a United States  
11 Geological Survey 7 ½-minute or 15-minute quadrangle map.
- 12 (4) The lead agency.
- 13 (5) The approval date of the mining operation's reclamation  
14 plan.
- 15 (6) The mining operation's status as active, idle, reclaimed, or  
16 in the process of being reclaimed.
- 17 (7) The commodities produced by the mine and the type of  
18 mining operation.
- 19 (8) Proof of annual inspection by the lead agency.
- 20 (9) Proof of the most recently approved financial cost estimate  
21 and the approved financial assurance cost mechanism.
- 22 (10) Ownership of the property, including government agencies,  
23 if applicable, by the assessor's parcel number, and total assessed  
24 value of the mining operation.
- 25 (11) The approximate permitted size of the mining operation  
26 subject to Chapter 9 (commencing with Section 2710), in acres.
- 27 (12) The approximate total acreage of land newly disturbed by  
28 the mining operation during the previous calendar year.
- 29 (13) The approximate total of disturbed acreage reclaimed during  
30 the previous calendar year.
- 31 (14) The approximate total unreclaimed disturbed acreage  
32 remaining as of the end of the calendar year.
- 33 (15) The total production for each mineral commodity produced  
34 during the previous year.
- 35 (16) A copy of any approved reclamation plan and any  
36 amendments or conditions of approval to any existing reclamation  
37 plan approved by the lead agency.
- 38 (b) (1) Every year, not later than the date established by the  
39 director, the person submitting the report pursuant to subdivision  
40 (a) shall forward to the lead agency, upon forms furnished by the

1 board, a report that provides all of the information specified in  
2 subdivision (a).

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

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

31 (d) (1) The board shall impose, by regulation, pursuant to  
32 paragraph (2), an annual reporting fee on, and method for collecting  
33 annual fees from, each active or idle mining operation. The  
34 maximum fee for any single mining operation may not exceed ten  
35 thousand dollars (\$10,000) annually and may not be less than one  
36 hundred dollars (\$100) annually, as adjusted for the cost of living  
37 as measured by the California Consumer Price Index for all urban  
38 consumers, calendar year averages, using the percentage change  
39 in the previous year, except that the maximum fee for any single  
40 mining operation shall not exceed six thousand dollars (\$6,000)

1 in the 2016–17 fiscal year and eight thousand dollars (\$8,000) in  
2 the 2017–18 fiscal year.

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

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

23 (3) The total revenue generated by the reporting fees may not  
24 exceed, and may be less than, the amount of eight million dollars  
25 (\$8,000,000), as adjusted for the cost of living as measured by the  
26 California Consumer Price Index for all urban consumers, calendar  
27 year averages, using the percentage change in the previous year,  
28 beginning with the 2016–17 fiscal year and annually thereafter. If  
29 the director determines that the revenue collected during the  
30 preceding fiscal year was greater or less than the cost to operate  
31 the program, the board shall adjust the fees to compensate for the  
32 overcollection or undercollection of revenues.

33 (4) (A) The reporting fees established pursuant to this  
34 subdivision shall be deposited in the Mine Reclamation Account,  
35 which is hereby created. Any fees, penalties, interest, fines, or  
36 charges collected by the director or board pursuant to this chapter  
37 or Chapter 9 (commencing with Section 2710) shall be deposited  
38 in the Mine Reclamation Account. The money in the account shall  
39 be available to the department and board, upon appropriation by  
40 the Legislature, for the purpose of carrying out this section and

1 complying with Chapter 9 (commencing with Section 2710), which  
2 includes, but is not limited to, classification and designation of  
3 areas with mineral resources of statewide or regional significance,  
4 reclamation plan and financial assurance review, mine inspection,  
5 and enforcement.

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

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

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

32 (e) The lead agency, or the board when acting as the lead agency,  
33 may impose a fee upon each mining operation to cover the  
34 reasonable costs incurred in implementing this chapter and Chapter  
35 9 (commencing with Section 2710).

36 (f) For purposes of this section, "mining operation" means a  
37 mining operation of any kind or character whatever in this state,  
38 including, but not limited to, a mining operation that is classified  
39 as a "surface mining operation" as defined in Section 2735, unless  
40 excepted by Section 2714. For the purposes of fee collections only,

1 “mining operation” may include one or more mines operated by  
2 a single operator or mining company on one or more sites, if the  
3 total annual combined mineral production for all sites is less than  
4 100 troy ounces for precious metals, if precious metals are the  
5 primary mineral commodity produced, or less than 100,000 short  
6 tons if the primary mineral commodity produced is not precious  
7 metals.

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

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

34 SEC. 4. Section 2714 of the Public Resources Code is amended  
35 to read:

36 2714. This chapter does not apply to any of the following  
37 activities:

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

39 (b) Onsite excavation and onsite earthmoving activities that are  
40 integral and necessary for the construction of structures and that

1 are undertaken to prepare a site for the construction of those  
2 structures, including landscaping or other land improvements  
3 associated with those structures, including the related excavation,  
4 grading, compaction, or the creation of fills, road cuts, and  
5 embankments, whether or not surplus materials are exported from  
6 the site, subject to all of the following conditions:

7 (1) All required permits for the construction and any associated  
8 landscaping or related land improvements have been approved by  
9 a public agency in accordance with applicable provisions of state  
10 law and locally adopted plans and ordinances, including, but not  
11 limited to, the California Environmental Quality Act (Division 13  
12 (commencing with Section 21000)).

13 (2) The lead agency's approval of the construction project  
14 included consideration of the onsite excavation and onsite  
15 earthmoving activities pursuant to the California Environmental  
16 Quality Act (Division 13 (commencing with Section 21000)).

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

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

24 (c) Operation of a plant site used for mineral processing,  
25 including associated onsite structures, equipment, machines, tools,  
26 or other materials, including the onsite stockpiling and onsite  
27 recovery of mined materials, subject to all of the following  
28 conditions:

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

31 (2) The plant site is located on lands zoned industrial or  
32 commercial or are contained within a zoning category intended  
33 exclusively for industrial activities by the applicable city or county.

34 (3) None of the minerals being processed are being extracted  
35 onsite.

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

39 (d) Prospecting for or the extraction of minerals for commercial  
40 purposes where the removal of overburden or mineral product

1 totals less than 1,000 cubic yards in any one location and the total  
2 surface area disturbed is less than one acre.

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

6 (f) Any other surface mining operations that the board  
7 determines to be of an infrequent nature and that involve only  
8 minor surface disturbances.

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

11 (h) Emergency excavations or grading conducted by the  
12 Department of Water Resources or the Central Valley Flood  
13 Protection Board for the purpose of averting, alleviating, repairing,  
14 or restoring damage to property due to imminent or recent floods,  
15 disasters, or other emergencies.

16 (i) (1) Surface mining operations conducted on lands owned  
17 or leased, or upon which easements or rights-of-way have been  
18 obtained, by the Department of Water Resources for the purpose  
19 of the State Water Resources Development System or flood control,  
20 and surface mining operations on lands owned or leased, or upon  
21 which easements or rights-of-way have been obtained, by the  
22 Central Valley Flood Protection Board for the purpose of flood  
23 control, if the Department of Water Resources adopts, after  
24 submission to and consultation with, the department, a reclamation  
25 plan for lands affected by these activities, and those lands are  
26 reclaimed in conformance with the standards specified in  
27 regulations of the board adopted pursuant to this chapter. The  
28 Department of Water Resources shall provide an annual report to  
29 the department by the date specified by the department on these  
30 mining activities.

31 (2) Nothing in this subdivision shall require the Department of  
32 Water Resources or the Central Valley Flood Protection Board to  
33 obtain a permit or secure approval of a reclamation plan from any  
34 city or county in order to conduct surface mining operations  
35 specified in paragraph (1). Nothing in this subdivision shall  
36 preclude the bringing of an enforcement action pursuant to Section  
37 2774.1, if it is determined that a surface mine operator, acting  
38 under contract with the Department of Water Resources or the  
39 Central Valley Flood Protection Board on lands other than those  
40 owned or leased, or upon which easements or rights-of-way have

1 been obtained, by the Department of Water Resources or the  
2 Central Valley Flood Protection Board, is otherwise not in  
3 compliance with this chapter.

4 (j) (1) Excavations or grading for the exclusive purpose of  
5 obtaining materials for roadbed construction and maintenance  
6 conducted in connection with timber operations or forest  
7 management on land owned by the same person or entity. This  
8 exemption is limited to excavation and grading that is conducted  
9 adjacent to timber operation or forest management roads and shall  
10 not apply to onsite excavation or grading that occurs within 100  
11 feet of a Class One watercourse or 75 feet of a Class Two  
12 watercourse, or to excavation for materials that are, or have been,  
13 sold for commercial purposes.

14 (2) This exemption shall be available only if slope stability and  
15 erosion are controlled in accordance with subdivision (f) of Section  
16 3704 and subdivision (d) of Section 3706 of Title 14 of the  
17 California Code of Regulations and, upon closure of the site, the  
18 person closing the site implements, where necessary, revegetation  
19 measures and postclosure uses in consultation with the Department  
20 of Forestry and Fire Protection.

21 (k) Excavations, grading, or other earthmoving activities in an  
22 oil or gas field that are integral to and necessary for ongoing  
23 operations for the extraction of oil or gas that comply with all of  
24 the following conditions:

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

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

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

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

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

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

38 SEC. 5. Section 2733 of the Public Resources Code is amended  
39 to read:

1 2733. “Reclamation” means the combined process of land  
2 treatment that minimizes water degradation, air pollution, damage  
3 to aquatic or wildlife habitat, flooding, erosion, and other adverse  
4 effects from surface mining operations, including adverse surface  
5 effects incidental to underground mines, so that mined lands are  
6 reclaimed to a usable condition that is readily adaptable for  
7 alternate land uses and create no danger to public health or safety.  
8 The process may extend to affected lands surrounding mined lands,  
9 and may require backfilling, grading, resoiling, revegetation, soil  
10 compaction, slope stabilization, or other measures.

11 SEC. 6. Section 2736 is added to the Public Resources Code,  
12 to read:

13 2736. “Financial assurance” means an approved current  
14 financial assurance cost estimate and a financial assurance  
15 mechanism that is at least equal to the current approved financial  
16 assurance cost estimate.

17 SEC. 7. Section 2770 of the Public Resources Code is amended  
18 to read:

19 2770. (a) Except as provided in this section, a person shall not  
20 conduct surface mining operations unless a permit is obtained  
21 from, a reclamation plan has been submitted to and approved by,  
22 and financial assurances for reclamation have been approved by  
23 the lead agency for the operation pursuant to this article.

24 (b) A person with an existing surface mining operation who has  
25 vested rights pursuant to Section 2776 and who does not have an  
26 approved reclamation plan shall submit a reclamation plan to the  
27 lead agency not later than March 31, 1988. If a reclamation plan  
28 application is not on file by March 31, 1988, the continuation of  
29 the surface mining operation is prohibited until a reclamation plan  
30 is submitted to the lead agency.

31 (c) [Reserved]

32 (d) [Reserved]

33 (e) A person who, based on the evidence of the record, can  
34 substantiate that a lead agency has either (1) failed to act according  
35 to due process or has relied on considerations not related to the  
36 specific applicable requirements of Sections 2772, 2773, and  
37 2773.1, and the lead agency surface mining ordinance adopted  
38 pursuant to subdivision (a) of Section 2774, in reaching a decision  
39 to deny approval of a reclamation plan or financial assurances for  
40 reclamation, or (2) failed to act within a reasonable time of receipt

1 of a completed application, may appeal that action or inaction to  
2 the board.

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

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

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

35 (2) Except for an interim management plan for a borrow pit  
36 surface mining ~~operation~~, *operation* owned or operated by the lead  
37 agency solely for use by the lead ~~agency~~, *agency* an interim  
38 management plan may remain in effect for a period not to exceed  
39 five years, at which time the lead agency shall do one of the  
40 following:

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

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

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

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

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

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

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

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

6 (j) Notwithstanding paragraph (1) of subdivision (b) of Section  
7 2774, a lead agency may conduct an inspection of a borrow pit  
8 surface mining ~~operation, operation~~ owned or operated by the lead  
9 agency solely for use by the lead ~~agency, agency~~ once every two  
10 calendar years during a period when the borrow pit surface mining  
11 operation is idle.

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

14 2772. (a) The reclamation plan shall be filed with the lead  
15 agency, on a form provided by the lead agency, by any person who  
16 owns, leases, or otherwise controls or operates on all or any portion  
17 of any mined lands and who plans to conduct surface mining  
18 operations on the lands.

19 (b) ~~A~~ *In addition to the other requirements for a reclamation*  
20 *plan, a reclamation plan for a borrow pit surface mining* ~~operation,~~  
21 *operation* owned or operated by the lead agency solely for use by  
22 the lead ~~agency, agency~~ shall, ~~in addition to the other requirements~~  
23 ~~of a reclamation plan,~~ include an interim management plan that  
24 shall maintain the site in compliance with this chapter during a  
25 period when the borrow pit surface mining operation is idle.

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

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

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

33 (3) The proposed dates for the initiation of mining operations  
34 and the completion of mining and reclamation of the surface mining  
35 operation.

36 (4) The maximum anticipated depth of the surface mining  
37 operation.

38 (5) A reclamation plan map or maps that shall include all of the  
39 following:

1 (A) Size and legal description of the lands that will be affected  
2 by the surface mining operation and the names and addresses of  
3 the owners of all surface interests and mineral interests in the lands.

4 (B) Clearly defined and accurately drawn property lines,  
5 setbacks, easements, and the reclamation plan boundary.

6 (C) Existing topography and final topography depicted with  
7 contour lines drawn at appropriate intervals for the site's  
8 conditions.

9 (D) Detailed geologic description of the area of the surface  
10 mining operation.

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

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

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

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

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

38 (A) A description of the manner in which known contaminants  
39 will be controlled and mining waste will be disposed.

1 (B) A description of the manner in which affected streambed  
2 channels and streambanks will be rehabilitated to a condition that  
3 minimizes erosion and sedimentation.

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

6 (10) A statement that the person submitting the reclamation  
7 plan accepts responsibility for reclaiming the mined lands in  
8 accordance with the reclamation plan.

9 (11) Any other information that the lead agency may require  
10 by ordinance.

11 (d) An item of information or a document required pursuant to  
12 this chapter, including subdivision (c), that has already been  
13 prepared as part of a permit application for the surface mining  
14 operation, or as part of an environmental document prepared for  
15 the project pursuant to the California Environmental Quality Act  
16 (Division 13 (commencing with Section 21000)), or required as a  
17 condition of approval, shall be included in the reclamation plan.  
18 Regulatory aspects that are solely of a local concern shall not be  
19 included in the reclamation plan. To the extent the information or  
20 document referenced in the reclamation plan is used to meet the  
21 requirements of this chapter, including subdivision (c), the  
22 information or document shall become part of the reclamation plan  
23 and shall be subject to all other requirements of this chapter.

24 (e) This section does not limit or expand the Supervisor of Mines  
25 and Reclamation's authority or responsibility to review a document  
26 in accordance with the California Environmental Quality Act  
27 (Division 13 (commencing with Section 21000)).

28 SEC. 9. Section 2772.1 is added to the Public Resources Code,  
29 to read:

30 2772.1. (a) (1) Prior to approving a surface mining operation's  
31 reclamation plan or plan amendments, the lead agency shall submit  
32 the proposed final reclamation plan or amendments to the director  
33 for review. All documentation for the submission shall be submitted  
34 to the director at one time.

35 (2) An item of information or a document required pursuant to  
36 this chapter, including subdivision (c) of Section 2772, that has  
37 been prepared as part of a permit application for the surface mining  
38 operation, not including aspects that are solely of a local concern,  
39 or as part of an environmental document prepared for the project  
40 pursuant to the California Environmental Quality Act (Division

1 13 (commencing with Section 21000)) shall be incorporated into  
2 the proposed final reclamation plan. An item of information or a  
3 document that is incorporated shall be inserted into the  
4 corresponding section of the proposed final reclamation plan or  
5 attached to the proposed final reclamation plan with a specific  
6 reference in the corresponding section of the proposed final  
7 reclamation plan. Any information or document incorporated into  
8 the proposed final reclamation plan shall become part of the  
9 approved reclamation plan and shall be subject to all other  
10 requirements of this article.

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

14 (A) The applicable requirements of this chapter, including  
15 subdivision (c) of Section 2772.

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

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

21 (b) (1) The director shall have 30 days from the date of receipt  
22 of a proposed final reclamation plan or plan amendments submitted  
23 pursuant to subdivision (a) to prepare written comments if the  
24 director chooses.

25 (2) If the director determines that the lead agency's submission  
26 pursuant to subdivision (a) is incomplete or that the submission  
27 includes maps, diagrams, or calculations that require preparation  
28 by an appropriately licensed California-licensed professional, the  
29 director shall return the submission to the lead agency. The director  
30 shall identify the incomplete components or those maps, diagrams,  
31 or calculations that require completion by an appropriately licensed  
32 California-licensed professional. The review by the director  
33 pursuant to paragraph (1) shall not begin until the director receives  
34 a complete submission, including maps, diagrams, or calculations  
35 prepared by an appropriately licensed California-licensed  
36 professional.

37 (3) (A) The lead agency shall review and evaluate and prepare  
38 a written response to the director's comments received pursuant  
39 to paragraph (1) describing the disposition of the major issues  
40 raised by the comments. The lead agency shall submit the lead

1 agency's response to the director at least 30 days prior to the  
2 intended approval of the proposed final reclamation plan or plan  
3 amendment. The lead agency's response shall include either of the  
4 following:

5 (i) A description of how the lead agency proposes to adopt the  
6 director's comments to the proposed final reclamation plan or plan  
7 amendment.

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

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

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

17 (ii) If no hearing is required by this chapter, the local ordinance,  
18 or other state law, the lead agency shall provide 30 days' notice  
19 to the director that the lead agency intends to approve the proposed  
20 final reclamation plan or plan amendment.

21 (D) Within 30 days following approval of the reclamation plan,  
22 the lead agency shall provide the director notice of the approval  
23 and a statement that identifies any additional conditions or other  
24 permit requirements imposed upon the surface mining operation.  
25 During that time, the department shall retain all of its powers,  
26 duties, and authorities pursuant to this chapter. The lead agency  
27 shall provide, as soon as practicable, but no later than 60 days after  
28 approval of the reclamation plan, both of the following:

29 (i) Certified copies of all maps, diagrams, or calculations signed  
30 and sealed by an appropriately licensed California-licensed  
31 professional.

32 (ii) A certified copy of the approved reclamation plan  
33 incorporating all approved modifications to the proposed final  
34 reclamation plan.

35 (4) To the extent there is a conflict between the comments of a  
36 trustee agency or a responsible agency that are based on that  
37 agency's statutory or regulatory authority and the comments of  
38 other commenting agencies that are received by the lead agency  
39 pursuant to the California Environmental Quality Act (Division  
40 13 (commencing with Section 21000)) regarding a reclamation

1 plan or plan amendments, the lead agency shall consider only the  
2 comments of the trustee agency or responsible agency.

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

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

20 SEC. 10. Section 2773.1 of the Public Resources Code is  
21 amended to read:

22 2773.1. (a) Lead agencies shall require financial assurances  
23 of each surface mining operation to ensure reclamation is  
24 performed in accordance with the surface mining operation's  
25 approved reclamation plan, as follows:

26 (1) Financial assurance mechanisms may take the form of surety  
27 bonds executed by an admitted surety insurer, as defined in  
28 subdivision (a) of Section 995.120 of the Code of Civil Procedure,  
29 irrevocable letters of credit, trust funds, or other forms of financial  
30 assurances specified by the board pursuant to subdivision (e) that  
31 are at least equal to the annual financial assurance cost estimate  
32 that the lead agency reasonably determines are adequate to perform  
33 reclamation in accordance with the surface mining operation's  
34 approved reclamation plan.

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

38 (3) The amount of financial assurances required of a surface  
39 mining operation for any one year shall be adjusted annually to  
40 account for new lands disturbed by surface mining operations,

1 inflation, and reclamation of lands accomplished in accordance  
2 with the approved reclamation plan.

3 (4) Each financial assurance mechanism shall be made payable  
4 to the lead agency and the department. A financial assurance  
5 mechanism shall not be released without the written consent of  
6 the lead agency and the department. Financial assurance  
7 mechanisms that were approved by the lead agency prior to January  
8 1, 1993, and were made payable to the State Geologist shall be  
9 considered payable to the department for purposes of this chapter.  
10 However, if a surface mining operation has received approval of  
11 its financial assurances from a public agency other than the lead  
12 agency, the lead agency shall deem those financial assurances  
13 adequate for purposes of this section, or shall credit them toward  
14 fulfillment of the financial assurances required by this section, if  
15 they are made payable to the public agency, the lead agency, and  
16 the department and otherwise meet the requirements of this section.  
17 In any event, if a lead agency and one or more public agencies  
18 exercise jurisdiction over a surface mining operation, the total  
19 amount of financial assurances required by the lead agency and  
20 the public agencies for any one year shall not exceed that amount  
21 which is necessary to perform reclamation of lands remaining  
22 disturbed. For purposes of this paragraph, a “public agency” may  
23 include a federal agency.

24 (b) (1) If the lead agency has evidence that an operator is  
25 financially incapable of performing reclamation in accordance  
26 with its approved reclamation land or that the operator has  
27 abandoned the surface mining operation without completing  
28 reclamation, the lead agency or the board shall conduct a public  
29 hearing with notice of the hearing provided to the operator and the  
30 department at least 30 days prior to the hearing.

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

37 (A) Notify the operator by personal service or certified mail  
38 that the lead agency or the director intends to take appropriate  
39 action to seize the financial assurances and specify the reasons for  
40 so doing.

1 (B) (i) Proceed to take appropriate action to seize the financial  
2 assurances and use the proceeds from the financial assurances to  
3 conduct and complete reclamation in accordance with the approved  
4 reclamation plan.

5 (ii) If the surface mining operation cannot be reclaimed in  
6 accordance with its approved reclamation plan or the financial  
7 assurances are inadequate to reclaim in accordance with the  
8 approved reclamation plan, the lead agency or the director may  
9 use the proceeds of the financial assurances to reclaim or remediate  
10 mining disturbances as appropriate for the site conditions, as  
11 determined by the lead agency and the director. The proceeds of  
12 the financial assurances shall not be used for any other purpose.

13 (iii) The operator is responsible for the costs of conducting and  
14 completing reclamation in accordance with the approved  
15 reclamation plan or a remediation plan developed pursuant to this  
16 section, as determined to be appropriate by the lead agency and  
17 director, that are in excess of the proceeds of the financial  
18 assurances.

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

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

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

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

6 (A) The lead agency has been notified in writing by the director  
7 that failure to take appropriate measures to seize the financial  
8 assurances or to reclaim the mine site shall result in actions being  
9 taken against the lead agency under Section 2774.4.

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

13 (C) The lead agency notifies the director in writing that its good  
14 faith attempts to seize the financial assurances have not been  
15 successful.

16 The director shall comply with subdivision (b) in seizing the  
17 financial assurances and reclaiming mine sites.

18 (e) The board may adopt regulations specifying financial  
19 assurance mechanisms other than surety bonds, irrevocable letters  
20 of credit, and trust funds that the board determines are reasonably  
21 available and adequate to ensure reclamation pursuant to this  
22 chapter, but these mechanisms shall not include solely financial  
23 tests or surety bonds executed by one or more personal sureties.  
24 These mechanisms may include reclamation bond pool programs  
25 or corporate financial tests, as described in subdivision (f),  
26 combined with additional financial assurance mechanisms, as  
27 identified in this section, that together ensure the completion of  
28 reclamation in accordance with the approved reclamation plan.

29 (f) (1) Corporate financial tests shall provide for no more than  
30 75 percent of the financial assurance cost estimate approved within  
31 the last year. Use of a financial test shall meet all of the following  
32 requirements:

33 (A) Be annually approved by both the lead agency and the  
34 director and may be disallowed by either the lead agency or the  
35 director.

36 (B) Include an assessment from an independent certified public  
37 accountant using generally accepted accounting principles in the  
38 United States.

39 (2) Corporate financial tests shall only be allowed after the board  
40 adopts a regulation that establishes a comprehensive analysis of a

1 corporation's financial status that includes financial net worth;  
2 income; liabilities, including other environmental assurances; and  
3 assets located within the United States. The regulation shall include  
4 additional measures to provide the lead agency or the director with  
5 the recovery of costs associated with the full collection and  
6 satisfaction of the financial assurance mechanisms.

7 (3) A surface mining operation shall have at least 25 percent of  
8 the financial assurance cost estimate or four million dollars  
9 (\$4,000,000), whichever is greater, in an acceptable financial  
10 assurance mechanism other than a corporate financial test.

11 (4) Subject to the requirements of this subdivision, an operator  
12 of multiple surface mining operations may use a corporate financial  
13 test that combines the financial assurance cost estimates of each  
14 surface mining operation.

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

21 SEC. 11. Section 2773.4 is added to the Public Resources Code,  
22 to read:

23 2773.4. (a) (1) Prior to approving the financial assurances of  
24 a surface mining operation pursuant to Sections 2770 and 2773.1,  
25 the lead agency shall submit the proposed financial assurance cost  
26 estimate, with a statement that it is adequate to reclaim the surface  
27 mining operation in accordance with the approved reclamation  
28 plan, to the director for review. All documentation for that  
29 submission shall be complete and submitted to the director at one  
30 time.

31 (2) If the director determines that the lead agency's submission  
32 pursuant to paragraph (1) is incomplete, the director shall return  
33 the submission to the lead agency, specifically noting those  
34 elements of the cost estimate that are incomplete. The review by  
35 the director pursuant to subdivision (b) shall not begin until the  
36 director receives a complete submission.

37 (b) The director shall have 45 days from the date of receipt of  
38 a complete financial assurance cost estimate pursuant to subdivision  
39 (a) to prepare written comments or request a reassessment if the  
40 director chooses.

1 (c) (1) (A) If the director can demonstrate that the proposed  
2 financial assurance cost estimate is inadequate to reclaim the  
3 surface mining operation in accordance with the approved  
4 reclamation plan, the director may request a reassessment by the  
5 lead agency.

6 (B) If the director requests a reassessment of a financial  
7 assurance cost estimate, the lead agency shall reassess and resubmit  
8 the proposed financial assurance cost estimate within 45 days of  
9 the director's request.

10 (2) If the lead agency or operator disagrees with the director's  
11 request for reassessment, or the director determines that a financial  
12 assurance cost estimate resubmitted pursuant to this subdivision  
13 remains inadequate, the lead agency, operator, or director may  
14 request a review hearing by the board.

15 (3) Financial assurance cost estimates shall not be approved  
16 pending the director's request for reassessment pursuant to this  
17 subdivision.

18 (4) Financial assurance cost estimates determined to be  
19 inadequate by the board shall be returned to the lead agency for  
20 reassessment and resubmission to the director pursuant to this  
21 section. Financial assurance cost estimates determined to be  
22 adequate by the board may be approved by the lead agency.

23 (d) (1) The lead agency shall prepare a written response to the  
24 director's comments, if any, describing the disposition of the major  
25 issues raised by the director's comments. The lead agency shall  
26 submit its proposed response to the director at least 30 days prior  
27 to approval of the financial assurance cost estimate and shall  
28 include either of the following:

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

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

33 (2) Copies of any written comments received and responses  
34 prepared by the lead agency pursuant to paragraph (1) shall be  
35 provided to the operator.

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

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

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

10 (e) (1) Within 30 days of the lead agency's approval of the  
11 financial assurance cost estimate, the operator shall provide the  
12 lead agency and the director an appropriate financial assurance  
13 mechanism that is at least equal to the approved financial assurance  
14 cost estimate.

15 (2) Within 15 days of receipt of a financial assurance  
16 mechanism, the lead agency and the director shall review the  
17 financial assurance mechanism to determine if the type of  
18 mechanism, including release instructions, complies with the  
19 requirements of this chapter.

20 (3) Financial assurance mechanisms determined to be  
21 noncompliant with this chapter shall be returned to the operator,  
22 with instructions on how to correct the type or release instructions  
23 of the financial assurance mechanism.

24 (f) To the extent there is a conflict between the comments of a  
25 trustee agency or a responsible agency that are based on that  
26 agency's statutory or regulatory authority and the comments of  
27 other commenting agencies that are received by the lead agency  
28 pursuant to the California Environmental Quality Act (Division  
29 13 (commencing with Section 21000)) regarding a financial  
30 assurance cost estimate or financial assurance mechanism, the lead  
31 agency shall consider only the comments of the trustee agency or  
32 responsible agency.

33 (g) The review of existing financial assurances shall not be  
34 considered a project for the purposes of the California  
35 Environmental Quality Act (Division 13 (commencing with Section  
36 21000)).

37 SEC. 12. Section 2774 of the Public Resources Code is  
38 amended to read:

39 2774. (a) Every lead agency shall adopt ordinances in  
40 accordance with state policy that establish procedures for the

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

10 (b) (1) (A) The lead agency shall conduct an inspection of a  
11 surface mining operation within six months of receipt by the lead  
12 agency of the surface mining operation's report submitted pursuant  
13 to Section 2207, solely to determine whether the surface mining  
14 operation is in compliance with this chapter.

15 (B) A lead agency shall not inspect a surface mining operation  
16 less than once in any calendar year. The lead agency shall cause  
17 an inspection to be conducted by an individual who is qualified  
18 pursuant to paragraph (2) and who satisfies the provisions of  
19 subdivision (c), including, but not limited to, a state-licensed  
20 geologist, state-licensed civil engineer, state-licensed landscape  
21 architect, state-licensed forester, or lead agency employee who  
22 has not been employed by the surface mining operation within the  
23 jurisdiction of the lead agency in any capacity during the previous  
24 12 months.

25 (C) Notwithstanding subparagraph (B), a lead agency employee  
26 who is qualified pursuant to paragraph (2) and who satisfies the  
27 provisions of subdivision (c) may inspect a surface mining  
28 operation owned or operated by the lead agency.

29 (D) All inspections shall be conducted using a form developed  
30 by the department and approved by the board that includes the  
31 relevant professional licensing and disciplinary information of the  
32 person qualified pursuant to paragraph (2) who conducted the  
33 inspection. The operator shall be solely responsible for the  
34 reasonable cost of the inspection.

35 (E) The lead agency shall notify the director within 60 days of  
36 the date of completion of the inspection that the inspection has  
37 been conducted. The inspection notice shall contain a statement  
38 regarding the surface mining operation's compliance with this  
39 chapter, shall include a copy of the completed inspection form,  
40 and shall specify which aspects of the surface mining operations,

1 if any, are inconsistent with this chapter and those noncompliant  
2 aspects that have been corrected following the inspection, with  
3 proof of correction. For each remaining noncompliant aspect, the  
4 lead agency shall provide to the director a copy of the notice of  
5 violation, the notice of violation combined with an order to comply  
6 pursuant to Section 2774.1, or a statement that indicates the lead  
7 agency does not intend to initiate an enforcement action pursuant  
8 to Section 2774.1. If the surface mining operation has a review of  
9 its reclamation plan, financial assurances, or an interim  
10 management plan pending under subdivision (b) or (h) of Section  
11 2770, or an appeal pending before the board or lead agency  
12 governing body under subdivision (e) or (h) of Section 2770, the  
13 inspection notice shall so indicate. The lead agency shall forward  
14 to the operator a copy of the inspection notice, a copy of the  
15 completed inspection form, and any supporting documentation,  
16 including, but not limited to, any inspection report prepared by the  
17 individual qualified pursuant to paragraph (2).

18 (2) (A) The department and the board, in consultation with the  
19 Board for Professional Engineers, Land Surveyors, and Geologists,  
20 shall adopt regulations that set forth the minimum qualifications  
21 for a person conducting an inspection of a surface mining operation  
22 pursuant to this chapter. The regulations shall delineate those  
23 aspects of an inspection that require the inspector to meet state  
24 licensure requirements.

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

29 (c) (1) On or before July 1, 2016, the department shall establish  
30 a training program for all surface mine inspectors. The program  
31 shall be designed to include a guidance document, developed by  
32 the department and approved by the board, to provide instruction  
33 and recommendations to surface mine inspectors performing  
34 inspections pursuant to subdivision (b).

35 (2) The training program shall include no less than four  
36 inspection workshops per year, offered by the department, in  
37 different regions of the state, to provide practical application of  
38 the guidance document material.

39 (3) On and after January 1, 2019, all inspectors shall have on  
40 file with the lead agency and the department a certificate of

1 completion of an inspection workshop. An inspector shall attend  
2 a workshop no later than five years after the date of his or her most  
3 recent certificate.

4 (d) In addition to subdivision (b), lead agencies or the Supervisor  
5 of Mines and Reclamation may inspect at any time a surface mining  
6 operation to determine if the operation is in compliance with this  
7 chapter and Section 2207.

8 (e) The approval of the guidance document by the board  
9 pursuant to subdivision (c) is not the adoption of a regulation for  
10 the purposes of the Administrative Procedure Act (Chapter 3.5  
11 (commencing with Section 11340) of Part 1 of Division 3 of Title  
12 2 of the Government Code) and is not subject to that chapter.

13 SEC. 13. Section 2774.1 of the Public Resources Code is  
14 amended to read:

15 2774.1. (a) Except as provided in subdivision (i) of Section  
16 2770, if the lead agency or the director determines, based upon an  
17 annual inspection pursuant to Section 2774, or otherwise confirmed  
18 by an inspection of the mining operation, that a surface mining  
19 operation is not in compliance with this chapter, the lead agency  
20 or the director may notify the operator of that violation by personal  
21 service or certified mail. If the lead agency or the director  
22 determines that the noted violations cannot be corrected within 30  
23 days of the notice, the lead agency shall or the director may  
24 combine the notice of violation with an order to comply. If the  
25 violation extends beyond 30 days after the date of the lead agency's  
26 or the director's notification, the lead agency or the director may  
27 issue an order by personal service or certified mail requiring the  
28 operator to comply with this chapter or, if the operator does not  
29 have an approved reclamation plan or financial assurances, cease  
30 all further mining activities.

31 (b) An order to comply issued under subdivision (a) shall take  
32 effect 30 days following service unless the operator within that  
33 30-day period requests a hearing before the lead agency for orders  
34 issued by the lead agency, or the board for orders issued by the  
35 director, concerning the alleged violation. An order to comply  
36 shall specify which aspects of the surface mine's activities or  
37 operations are inconsistent with this chapter, shall specify a time  
38 for compliance that the lead agency or director determines is  
39 reasonable, not to exceed two years, taking into account the  
40 seriousness of the violation and any good faith efforts to comply

1 with applicable requirements, and may include an administrative  
2 penalty imposed pursuant to subdivision (c). If a lead agency or  
3 the director determines compliance with an order to comply will  
4 exceed two years, the board may specify a longer period based on  
5 an application and showing of good cause.

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

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

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

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

37 (e) Upon a complaint by the director, the department, or the  
38 board, the Attorney General may bring an action to recover  
39 administrative penalties under this section, and penalties under  
40 Section 2207, in any court of competent jurisdiction in this state

1 against any person violating any provision of this chapter or Section  
2 2207, or any regulation adopted pursuant to this chapter or Section  
3 2207. The Attorney General may bring this action on his or her  
4 own initiative if, after examining the complaint and the evidence,  
5 he or she believes a violation has occurred. The Attorney General  
6 may also seek an order from a court of competent jurisdiction  
7 compelling the operator to comply with this chapter and Section  
8 2207.

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

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

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

23 (2) The director shall comply with this section in initiating  
24 enforcement actions.

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

27 SEC. 14. Section 2774.4 of the Public Resources Code is  
28 amended to read:

29 2774.4. (a) The board shall exercise some or all of a lead  
30 agency's powers under this chapter pursuant to subdivision (c),  
31 except for permitting authority and vested rights determinations  
32 pursuant to Section 2776, if the board finds that a lead agency has  
33 done any of the following:

34 (1) Approved reclamation plans or financial assurances that are  
35 not consistent with this chapter.

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

38 (3) Failed to seize the financial assurances and to carry out the  
39 reclamation of surface mining operations as required by this  
40 chapter.

1 (4) Failed to take appropriate enforcement actions as required  
2 by this chapter.

3 (5) Intentionally misrepresented the results of inspections  
4 required under this chapter.

5 (6) Failed to submit information to the department as required  
6 by this chapter.

7 (b) The board shall conduct a public hearing no sooner than  
8 three years after the board has taken action pursuant to subdivision  
9 (a) to determine if a lead agency has corrected its deficiencies in  
10 implementing and enforcing this chapter and the rules and  
11 regulations adopted pursuant to this chapter or has developed a  
12 program that will adequately administer this chapter and Section  
13 2207. If the board finds sufficient evidence of correction or the  
14 development of a program to adequately implement this chapter  
15 and Section 2207, the board shall restore to the lead agency some  
16 or all of the powers assumed by the board pursuant to subdivision  
17 (a).

18 (c) Before taking any action pursuant to subdivision (a), the  
19 board shall first conduct a hearing, providing 30 days' notice to  
20 the lead agency, and shall determine if the lead agency has engaged  
21 in conduct described in subdivision (a). If the board finds that the  
22 lead agency has engaged in conduct described in subdivision (a),  
23 the board shall do either of the following:

24 (1) (A) Require the lead agency to develop a remedial plan to  
25 correct the noted deficiencies. The remedial plan shall describe  
26 specific objectives and corresponding processes designed to  
27 address, at a minimum, the noted deficiencies and a time that the  
28 remedial plan will be fully implemented.

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

32 (2) Take immediate action pursuant to subdivision (a) and hold  
33 a public hearing within the lead agency's area of jurisdiction, upon  
34 a 45-day written notice given to the public in at least one newspaper  
35 of general circulation within the city or county and directly mailed  
36 to the lead agency and to all operators within the lead agency's  
37 jurisdiction who have submitted reports as required by Section  
38 2207.

39 (d) Affected operators and interested persons have the right at  
40 the public hearing to present oral and written evidence on the

1 matter being considered. The board, at the public hearing, may  
2 place reasonable limits on the right of affected operators and  
3 interested persons to question and solicit testimony.

4 (e) (1) If the board decides to take action pursuant to subdivision  
5 (a) and exercise some or all of a lead agency's powers pursuant to  
6 this chapter, except for permitting authority and vested rights  
7 determinations pursuant to Section 2776, the board shall, based  
8 on the record of the public hearing, adopt written findings that  
9 explain all of the following:

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

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

12 (C) Why the action is authorized by and meets the requirements  
13 of subdivision (a).

14 (2) In addition, the findings shall address the significant issues  
15 raised or written evidence presented by affected operators,  
16 interested persons, the lead agency, or the department and findings  
17 from any review of the lead agency's administrative and  
18 enforcement program. The transcript of testimony and exhibits,  
19 together with all papers and requests filed in the proceedings, shall  
20 constitute the exclusive record for decision by the board.

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

25 (g) The lead agency, any affected operator, or any interested  
26 person who has presented oral or written evidence at the public  
27 hearing before the board pursuant to subdivision (d) may obtain a  
28 review of the board's action taken pursuant to subdivision (a) by  
29 filing in the superior court a petition for a writ of mandate within  
30 30 days following the issuance of the board's decision. Section  
31 1094.5 of the Code of Civil Procedure governs judicial proceedings  
32 pursuant to this subdivision, except that in every case the court  
33 shall exercise its independent judgment. If a petition for a writ of  
34 mandate is not filed within the time limits set by this subdivision,  
35 the board's action under subdivision (a) shall not be subject to  
36 review by any court or agency.

37 SEC. 15. Section 2776 of the Public Resources Code is  
38 amended to read:

39 2776. (a) (1) A person who has obtained a vested right to  
40 conduct surface mining operations prior to January 1, 1976, shall

1 not be required to secure a permit pursuant to this chapter as long  
 2 as the vested right continues and as long as no substantial changes  
 3 are made in the operation except in accordance with this chapter.  
 4 A person shall be deemed to have vested rights if, prior to January  
 5 1, 1976, the person has, in good faith and in reliance upon a permit  
 6 or other authorization, if the permit or other authorization was  
 7 required, diligently commenced surface mining operations and  
 8 incurred substantial liabilities for work and materials necessary  
 9 for the surface mining operations. Expenses incurred in obtaining  
 10 the enactment of an ordinance in relation to a particular operation  
 11 or the issuance of a permit shall not be deemed liabilities for work  
 12 or materials.

13 (2) A lead agency shall maintain records associated with a vested  
 14 right determination.

15 (b) The reclamation plan required to be filed pursuant to  
 16 subdivision (b) of Section 2770 shall apply to operations conducted  
 17 after January 1, 1976, or to be conducted.

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

22 SEC. 16. No reimbursement is required by this act pursuant to  
 23 Section 6 of Article XIII B of the California Constitution because  
 24 a local agency or school district has the authority to levy service  
 25 charges, fees, or assessments sufficient to pay for the program or  
 26 level of service mandated by this act, within the meaning of Section  
 27 17556 of the Government Code.

28 *SEC. 17. This act shall become operative only if both this bill*  
 29 *and Assembly Bill 1142 of the 2015–16 Regular Session are*  
 30 *enacted and become operative.*