

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1142

Introduced by Assembly Member Gray

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

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

(1) The Surface Mining and Reclamation Act of 1975 requires the department to publish in the California Regulatory Notice Register, or otherwise make ~~available, upon request~~, *available upon request* to the Department of General Services or any other state or local agency, a list identifying certain surface mining operations. Existing law also prohibits a state agency from acquiring or utilizing mined material, or from contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list that meets certain requirements. The act, until January 1, 2019, requires this list to identify surface mining operations whose reclamation plan has been approved and is in compliance with the act, whose mining operation is in compliance with the approved reclamation plan or an order to comply, as specified, and whose mining operation has an approved financial assurance, as specified.

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

(2) The act prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is

obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

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

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

This bill would revise and recast those provisions and, among other things, would require the owner or operator to provide a copy of the previously completed annual inspection form and a requested date for the next annual inspection by the lead agency, require a lead agency to authorize an inspection to be conducted by an employee of the ~~local~~ *lead* agency who has received specified training, impose new requirements on the lead agency related to the timing of inspections, impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining operation, and require the State Geologist to coordinate with the director, board, lead agencies, and interested parties to develop a curriculum for the training of mine inspectors. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(4) The act requires that the lead agency have primary responsibility in enforcing the act. The act authorizes, in cases where the board is not the lead agency, the director to initiate enforcement actions if the lead agency has been notified by the director, for at least 15 days, of a violation and has not taken appropriate enforcement action, or the director determines there is a violation that presents an imminent and substantial endangerment to the public health or ~~safety~~, *safety* or the environment.

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

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 2207 of the Public Resources Code is
2 amended to read:

3 2207. (a) The owner or the operator of a mining operation
4 within the state shall forward to the director annually, not later
5 than a date established by the director, upon forms approved by
6 the board from time to time, a report that identifies and contains
7 all of the following:

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

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

14 (3) The location of the mining operation, its name, its mine
15 number as issued by the Office of Mine Reclamation or the
16 director, its section, township, range, latitude, longitude, and
17 approximate boundaries of the mining operation marked on a

1 United States Geological Survey 7½-minute or 15-minute
2 quadrangle map.

3 (4) The lead agency.

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

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

8 (7) The commodities produced by the mine and the type of
9 mining operation.

10 (8) A copy of the previously completed annual inspection form
11 and a requested date for the next annual inspection by the lead
12 agency.

13 (9) Proof of financial assurances.

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

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

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

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

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

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

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

30 (b) (1) Every year, not later than the date established by the
31 director, the person submitting the report pursuant to subdivision
32 (a) shall forward to the lead agency, upon forms furnished by the
33 board, a report that provides all of the information specified in
34 subdivision (a).

35 (2) The owner or operator of a mining operation shall allow
36 access to the property to any governmental agency or the agent of
37 any company providing financial assurances in connection with
38 the reclamation plan in order that the reclamation can be carried
39 out by the entity or company, in accordance with the provisions
40 of the reclamation plan.

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

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

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's proposed Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also

1 consider the total assessed value of the mining operation, the
2 acreage disturbed by mining activities, and the acreage subject to
3 the reclamation plan.

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

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

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

37 (B) (i) In addition to reporting fees, the board shall collect five
38 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
39 silver mined within the state and shall deposit the fees collected
40 in the Abandoned Mine Reclamation and Minerals Fund

1 Subaccount, which is hereby created in the Mine Reclamation
2 Account. The department may expend the moneys in the
3 subaccount, upon appropriation by the Legislature, for only the
4 purposes of Section 2796.5 and as authorized herein for the
5 remediation of abandoned mines.

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

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

23 (e) The lead agency, or the board when acting as the lead agency,
24 may impose a fee upon each mining operation to cover the
25 reasonable costs incurred in implementing this chapter and Chapter
26 9 (commencing with Section 2710).

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

39 (g) Any information in reports submitted pursuant to subdivision
40 (a) that includes or otherwise indicates the total mineral production,

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

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

25 SEC. 2. Section 2717 of the Public Resources Code, as
26 amended by Section 2 of Chapter 417 of the Statutes of 2013, is
27 amended to read:

28 2717. (a) Notwithstanding Section 10231.5 of the Government
29 Code, the board shall submit to the Legislature on December 1 of
30 each year a report on the actions taken pursuant to this chapter
31 during the preceding fiscal year. The report shall include a
32 statement of the actions, including legislative recommendations,
33 that are necessary to carry out more completely the purposes and
34 requirements of this chapter.

35 (b) For the purposes of ensuring compliance with Sections
36 10295.5 and 20676 of the Public Contract Code, the department
37 shall, at a minimum, quarterly publish in the California Regulatory
38 Notice Register, or otherwise make available upon request to the
39 Department of General Services or any other state or local agency,
40 a list identifying all of the following:

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

4 (A) The reclamation plan and financial assurances have been
5 approved pursuant to this chapter.

6 (B) Compliance with state reclamation standards developed
7 pursuant to Section 2773.

8 (C) Compliance with the financial assurance guidelines
9 developed pursuant to Section 2773.1.

10 (D) Whether the annual reporting fee has been submitted to the
11 department.

12 (2) Surface mining operations for which an appeal is pending
13 before the board pursuant to subdivision (e) of Section 2770, if
14 the appeal was not pending before the board for more than 180
15 days.

16 (3) Surface mining operations for which an inspection is required
17 and for which an inspection notice has been submitted by the lead
18 agency pursuant to Section 2774 that indicates both compliance
19 with the approved reclamation plan and that sufficient financial
20 assurances, pursuant to Section 2773.1, have been approved and
21 secured.

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

23 (A) The reclamation plan has been approved and is in
24 compliance with this chapter.

25 (B) The mining operation is in compliance with either of the
26 following:

27 (i) The approved reclamation plan.

28 (ii) An order to comply issued ~~prior to January 1, 2019~~, pursuant
29 to this chapter and that is being complied with by the operator. An
30 order to comply may be stipulated to as follows:

31 (I) By the department, lead agency, and operator if the
32 enforcement action was initiated by the director.

33 (II) By the lead agency and the operator, with notice of the
34 stipulation provided to the director if the enforcement action was
35 initiated by the lead agency.

36 (C) In accordance with Section 2773.1 and Article 11
37 (commencing with Section 3800) of Title 14 of the California Code
38 of Regulations, as amended, the surface mining operation has an
39 approved financial assurance in place that is adequate for
40 reclamation pursuant to the approved reclamation plan.

1 (c) Between July 1, 2017, and January 1, 2018, the department
2 shall submit to the Legislature a report on the activities of lead
3 agencies and surface mining operations. This report shall include,
4 but need not be limited to, all of the following:

5 (1) Number of financial assurance cost estimates reviewed and
6 approved each year by each lead agency.

7 (2) Number of annual mine inspections performed by each lead
8 agency.

9 (3) Information on idle mines and interim management plans
10 approved by each lead agency.

11 (4) Number and location of mining operations that are no longer
12 in operation with no intent to resume and are in the process of
13 reclamation and how many years each of these mining operations
14 has claimed that status.

15 (5) Information on approved mineral resources management
16 plans across the state from the board.

17 (6) Number and location of mines with reclamation plans
18 approved prior to the adoption of the 1993 reclamation standards.

19 (7) Percentage of mining operations on the list published
20 pursuant to subdivision (b) and the number and location of mining
21 operations that have been placed on the list pursuant to clause (ii)
22 of subparagraph (B) of paragraph (4) of subdivision (b).

23 (8) Number of historic abandoned mines remediated by the
24 department and the locations of known remaining hazards.

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

27 (10) Number of administrative penalties issued by the
28 department and amounts, as well as information on the amounts
29 actually collected by the department organized by location.

30 (d) A report submitted pursuant to subdivision (a) or (c) shall
31 be submitted in compliance with Section 9795 of the Government
32 Code.

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

35 SEC. 4. Section 2773.1 of the Public Resources Code is
36 amended to read:

37 2773.1. (a) Lead agencies shall require financial assurances
38 of each surface mining operation to ensure reclamation is
39 performed in accordance with the surface mining operation's
40 approved reclamation plan, as follows:

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

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

12 (3) The amount of financial assurances required of a surface
13 mining operation for any one year shall be reviewed and, if
14 necessary, adjusted once each calendar year to account for new
15 lands disturbed by surface mining operations, inflation, and
16 reclamation of lands accomplished in accordance with the approved
17 reclamation plan. An operator shall not be required to adjust
18 financial assurances that are in excess of the amount determined
19 necessary to perform reclamation in accordance with the surface
20 mining operation's approved reclamation plan.

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

28 (5) The financial assurances shall be made payable to the lead
29 agency and the department. Financial assurances that were
30 approved by the lead agency prior to January 1, 1993, and were
31 made payable to the State Geologist shall be considered payable
32 to the department for purposes of this chapter. However, if a surface
33 mining operation has received approval of its financial assurances
34 from a public agency other than the lead agency, the lead agency
35 shall deem those financial assurances adequate for purposes of
36 this section, or shall credit them toward fulfillment of the financial
37 assurances required by this section, if they are made payable to
38 the public agency, the lead agency, and the department and
39 otherwise meet the requirements of this section. In any event, if a
40 lead agency and one or more public agencies exercise jurisdiction

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

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

12 (1) Notify the operator by personal service or certified mail that
13 the lead agency or the director intends to take appropriate action
14 to forfeit the financial assurances and specify the reasons for so
15 doing.

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

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

25 (4) Use the proceeds from the forfeited financial assurances to
26 conduct and complete reclamation in accordance with the approved
27 reclamation plan. The financial assurances shall not be used for
28 any other purpose. The operator is responsible for the costs of
29 conducting and completing reclamation in accordance with the
30 approved reclamation plan that are in excess of the proceeds from
31 the forfeited financial assurances.

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

1 new owner and have been approved by the lead agency in
2 accordance with Section 2770.

3 (d) The lead agency shall have primary responsibility to seek
4 forfeiture of financial assurances and to reclaim mine sites under
5 subdivision (b). However, in cases where the board is not the lead
6 agency pursuant to Section 2774.4, the director may act to seek
7 forfeiture of financial assurances and reclaim mine sites pursuant
8 to subdivision (b) only if both of the following occurs:

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

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

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

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

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

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

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

36 (f) On or before March 1, 1993, the board shall adopt guidelines
37 to implement this section. The guidelines are exempt from the
38 requirements of the Administrative Procedure Act (Chapter 3.5
39 (commencing with Section 11340) of Part 1 of Division 3 of Title

1 2 of the Government Code), and are not subject to review by the
2 Office of Administrative Law.

3 SEC. 5. Section 2773.11 is added to the Public Resources Code,
4 to read:

5 2773.11. (a) Prior to the modification of the amount of a
6 financial assurance or the full or partial release of the financial
7 assurance instrument to which both the lead agency and the
8 department are cobeneficiaries pursuant to Section 2773.1, the
9 lead agency shall provide to the director all of the following
10 documents at one time:

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

17 (2) A revised financial assurance cost estimate prepared by the
18 operator and accepted by the lead agency, or prepared by the lead
19 agency pursuant to Section 2773.1, with supporting documentation
20 that indicates the specific cost changes to the existing financial
21 assurance amount, or that indicates there are no further outstanding
22 reclamation liabilities to be included in the financial assurance.

23 (3) A statement by the lead agency, with supporting
24 documentation that may include the most recent inspection report
25 and any geological and engineering reports prepared as part of the
26 inspection report, that the mined land remains subject to a financial
27 assurance as modified or that the mined land has been reclaimed
28 in accordance with the approved reclamation plan, that there are
29 no outstanding reclamation liabilities, and recommending to the
30 director that the financial assurance be released.

31 (4) The director shall review and comment on the documents
32 within 45 days from the date of receipt of the documents, pursuant
33 to Section 2774. The director shall inspect the surface mining
34 operation if the director determines it necessary pursuant to Section
35 2774.1 and shall do any of the following:

36 (A) Notify the lead agency of the director's concurrence that
37 the modified financial assurance amount is adequate or that there
38 are no outstanding reclamation liabilities on the mined land and
39 that the original financial assurance should be released in full or

1 in part pursuant to Section 2773.1, at which time the financial
2 assurance shall be released.

3 (B) Notify the lead agency that the director has found, based
4 on an inspection, aspects of the surface mining operation that
5 require additional modifications to the financial assurance amount
6 or aspects that are not in compliance with the approved reclamation
7 plan.

8 (C) Commence the financial assurance forfeiture process
9 pursuant to Section 2773.1.

10 (b) (1) An operator may request the lead agency and the director
11 jointly to inspect and review a request for full or partial release of
12 a financial assurance instrument. Notwithstanding subdivision (a),
13 the operator may submit a request for a joint inspection and review
14 to the lead agency and the director along with the surface mining
15 operation's most recent inspection report, a revised financial
16 assurance cost estimate, and other supporting documentation.

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

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

22 (A) Notify the operator the modified financial assurance amount
23 is adequate or that there are no outstanding reclamation liabilities
24 on the mined land and that the original financial assurance should
25 be released in full or in part pursuant to Section 2773.1, at which
26 time the financial assurance shall be released.

27 (B) Notify the operator that aspects of the surface mining
28 operation require additional modifications to the financial assurance
29 amount or that aspects of the surface mining operation are not in
30 compliance with the approved reclamation plan.

31 (C) Commence the financial assurance forfeiture process
32 pursuant to Section 2773.1.

33 (c) If a violation by the operator is confirmed by an inspection
34 either by the lead agency or by the director, the lead agency or the
35 director may take actions pursuant to Section 2774.1 to ensure the
36 violation is corrected. The financial assurance shall not be released
37 until the violation is corrected.

38 (d) Prior to sending written notification and release of financial
39 assurances pursuant to Section 2773.1, the lead agency shall obtain
40 the written concurrence of the director that the completion of

1 reclamation of the mined land disturbed by the surface mining
2 operation is in accordance with the requirements of the reclamation
3 plan approved by the lead agency.

4 (e) The board shall promulgate a regulation consistent with this
5 section.

6 SEC. 6. Section 2774 of the Public Resources Code is amended
7 to read:

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

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

1 regarding the surface mining operation's compliance with its
2 approved reclamation plan, as described in subdivision (c) of
3 Section 2772, a copy of the completed inspection form, and which
4 aspects of the surface mining operations, if any, are inconsistent
5 with its approved reclamation plan, as described in subdivision (c)
6 of Section 2772, and any corrective measures recommended by
7 the inspector. If the surface mining operation has a review of its
8 reclamation plan, financial assurances, or an interim management
9 plan pending under subdivision (b), (c), (d), or (h) of Section 2770,
10 or an appeal pending before the board or lead agency governing
11 body under subdivision (e) or (h) of Section 2770, the notice shall
12 so indicate. The lead agency shall forward to the operator a copy
13 of the notice, a copy of the completed inspection form, and any
14 supporting documentation, including, but not limited to, any
15 inspection report prepared by the geologist, civil engineer,
16 landscape architect, forester, or mine inspector qualified pursuant
17 to subdivision (i) who conducted the inspection.

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

1 ordinance in effect at the time that the reclamation plan is submitted
2 to the director for review.

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, along with final approved
35 copies of those documents, during which period the department
36 retains all powers, duties, and authorities of this 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) (1) If an operator does not request an inspection date on the
6 annual report filed pursuant to Section 2207, or if the lead agency
7 is unable to cause the inspection of a given surface mining
8 operation on the date requested by the operator, the lead agency
9 shall provide the operator with a minimum of 30 days' written
10 notice of a pending inspection or a lesser time period if agreed to
11 by the operator.

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

17 (3) The director shall have 45 days from the date of receipt of
18 the operator's annual financial assurance cost estimate to prepare
19 written comments on the operator's financial assurances and
20 provide the comments to the lead agency and the operator. The
21 lead agency shall have 30 days from receipt of the director's
22 comments to evaluate the written comments received from the
23 director and provide the director and operator its proposed response
24 to the director. The lead agency shall accept or reject a surface
25 mining operation's annual financial assurance cost estimate within
26 60 days of receipt of the director's comments or the due date of
27 the director's comments if comments are not received. The lead
28 agency shall send to the director its final response to the director's
29 comments within 30 days of its acceptance of the annual financial
30 assurance cost estimate.

31 (4) If the lead agency determines an operator's annual financial
32 assurance cost estimate is inadequate, the lead agency shall specify
33 the reasons for that determination. The operator shall have 30 days
34 to appeal that denial pursuant to subdivision (e) of Section 2770
35 or provide a revised financial assurance cost estimate incorporating
36 the suggested changes to the director and the lead agency for
37 approval by the lead agency.

38 (5) The operator shall provide the director and the lead agency
39 with a revised financial assurances mechanism within 60 days of
40 the lead agency's approval. An operator shall not be required to

1 adjust financial assurances that are in excess of the amount
2 determined necessary to perform reclamation in accordance with
3 the surface mining operation's approved reclamation plan provided
4 that financial assurance mechanism remains in effect.

5 (f) (1) No later than April 1 of each year, the director shall
6 provide each lead agency with a notice listing each active or idle
7 surface mining operation within the lead agency's jurisdiction. For
8 each surface mining operation, the director shall ~~request~~, *request*
9 and the lead agency shall provide to the director, on a form
10 provided by the director, no later than July 1 of each year, the
11 following information:

12 (A) A copy of any permit or reclamation plan amendments, as
13 applicable.

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

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

17 (D) The date of each surface mining operation's last financial
18 assurance review pursuant to Section 2773.1 for each operation
19 listed.

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

23 (3) The form provided by the director shall include the
24 department's current information for each operation. The notice
25 to each lead agency shall include a statement that failure to file
26 with the director the information requested pursuant to this
27 subdivision may be cause for action pursuant to Section 2774.4.

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

32 (h) (1) If a surface mining operation is not inspected by the
33 lead agency on the date requested by the operator pursuant to
34 Section 2207 and the operator has not received a 30-day notice of
35 pending inspection from the lead agency as provided in subdivision
36 (e), the operator may send a notice to the lead agency and the
37 director stating the operator's intent to have the surface mining
38 operation inspected by a third party who has not been employed
39 in any capacity by the operator in the previous 12 months and who
40 is a state-licensed geologist, state-licensed civil engineer,

1 state-licensed landscape architect, or state-licensed forester who
2 is experienced in land reclamation. An inspector retained by the
3 operator pursuant to this section shall provide the lead agency a
4 15-day notice of the inspector's intended inspection date for the
5 operation and shall provide a reasonable opportunity for a
6 representative of the lead agency to attend the inspection.

7 (2) An inspector who inspects a surface mining operation
8 pursuant to this subdivision shall provide the notice of completion
9 of inspection specified in subdivision (b) to the director and the
10 lead agency, whether or not a lead agency representative
11 participated in the inspection. The notice shall include the stamp
12 of the licensed professional who conducted the inspection.

13 (i) (1) The State Geologist shall coordinate with the director,
14 board, lead agencies, and interested parties to develop a curriculum
15 for the training of mine inspectors. The curriculum shall include,
16 but need not be limited to, all of the following:

17 (A) Training on determining revegetative success.

18 (B) Evaluating slopes for signs of instability.

19 (C) How to properly use the inspection form approved by the
20 board.

21 (D) The calculation of financial assurances.

22 (E) Considerations for corrective measures.

23 (F) Other issues necessary to ensure the consistent inspection
24 of surface mines under this chapter.

25 (2) Lead agency employees who inspect surface mining
26 operations under this chapter ~~on or before December 31, 2015,~~
27 shall be deemed qualified mine inspectors for up to two years after
28 the State Geologist has finalized the curriculum pursuant to
29 paragraph (1) and the training has been available to lead agency
30 employees.

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

34 (4) Nothing in this subdivision shall be construed to affect or
35 impose qualifications or standards on employees designated by a
36 local, state, or federal agency to perform inspections of real
37 property under separate provisions of local, state, or federal law,
38 including, but not limited to, the Porter-Cologne Water Quality
39 Control Act (Division 7 (commencing with Section 13000) of the
40 Water Code), the federal Clean Water Act (33 U.S.C. Sec. 1251

et seq.), and the Fish and Game Code, notwithstanding the fact that that informational addenda are submitted to lead agencies pursuant to this chapter in addition to reclamation plans, including materials submitted pursuant to subdivision (d) of Section 2772.

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

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

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

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

(c) An operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject

1 to an order by the lead agency or the director imposing an
2 administrative penalty of not more than five thousand dollars
3 (\$5,000) per day, assessed from the original date of noncompliance
4 with this chapter or Section 2207. The penalty may be imposed
5 administratively by the lead agency or the director. In determining
6 the amount of the administrative penalty, the lead agency or the
7 director shall take into consideration the nature, circumstances,
8 extent, and gravity of the violation or violations, any prior history
9 of violations, the degree of culpability, economic savings, if any,
10 resulting from the violation, and any other matters justice may
11 require. Orders setting administrative penalties shall become
12 effective upon issuance of the order and payment shall be made
13 to the lead agency or the director within 30 days, unless the
14 operator petitions the legislative body of the lead agency, the board,
15 or the superior court for review as provided in Section 2774.2. An
16 order shall be served by personal service or by certified mail upon
17 the operator. Penalties collected by the director shall not be used
18 for purposes other than to cover the reasonable costs incurred by
19 the director in implementing this chapter or Section 2207.

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

26 (e) Upon a complaint by the director, the department, or the
27 board, the Attorney General may bring an action to recover
28 administrative penalties under this section, and penalties under
29 Section 2207, in any court of competent jurisdiction in this state
30 against any person violating any provision of this chapter or Section
31 2207, or any regulation adopted pursuant to this chapter or Section
32 2207. The Attorney General may bring this action on his or her
33 own initiative if, after examining the complaint and the evidence,
34 he or she believes a violation has occurred. The Attorney General
35 may also seek an order from a court of competent jurisdiction
36 compelling the operator to comply with this chapter and Section
37 2207.

38 (f) (1) The lead agency has primary responsibility for enforcing
39 this chapter and Section 2207. In cases where the board is not the
40 lead agency pursuant to Section 2774.4, enforcement actions may

1 be initiated by the director pursuant to this section only after the
2 violation has come to the attention of the director and either of the
3 following occurs:

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

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

12 (2) The director shall comply with this section in initiating
13 enforcement actions.

14 (g) In exercising enforcement authority pursuant to this section,
15 the lead agency, the director, or the board, as appropriate, shall
16 take into account and seek to minimize the impact of any proposed
17 enforcement action on the number of existing jobs supported
18 directly or indirectly by the surface mining operation.

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

21 SEC. 8. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.