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SB-209 Surface mining: financial assurances: reclamation plans. (2015-2016)

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Senate Bill No. 209

CHAPTER 8

An act to amend Sections 607, 2207, and 2714 of, and to add Sections 2006.5, 2770.1, and 2773.1.5 to, the Public Resources Code, relating to surface mining.

[Approved by Governor April 18, 2016. Filed with Secretary of State April 18, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 209, Pavley. Surface mining: 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 Mine Reclamation within the department under the direction of the Supervisor of Mine 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 require a lead agency that is the owner or operator of a borrow pit surface mining operation that is used solely by that lead agency to include in the reclamation plan maintenance measures that become effective when the borrow pit surface mining operation is idle or to obtain an approved interim management plan, as specified. The bill would authorize a lead agency to conduct an inspection once every 2 calendar years during a period when the borrow pit surface mining operation that is used solely by that lead agency is idle.

This bill would allow an operator, after the board has adopted a specified regulation, to include in a financial assurance mechanism a corporate financial test, as described.

(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.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

- (a) California Geological Survey.
- (b) Division of Oil, Gas, and Geothermal Resources.
- (c) Division of Land Resource Protection.
- (d) Division of Mine Reclamation.

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

2006.5. "Supervisor of Mine Reclamation" means the individual directing the Division of Mine Reclamation established pursuant to subdivision (d) of Section 607.

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

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

- (1) The name, address, and telephone number of the person, company, or other owner of the mining operation.
- (2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.
- (3) The location of the mining operation, its name, its mine number as issued by the Division of Mine Reclamation or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7¹/₂-minute or 15-minute quadrangle map.
- (4) The lead agency.
- (5) The approval date of the mining operation's reclamation plan.
- (6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.
- (7) The commodities produced by the mine and the type of mining operation.
- (8) A copy of the previously completed annual inspection form and a requested date, within 12 months of the prior inspection date, for the next annual inspection by the lead agency.
- (9) Proof of financial assurances.
- (10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.
- (11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.
- (12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.
- (13) The approximate total of disturbed acreage reclaimed during the previous calendar year.
- (14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.
- (15) The total production for each mineral commodity produced during the previous year.
- (16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

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

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan in order that the reclamation can be carried out by the entity or company, in accordance with the provisions 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 (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 Division 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 ten thousand dollars (\$10,000) 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, except that the maximum fee for any single mining operation shall not exceed six thousand dollars (\$6,000) in the 2017–18 fiscal year and eight thousand dollars (\$8,000) in the 2018–19 fiscal year.

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

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

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of eight million dollars (\$8,000,000), 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 2017–18 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

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

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

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

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of $1\frac{1}{2}$ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

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

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

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

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

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

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

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

(b) Onsite excavation and onsite earthmoving activities that are integral and necessary for the construction of structures and that are undertaken to prepare a site for the construction of those structures, including landscaping or other land improvements associated with those structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

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

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

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

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

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

- (1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.
- (2) The plant site is located on lands zoned industrial or commercial or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.
- (3) None of the minerals being processed are being extracted onsite.
- (4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

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

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

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

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

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

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

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

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

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

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

- (1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).
- (2) The operations are consistent with any general plan or zoning applicable to the site.
- (3) The earthmoving activities are within oil or gas field properties under a common owner or operator.
- (4) No excavated materials are sold for commercial purposes.

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

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

SEC. 5. Section 2770.1 is added to the Public Resources Code, to read:

2770.1. For the purposes of a borrow pit surface mining operation that is owned or operated by a lead agency solely for use by that lead agency, all of the following shall apply:

(a) (1) In addition to the requirements of Sections 2772 and 2773, the lead agency shall include in its reclamation plan maintenance measures that become effective when the borrow pit surface mining operation is idle. The maintenance measures shall maintain the site in compliance with this chapter while the borrow pit surface mining operation is idle.

(2) Notwithstanding paragraph (1), a lead agency may obtain an interim management plan pursuant to subdivision (h) of Section 2770.

(3) A lead agency that complies with this subdivision shall be exempt from the requirements of paragraph (6) of subdivision (h) of Section 2770.

(b) Notwithstanding paragraph (2) of subdivision (h) of Section 2770, an interim management plan for a borrow pit surface mining operation may remain in effect until reclamation of the borrow pit surface mining operation is completed in accordance with the approved reclamation plan.

(c) Notwithstanding subdivision (b) of Section 2774, a lead agency may conduct an inspection of a borrow pit surface mining operation once every two calendar years during a period when the borrow pit surface mining operation is idle.

SEC. 6. Section 2773.1.5 is added to the Public Resources Code, to read:

2773.1.5. (a) Notwithstanding subdivision (e) of Section 2773.1, a financial assurance mechanism may include corporate financial tests combined with surety bonds, irrevocable letters of credit, or trust funds, as described in this section, that together ensure the completion of reclamation in accordance with the approved reclamation plan.

(b) (1) Corporate financial tests shall only be allowed after the board adopts a regulation that establishes a comprehensive analysis and test of a corporation's financial status that includes, but is not limited to, all of the following:

(A) A minimum financial net worth of at least thirty-five million dollars (\$35,000,000), adjusted annually to reflect changes in the Consumer Price Index, as calculated by the United States Bureau of Labor Statistics.

(B) Income.

(C) Liabilities, including other environmental assurances.

(D) Assets located within the United States.

(2) The regulation also shall include, but need not be limited to, all of the following:

(A) Additional measures to provide the lead agency or the director with the recovery of costs associated with the full collection and satisfaction of the financial assurance mechanisms.

(B) Requirements for corporate financial tests that include, but are not limited to, all of the following:

(i) Provide for no more than 75 percent of the financial assurance cost estimate approved within the last year.

(ii) Be annually approved by both the lead agency and the director.

(iii) Be able to be disallowed by either the lead agency or the director.

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

(c) Each surface mining operation shall have at least 25 percent of the financial assurance cost estimate in an acceptable financial assurance mechanism other than a corporate financial test if a qualifying corporation operates multiple surface mining operations.

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

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 8. This act shall become operative only if both this bill and Assembly Bill 1142 of the 2015–16 Regular Session are enacted and become operative on or before January 1, 2017.