

## **INITIAL STATEMENT OF REASONS:**

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend Section 8105 of Article 6, of the California Code of Regulations (CCR), Title 15, Division 8, concerning employee reporting of arrest, conviction, or driving restriction.

California Legislature explicitly imparted the function of CALPIA in Penal Code (PC) section 2801. CALPIA is tasked with operating business enterprises as much like private businesses as possible (see 2801(b)) and making the enterprises profitable enough to sustain CALPIA (see 2801(c)). PC section 2801 provides CALPIA's purpose as an agency.

California Legislature explicitly imparted the function of the PIB in PC section 2808 and provided the PIB with *“all powers to do all of the things that the board of directors of a private corporation would do . . .”* PC section 2808 provides the PIB with the authority to approve CALPIA's rulemaking proposals concerning employee reporting of arrest, conviction, or driving restriction.

In PC section 2809, the California Legislature explicitly imparted CALPIA to apply practices and procedures that include disciplinary and dismissal procedures for all employees working under the jurisdiction of CALPIA. PC section 2809 provides CALPIA and the PIB with the authority to adopt regulations concerning employee reporting of arrest, conviction, or driving restriction.

Pursuant to Government Code section 11342.2, this proposed regulation is consistent and not in conflict with PC sections 2801, 2808, and 2809; this proposed regulation is reasonably necessary to effectuate the purpose of PC sections 2801, 2808, and 2809.

In order to implement and make specific, PC sections 2801, 2808, and 2809, CALPIA and the PIB propose to adopt new regulations regarding CALPIA employee reporting of arrest, conviction, or change in employee's driving status.

In order to fully support CALPIA's purpose to operate like a private, self-sustaining business, the General Manager must be immediately made aware of any employee arrest, conviction, or driving restriction. It is necessary to adopt this regulation to ensure the General Manager's ability to assess an employee arrest, conviction, or driving restriction and determine potential interference with work tasks and responsibilities as well as the safety and continuous productions of CALPIA. The General Manager cannot execute his/her duties prescribed by law, if he/she is not made aware of immediate threats to the safety and operations of CALPIA. Immediate assessments and decisions will be necessary to temporarily or permanently reassign employee or remove employee from civil service based on arrest, conviction, or driving restriction. Each incident will be decided on a case by case basis.

**Consideration of Alternatives:**

CALPIA must determine that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of CALPIA, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CALPIA has made an initial determination that no reasonable alternatives to the regulation have been identified or brought to the attention of CALPIA that would lessen any adverse impact on small business.

Currently, no reasonable alternatives have been brought to the attention of CALPIA that would alter CALPIA's initial determination.

## **ECONOMIC IMPACT ASSESSMENT**

In accordance with Government Code Section 11346.3(b), CALPIA has made the following assessments regarding the proposed regulations:

### **Significant Statewide Adverse Economic Impact on Business:**

The CALPIA has initially determined that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of CALPIA employees.

### **Creation or Elimination of Jobs within the State of California**

CALPIA has determined that reporting requirements for employee arrest, conviction, or driving restriction to the General Manager will have no impact on the creation or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of CALPIA employees.

### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

Reporting requirements for employee arrest, conviction, or driving restriction to the General Manager will have no effect on the creation of new or elimination of existing businesses with the State of California because those businesses are not affected by the internal management of CALPIA employees.

### **Expansion of Business Currently Doing Businesses within the State of California**

Reporting requirements for employee arrest, conviction, or driving restriction to the General Manager will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA employees.

### **Benefits of the Regulations**

The proposed regulatory action will benefit CALPIA by providing the General Manager the ability to assess and determine potential impacts to CALPIA's safety and productivity in the event of any employee arrest, conviction or driving restriction. These proposed regulations will help the General Manager in ensuring that CALPIA operations are performed efficiently and without undue costs.

### **Reports Relied Upon:**

The CALPIA, in proposing these regulations, has not identified nor relied upon any technical, theoretical, or empirical study, report, or similar document.

### **Specific Purpose and Rationale, Per Government Code 11346.2(b)(1)**

**Section 8105** is amended to ensure the General Manager is immediately informed of any employee arrest, conviction, or driving restriction in order to quickly assess any potential impact on the safety and productivity of CALPIA. It is necessary for the General Manager to make immediate informed decisions for the following reasons:

- **Protect and maintain CALPIA's purpose as an agency**
- **Prevent negative impact on safety**
- **Prevent negative impact on productivity**
- **Avoid cost of government to the taxpayers of California**
- **Employee well being**

#### **Protect and maintain CALPIA's purpose as an agency**

Penal Code section 2801 imparts CALPIA with operating business enterprises profitable enough to sustain CALPIA (see 2801(b)). Therefore, the General Manager's immediate attention is necessary to determine if CALPIA's production will be disrupted and/or profitability is threatened due to an employee arrest, conviction, or driving restriction. For example, if an employee is required to drive as part of their work duties, a change in their driving status would hinder productivity, particularly if the employee is a heavy truck driver who transports

essential supplies. In this example, the General Manager, as the hiring authority for CALPIA, would determine if the employee should be temporarily or permanently reassigned to another classification or permanently removed from state civil service.

#### **Prevent negative impact on safety**

Pursuant to PC subsection 2808(e), the General Manager shall have a demonstrated appreciation of the problems associated with prison management. Maintaining safety within a prison environment is a unique challenge other state agencies do not face. For example, an employee arrest and/or conviction for a drug violation may not be perceived as a threat to most civil service job duties. However, in a prison environment, a drug violation is a very serious concern for safety. If the employee's duties involve operating or supervising the operation of large, potentially dangerous, industrial machinery where potential for serious injury exists, drugs can compromise the safety of everyone within the workplace. Also, any indication or evidence that an employee is in possession or abusing drugs demonstrates the potential threat of the drugs entering prison grounds via the employee. In this example, the General Manager, as the hiring authority for CALPIA, would determine if the employee should be temporarily or permanently reassigned to another classification or permanently removed from state civil service to maintain safety.

#### **Prevent negative impact on productivity**

Any employee arrest, conviction, or driving restriction could potentially harm productivity capabilities at work. For example, court dates and hearings, pending incarceration, etc. would impact an employee's production at work due to their absence. Permanent or temporary arrangements must be initiated immediately to maintain efficient productivity in these situations. Replacing an employee's role is time

consuming; therefore, the General Manager must act quickly to ensure scheduled productions are secured.

### **Avoid cost of government to the taxpayers of California**

Penal Code section 2801 imparts CALPIA with operating business enterprises profitable enough to reduce operating expenses of the Department of Corrections and Rehabilitation (see 2801(c)). CALPIA, as an employer, has a responsibility to taxpayers to ensure that its functions are performed efficiently and without undue and unnecessary costs. Employee arrests and convictions must be assessed by the General Manager to determine and avoid foreseeable and unnecessary cost of government to the taxpayers of California. For example, an employee conviction of a felony or misdemeanor involving moral turpitude<sup>1</sup> would require General Manager to determine if the convicted employee may cause future, unnecessary costs and difficulties to CALPIA. Moral turpitude reflects a trait of character that **may continue**, and affect an employee's performance of duties not related to the circumstances in which it was manifested. (Wilson v. State Personnel Board, (1974) 39 Cal.App.3d 218; Douglas Durham (1995) SPB Dec. No. 95-18.) As an example, an employee who is convicted for fraud creates probability that his/her wrongdoings may reoccur on the job which could result in unnecessary expenses to CALPIA. In this example, the General Manager, as the hiring authority for CALPIA, would determine if the employee should be temporarily or permanently reassigned to another classification or permanently removed from state civil service to avoid cost of government to the taxpayers of California.

---

<sup>1</sup> Pursuant to Government Code section 19572(k)

### **Employee wellbeing**

In the event of an employee arrest, conviction or driving restriction, it is essential for the General Manager, along with the employee's supervisor/manager, to suggest the "Employee Assistance Program." This confidential program is provided at no charge to promote employee health and wellbeing during difficult times. An employee's wellbeing plays a major role in their job duties; thus making it CALPIA's goal to ensure the employee is made aware of his/her resources to improve and protect their wellbeing.

For the reasons listed above, it is necessary for employee arrests, convictions, or driving restrictions be brought to General Manager's attention for immediate assessment. The General Manager cannot execute his/her duties prescribed by law, if he/she is not made aware of potential impacts to the safety and operations of CALPIA.