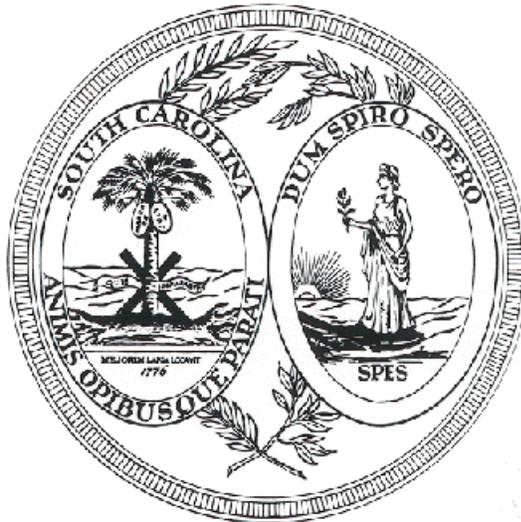


LAC

Report to the General Assembly

December 2000

A Review of the State Operations of the Adjutant General



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A Review of the
State Operations
of the Adjutant General

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Synopsis

Members of the General Assembly requested that we review the state operations of the Adjutant General (AG), with a focus on program management and compliance. Our review found several areas where program management and controls could be improved and other areas where we did not identify significant problems.

- ❑ The agency needs to improve its method for determining maintenance priorities and its documentation of completed and deferred maintenance projects. Also, the AG is not effectively using information about maintenance needs obtained during annual armory inspections. The state is primarily responsible for maintaining the 84 armories. Since state funding has been insufficient to meet all needs, the agency should maximize the use of federal funds available for maintenance projects.
- ❑ We did not identify problems with the Adjutant General's criteria for closing or constructing armories. Since 1990 the AG has closed nine armories and constructed seven. Decisions are based on demographics, condition of existing facilities, federal military directives, funding, and community factors.
- ❑ The Adjutant General's use of capital improvement bonds has been authorized in compliance with state laws and regulations. However, the AG has not always had appropriate controls to ensure that construction projects are adequately monitored.
- ❑ Although there is no consensus on the placement of emergency management functions, we found that all states' emergency management agencies, except in South Carolina, are in a direct chain of command to the Governor. However, we found no substantial evidence that the structure of the emergency management division in South Carolina has caused serious problems.
- ❑ The Adjutant General's office does not have adequate controls over funds disbursed through the National Guard tuition assistance program. Some participants who did not meet program requirements received tuition assistance funds, and others were overpaid for courses completed. Only \$4,192 (3%) of \$152,287 in debts owed to the program has been collected.

- The AG has not implemented adequate controls to ensure accurate leave reporting by state employees who are also members of the National Guard. A review of records indicated that some employees have received unauthorized dual compensation; that is, they have been paid by both the state and federal governments for the same days of service in excess of allowed military leave.
- The state pension benefits for members of the National Guard has not been adequately funded. Deficiencies in funding may violate the South Carolina Constitution.
- We found that the AG generally has controls to ensure that employees are qualified for their positions. However, the agency should obtain appropriate equivalency approvals, require documentation for educational attainments, and revise its interview and selection policy.
- Participation in the Employer Support for the Guard and Reserve (ESGR) program offers substantive benefits to the National Guard at a minimal cost to the state.

Introduction

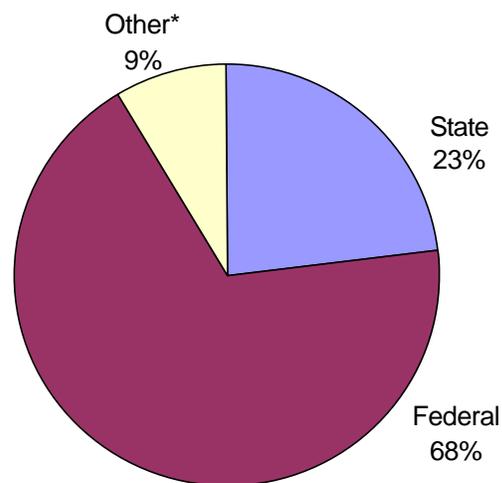
Background

The Adjutant General’s office (AG) administers the South Carolina Army National Guard and the South Carolina Air National Guard. The agency’s state operations include the emergency preparedness division and the South Carolina State Guard, a volunteer force. The AG has both a federal mission and a state mission.

- ❑ The federal mission is to provide trained military personnel and operational military equipment to support the President in defending the U.S. Constitution.
- ❑ The state mission is to support the citizens of South Carolina and local authorities before, during, and after a natural disaster as well as to support the military mission through the maintenance of facilities and other direct support functions.

State funding provides a small portion of the National Guard’s resources. As a state agency, the AG had expenditures of \$59,114,530 in FY 99-00. Of this amount \$13,824,445 (23%) was state appropriations (see Graph 1.1). As of March 2000, the agency had 182 full-time positions for state employees; more than half of these (103) were federally funded.

Graph 1.1: Office of the Adjutant General Expenditures FY 99-00



* Other includes restricted and earmarked funds.

Source: Comptroller General.

In addition to funds expended through the state budget, much of the National Guard's operation is funded directly by the federal government. This funding includes salaries and pensions of the members of the National Guard and full-time federal employees who support guard operations throughout the state. According to the AG, total federal and state support of the agency was more than \$200 million for federal FY 99-00.

State resources are primarily used for the overall administration of the agency, armory operations and maintenance, and the emergency preparedness division. State tuition assistance and the state pension benefit for guard members are other programs funded by the state.

As of June 30, 2000, there were 9,853 members of the Army National Guard, 1,162 members of the Air National Guard, and 903 members of the State Guard. South Carolina has experienced some of the problems with recruiting that are being faced throughout the nation. As of June 30, the Army Guard was at 87% of its authorized strength of 11,270, and the Air Guard was at 92% of its authorized strength of 1,257.

Audit Objectives

Members of the General Assembly requested that we conduct an audit of the Adjutant General's office. The requesters were concerned about critical findings in recent state auditor's reports which raised questions about program and financial management. We completed survey work at the AG and consulted with the state auditor to avoid duplication. Our audit objectives are listed below.

- Review armory maintenance expenditures to determine whether priorities are appropriate.
- Determine whether the criteria used to construct and/or close armories are appropriate.
- Determine whether the Adjutant General's office has adequate controls over funds used for permanent improvements and whether it has spent capital improvement bonds in accordance with state laws and regulations.

- Review the administrative structure of the emergency preparedness division and determine where the emergency preparedness function is placed in other states.
- Review the state tuition assistance program to determine whether there are appropriate management controls to ensure compliance with laws and regulations.
- Determine whether there are adequate controls to ensure that state employees comply with laws and regulations regarding leave.
- Review the funding and administration of the state pension program for the National Guard.
- Determine whether state employees at the Adjutant General's office are qualified for their positions.
- Review the employer support program to determine its costs and benefits.

See Appendix A for discussion of the audit scope and methodology.

Chapter 1
Introduction

Facilities Management

Armory Maintenance

The state is responsible for maintaining the 84 National Guard armories. However, state funding has not been sufficient to meet all maintenance needs. Almost half of the armories were rated “red” for bad condition during the AG’s annual facility inspections. The AG does not have an adequate method of determining maintenance priorities. Also, the agency has not maintained a current list of deferred maintenance projects, and the buildings and grounds section has not adequately documented its work.

The main sources of funding for armory maintenance and operations are state appropriations, rental monies from armories, and various fees and fines. Table 2.1 shows the revenues and expenses for armory operations and maintenance for FY 99-00. This table does not include the salaries of the approximately 11 full-time employees in the buildings and grounds division. Salary expenditures for those employees and temporary positions for FY 99-00 were \$312,042. From our review, it is apparent that the majority of funding is used for armory operations, leaving limited amounts for maintenance projects.

Table 2.1: Revenues and Expenditures for Armory Operations and Maintenance FY 99-00

REVENUES	
State Appropriations	\$1,582,847
Federal Grant	436,567
Rents	390,994
Other	239,444
TOTAL	\$2,649,852
EXPENDITURES	
Utilities	\$1,079,872
Fixed Charges	827,332*
Other Contractual Services	381,147**
Supplies	291,492
Equipment	115,525
Personal Services	102,821
Other	40,354
TOTAL	\$2,838,543

* Contains \$741,985 for rent on the AG building.

** Includes water, sewer, and garbage pick-up.

Source: Adjutant General's office.

The federal government contributes approximately 75% of costs for the construction of an armory with the state financing the remainder. For each armory, there is an agreement, which remains in effect for 25 years, between the federal government and the state of South Carolina which says that it is the state's responsibility to ". . . maintain and preserve the facilities . . . in a state of good repair at its own expense during the period of this agreement"

Officials of the Adjutant General's office told us that the state could be found to be in violation of these agreements. There are significant maintenance needs which have been deferred because of lack of funding. Although the AG's office does not maintain a complete list of deferred maintenance projects, we were provided several lists of deferred maintenance items including replacement roofs, heating and air systems, lawn equipment, carpet, and paint. At least three armories need roofs replaced or substantially repaired at an estimated total cost of \$1.2 million. According to AG officials, total deferred maintenance is more than \$4 million.

Approximately three years ago, the agency began obtaining some funding from the federal government for maintenance costs. Instead of the state funding 100% for all maintenance, the federal government offers a 50% match of funds for the "repair of major building systems" in state-owned armories. This would include roofs, air conditioning, heating, and boilers. As of September 2000, the AG had \$62,500 in matching federal funds approved for four projects. According to AG officials, up to \$1.2 million in federal funds could be used if matching state funds were available. In some instances, the agency has also received 75% federal funding for minor construction projects. The AG's office has requested additional state appropriations for armory maintenance for the past four years, receiving \$15,000 and \$250,000 in FY 96-97 and FY 99-00, respectively.

Establishing Priorities

The AG's office should improve its procedures for establishing maintenance priorities. Our 1990 audit of the AG's office found that the agency had no procedures for establishing maintenance project priorities. Also, the AG's office had not followed its unwritten policy on maintenance priorities; they had funded low-priority projects over more urgent needs. In response to that audit, in 1991 the AG's office established a policy for an armory review board to meet regularly to establish priorities for repair. Adjutant General Regulation (AGR) 420-1 established procedures for maintenance, repairs, alterations, and additions to the National Guard's property. According to an agency official, however, the armory review board functioned for less than one year after being established.

During this review, we found no written guidance on how work order requests from the armories should be prioritized. A buildings and grounds division official determines which items should be addressed. We reviewed all 479 work orders approved in FY 98-99. Each work order was categorized into one of five categories ranging from “emergency” to “unauthorized.” However, we found that 474 of the 479 work orders were categorized as “routine.” Four of the five work orders categorized as emergencies were for apparent safety or immediate need situations, such as the repair of a fire alarm system. However, one of the emergency requests was to replace an air conditioning unit for a drill hall. Since the National Guard Bureau’s guidelines for the design of armories state that drill halls should not be air conditioned, the assignment of an emergency priority to this item was questionable.

Most of the minor repairs requested by the armories were completed. We found documentation that 399 (83%) of 479 work orders were completed. According to an agency official, another 53 (11%) work orders were also completed; however, the agency did not furnish documentation for these items (see p. 8).

In April 2000, the agency established a facilities committee and a facilities board. The committee’s mission is to:

... recommend short and long-term priorities for repair, upgrade, and minor construction of facilities (not to exceed \$25,000) for the overall good of the SCARNG and to make recommendations for long-term construction and repairs/upgrades to the Facilities Board.

As of October 2000, the committee had met twice. The board met in October and recommended maintenance priorities from those identified by the six state area commands.

Use of Inspection Information

The AG’s office is not effectively using information about maintenance needs obtained during annual armory inspections. Inspections conducted by the AG’s facilities management office (FMO) identify maintenance needs, but staff do not communicate this information to the buildings and grounds division that is responsible for maintenance. The annual inspections rate various components of the armory, such as grounds, parking, administrative areas, toilets, kitchens, and assembly (drill) halls, using “green” for good condition, “amber” for fair condition, and “red” for bad condition. The facility is also given an overall quality rating.

We found that all state-owned armories had been inspected within the past year. Almost one-half of the forms rated the armory as “red.” The forms for some armories included lists of maintenance items needing attention. When asked if this information is forwarded to buildings and grounds’ personnel, officials stated that the buildings and grounds division has access to the overall rating of the inspection on computer; however, the list of maintenance items or other specific information is not available there.

According to an official, the armory personnel should have already turned in work requests to the buildings and grounds division for items needing repair; therefore, sending a list compiled by the inspector would be duplicative. However, we reviewed maintenance items noted in inspections of two armories and found that just 6 of 35 (17%) had been reported to buildings and grounds. Also, maintenance information recorded by inspectors could help eliminate inconsistencies in analyzing the needs of each armory and aid in establishing priorities.

Documentation of Maintenance Projects

The buildings and grounds section has not adequately documented its work. Our review indicated an overall weakness in completing paperwork and updating the division’s records. We found that costs were recorded for approximately 116 (24%) of the work orders and that work hours were not recorded in all cases. At least 136 work orders were not maintained in the division’s files, but were found later and provided to us.

Buildings and grounds officials agreed that there is a problem with completing and maintaining work orders. According to those officials, the division is working towards improving the monitoring of work orders to ensure that work is done and paperwork is completed.

Recommendations

1. The Adjutant General’s office should maximize the use of federal matching funds for maintenance needs when appropriate.
2. The Adjutant General’s office should ensure that it uses an appropriate system to prioritize maintenance and repair needs of the armories.
3. The Adjutant General’s office should ensure that maintenance information obtained in annual facilities’ inspections is used in determining the agency’s maintenance needs and priorities.

4. The Adjutant General's office should maintain a current listing of all deferred maintenance needs and their estimated costs.
5. The Adjutant General's office should establish a system to more accurately document costs, work hours, and work completed.

Armory Construction and Closures

Based on our review of armories closed and armories constructed over the past ten years, we did not identify problems with the Adjutant General's criteria for closing or constructing armories. Decisions to construct or close armories are made in a general context of funding and other factors.

Generally, constructing armories has the advantage for the state of bringing in federal dollars; armory construction is 75% funded by the federal government. However, armory construction imposes funding obligations on the state to maintain the facilities (see p. 6). Also, armories are a part of the local communities where they are located. Local communities often donate land and contribute to armory operations and have an interest in using the facility for community events that are not related to the National Guard. In addition, armories are used as evacuation shelters during emergencies.

Since 1990, the Adjutant General has closed nine armories across the state (see table below). During this same period, seven armories have been constructed, with one more scheduled for construction in October 2000. During the audit, agency officials stated they were considering closure of five other armories and construction of five additional armories.

Table 2.2: Armories Closed Since 1990

ARMORY LOCATION	REASON FOR CLOSURE
Charleston – The Citadel	Given to the Citadel/To be replaced*
Chesterfield	Demographics/No unit
Gaffney	To be replaced
Lexington	Destroyed by tornado/Unit moved
Manning	To be replaced
Pacolet Mills	Demographics
Ware Shoals/Hodges	To be replaced
Whitmire	Demographics
York	Demographics/No unit

* Replacement not yet funded.

According to officials, the main reasons for closing an armory would be changing demographics or because the building needs to be replaced. For example, in areas of the state where the population in age groups eligible for service in the National Guard is decreasing, it is no longer appropriate to maintain units and armories. Also, more than 30 armories are older than 35 years; the older armories do not have adequate space for current unit size and equipment requirements. In a September 27, 2000, memo, the AG identified at least two other armories being considered for closure due to revenue shortfalls.

Armories are normally constructed to replace older facilities or because requirements in “force structure” mandated by the U.S. Army necessitate changes (see table below). Sometimes the priority given to replacement armories is dictated by available funding. For example, the Manning armory was a low priority for replacement by the Adjutant General, but because it was funded by the federal government instead of other projects with higher priority, the AG constructed this armory first.

Table 2.3: Armories Constructed Since 1990

ARMORY LOCATION	REASON FOR CONSTRUCTION	ARMORY USE
Fountain Inn*	New force structure	Replacement
Ware Shoals/ Hodges*	New force structure	Replacement
Pickens*	New force structure	Replacement
Pine Ridge**	400-person hospital unit	Emergency Preparedness Division
Gaffney	Replacement	Replacement
Manning	Replacement	Replacement
Eastover	New force structure	New force structure

* Armories were constructed for new units to support the HAWK missile system; however, the Army discontinued the HAWK. The AG completed construction and uses them as replacement armories.

** The Army decided this type of unit was not needed so the AG restructured the facility to house EPD.

Armory Partnerships

The AG is trying to develop partnerships with other entities, such as schools and local governments, for new armories. For example, the AG drafted a memorandum of understanding with USC-Spartanburg (USC-S). The AG planned to build an armory in conjunction with the university on its campus. USC-S would maintain and operate the armory facility. The partnership would also allow maximum utilization of the facility and give the National Guard proximity to a recruiting market. Although the AG received approval of federal funds and had approximately one-half of the needed state funding, they were not able to get another \$1 million for the remainder of the state match. However, they now plan to construct the armory using funds from the sale of the old armory, originally designated for enhancements, to build the basic structure. The agency has investigated a similar partnership with Clemson University.

Written Criteria

There are no written criteria for armory closure or construction. The AG addresses these decisions in meetings of the Army Readiness Council, a group composed of high-ranking agency officials such as the deputy adjutant general, the chief of staff, and leaders of the state area commands. The Adjutant General approves recommendations of the council. Written criteria for armory closure and construction could help to ensure that all relevant factors are considered and that decisions to close or construct armories are consistent and defensible.

Recommendation

6. The Adjutant General's office should adopt written criteria for armory construction and closure.

Controls Over Capital Improvement Expenditures

We reviewed the Adjutant General's controls over funds used for permanent improvements and whether capital improvement bonds were spent in accordance with state laws and regulations. The AG's use of capital improvement bond (CIB) funds for specified projects has been authorized in accordance with state laws and regulations; however, the AG has not always had appropriate controls to ensure that projects are adequately monitored.

Review of AG Permanent Improvement Projects

The Adjutant General has received two allocations of capital improvement bond funds over the last 10 years. Act 522 of 1992 authorized CIB funding for nine projects totaling \$4,900,420. Act 111 of 1997 authorized \$1.5 million of CIB funds exclusively for the emergency preparedness division (EPD) relocation/renovation project. We found the AG's use of CIB funds for these projects was properly authorized.

We reviewed the following project files to ensure that funds for capital improvement projects were spent on the projects for which they were originally authorized:

- Clark's Hill training facility.
- Emergency preparedness division (EPD) relocation/renovations.
- Statewide armory renovations.
- The McEntire Class IX facility project.

We found no evidence that project expenditures were inappropriate.

Adjutant General's Controls

The Adjutant General has had weak internal controls over its capital improvement projects. For example, the state auditor's report for 1997 and 1998 found a number of problems relating to the AG's accounting for permanent improvement projects. The report noted:

. . . [I]nternal controls over construction activities are extremely weak and risks are high due to a lack of communication between budget and finance, procurement, and facilities management. The Agency has a high number of errors and compliance violations involving SPIRS projects and a slow error correction rate due mainly to the decentralization of construction activities. The Agency has not made a clear division of responsibilities between the departments and has not recognized that its staff is inadequately trained to properly account for these projects.

The Statewide Permanent Improvement Reporting System (SPIRS) report detailing capital improvement expenditures is generated monthly by the Budget and Control Board. Before a project is completed, the board requires the agency's records to be reconciled with the SPIRS system. According to an AG official, they have not reconciled the monthly SPIRS reports with project account balances.

A variety of AG employees in different areas of the agency have worked with capital improvement projects in recent years. Facility and project record keeping have been inconsistent. Beginning in 1999, the AG assigned an internal auditor to review expenditures for capital improvement projects. However, as of September 2000, he had no written reports. Also, his position may not have adequate independence. He reports to an official who reports to the deputy Adjutant General for state operations. Government auditing standards state that internal auditors should report directly to the head or deputy of the agency to ensure their independence.

When the controls over capital improvement projects are weak or dispersed, there is an increased risk that projects will not be properly monitored. Also, without regular reconciliations of project balances, the fiscal integrity of capital improvement projects may be compromised.

Recommendations

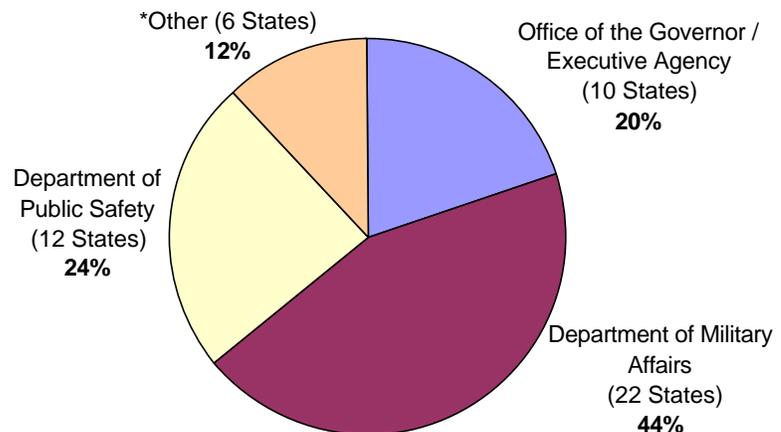
7. The Adjutant General's office should strengthen its internal controls over capital improvement projects. The agency should clearly divide responsibilities between its departments and ensure that its staff is adequately trained to properly account for these projects.
8. The Adjutant General's office should prepare monthly reconciliations of capital improvement project balances with the SPIRS report compiled by the Budget and Control Board.
9. The Adjutant General's office should strengthen its internal audit function by having the internal auditor report to either the adjutant general or deputy adjutant general.

Placement of the Emergency Preparedness Division

We were asked to review the administrative structure of the emergency preparedness division (EPD) and determine where the emergency preparedness function is placed in other states. While we found South Carolina's situation unique because the Adjutant General is elected and not appointed by the Governor, we found no substantial evidence that the structure of EPD has caused serious problems.

Section 25-1-420 of the S.C. Code of Laws established the emergency preparedness division within the office of the Adjutant General. The director of EPD is appointed by the Adjutant General and serves at his pleasure. We obtained information regarding the location of other states' emergency management agencies and found the emergency management function is located in a variety of agencies.

Graph 2.1: State Placement of
Emergency Management Function



* Other includes State Police, Department of Community or Local Affairs, or some combination of Military Affairs and/or Public Safety.

Although there appears to be no consensus in the placement of emergency management, we found that all states' emergency management agencies, except in South Carolina, are in a direct chain of command to the Governor. In South Carolina, only in instances of declared state emergencies does the Adjutant General report directly to the Governor. Emergency management agencies in other states are located within a cabinet agency and/or their directors are appointed by the Governor. Since the Adjutant General is appointed by the Governor in other states, if the emergency management agency is located under the Adjutant General's office, there is a direct relationship to the Governor. South Carolina is the only state in which the Adjutant General is elected.

Hurricane Floyd Evacuation

A report on the evacuation of the coast during Hurricane Floyd in 1999 recommended that EPD be placed under the Governor's office because "the current governmental structure . . . does not allow for the free flow of strategic and critical information directly to the chief executive officer having to make ultimate decisions with regard to life and property in our state." A bill was introduced during the 2000 legislative session to move the division under the Governor's office; however, it did not pass. Officials of neither the Governor's office nor the Adjutant General's office cited specific problems during the 1999 evacuation that were caused by EPD's administrative structure.

In another report, a consultant evaluated South Carolina's experience with the 1999 hurricane season and recommended that coordination of state emergency operations could be strengthened with more direct participation by the Governor at the state emergency operations center. A closer working relationship between the Governor's staff and the emergency operations center's staff could also avoid or minimize the potential that state and local officials could receive separate lines of communication from the Governor's office and the emergency operations center. Separate communications might result in inconsistent or uncoordinated direction to state emergency operations or allocation of state resources. According to the EPD director, the previous quarters for the emergency operations center were small and crowded; however, the problem of accommodating all appropriate officials should be solved with the more spacious facilities at the new emergency operations center (see p. 10).

Conclusion

Any decision to change the location of EPD rests with the General Assembly. The Governor's position, as stated by a member of his staff, is that EPD should be moved to the Governor's office. This official stated that the Governor would like to work more closely with EPD's director, and the EPD director should be working more closely with other cabinet agencies which would be involved during emergencies. The Adjutant General believes that the current location of EPD is the most effective since National Guard forces play an integral part during emergency situations and the current structure has not caused problems in the past.

Recommendation

10. All officials involved in the state's emergency operations should utilize the emergency operations center and integrate decision-making and communications.

Chapter 2
Facilities Management

Personnel and Benefits Issues

Tuition Assistance Program

The Adjutant General's office does not have adequate controls over funds disbursed through the National Guard tuition assistance program. Some participants who did not meet program requirements received tuition assistance funds, and others were overpaid for the courses completed. The agency has not made adequate efforts to collect funds owed to the program. Since 1998, the AG identified \$152,287 in debts incurred since 1980; only \$4,192 (3%) of this amount has been recouped. Also, the Adjutant General has interpreted state law in a manner which may add time to a tuition assistance recipient's obligation period to the National Guard. This may have prevented some recipients from participating in the program.

Background

S.C. Code §59-114-10 *et seq.* created the South Carolina National Guard Tuition Assistance Program. Pursuant to §59-114-40, the program funds the tuition of participants who are taking trade or vocational classes, attaining a two-year associate degree, or a four-year baccalaureate degree. Qualifying members of the National Guard may receive tuition assistance of up to \$1,000 per 12 semester hours successfully completed. The Adjutant General's office has allowed program participants to receive up to \$3,000 per academic year. Participation is limited to four years, and the maximum amount of funding a program participant may receive over four years is \$12,000.

Adjutant General Regulation (AGR) 621-1 states that in order to receive tuition assistance funds for a course, a participant must earn at least a "C." Also, recipients must remain in the National Guard for ". . . two years beyond the end of the academic period for which tuition is requested." Participants are required to sign a form stating if they do not fulfill the two-year obligation period, they must repay the funds received. Table 3.1 shows the funding for the program over the last ten fiscal years.

**Table 3.1: Tuition Assistance
Program Funding
FY 91-92 – FY 00-01**

YEAR	STATE APPROPRIATIONS
FY 91-92	\$237,398
FY 92-93	\$189,679
FY 93-94	\$180,195
FY 94-95	\$180,195
FY 95-96*	\$0
FY 96-97*	\$0
FY 97-98	\$100,000
FY 98-99	\$100,000
FY 99-00	\$200,000
FY 00-01	\$200,000**

* Funding for the program was discontinued in FY 95-96 and FY 96-97.

** An additional appropriation of \$250,000 in surplus revenue was pending as of October 2000.

Source: FY 91-92 through FY 00-01 Appropriation Acts.

Recoupment Efforts Inadequate

The Adjutant General's office has not made adequate efforts to recoup funds from recipients who did not meet program requirements. According to an official, many program participants did not stay in the National Guard for two years after receiving assistance. These participants are supposed to pay back the assistance they received. However, the agency has made minimal efforts to identify and recoup funds owed. Beginning in the spring of 1998, the agency identified \$152,287 in debts incurred to the program since 1980 (\$111,112 of this amount since 1990), and only \$4,192 (3%) has been recouped. According to an official, the recoupment effort was limited to periodically sending letters to program participants identified as owing funds to the program.

The Adjutant General could get additional recoupments by participating in the Department of Revenue's (DOR) debt collection program. This program, authorized by S.C. Code §12-56-10 *et seq.*, allows state agencies to collect debts by withholding a debtor's tax refund. Participating agencies must appoint hearing officers, debt coordinators, and supply notice and appeal procedures to the taxpayers whose refunds will be offset. Table 3.2 indicates the number of participating agencies since January 1, 1997, the number of debts collected, and the amount. The total amount collected by the DOR program since January 1, 1997, is \$178,629,692.

**Table 3.2: Department of Revenue
Setoff Debt Collection Program
January 1997 – June 2000**

TIME PERIOD	PARTICIPATING AGENCIES	NUMBER OF DEBTS	AMOUNT COLLECTED
January – June 2000	81	183,627	\$44,323,769
Calendar Year 1999	82	181,956	\$42,942,982
Calendar Year 1998	82	195,295	\$47,404,319
Calendar Year 1997	75	175,272	\$43,958,621

Source: Department of Revenue.

According to an AG official, they considered participating in the DOR program. The agency sent letters to program debtors in August 1999 warning them that they were going to turn their debts over to the DOR program. However, the Adjutant General's office has not yet participated in the program because of legal concerns. The Adjutant General's legal counsel stated he is concerned about a recent court decision against municipalities that used the DOR program. However, LAC legal counsel identified nothing in this case that should prevent the Adjutant General from participating in the program.

Program Management Controls

We sampled the files of 48 of the 577 program participants who received tuition assistance during FY 98-99 and FY 99-00 and found that program controls need improvement.

- Four program participants received tuition assistance funds for courses in which they did not earn at least a "C" as required.
- Six program participants were overpaid for a total cost of \$1,463.
- One file did not contain adequate documentation that the program participant had paid tuition.

We also found that Adjutant General Regulation (AGR) 621-1 is outdated. For example, the regulation restricts recipients to "a \$4,000 maximum award or four years whichever comes first." The maximum amount of funding a participant may receive over four years is now \$12,000. Also, AGR 621-1 states that a recipient must maintain a cumulative grade point average of at least a 2.0 on a 4.0 grading scale. According to an AG official, he only verifies to ensure a grade of "C" is earned in the courses for which tuition assistance is received. The program participant's cumulative grade point average is not reviewed prior to payment for courses.

Conflict between State
Law and Adjutant
General Regulation 621-1

A conflict exists between S.C. Code §59-114-40 and Adjutant General Regulation (AGR) 621-1. Section 59-114-40 requires program participants to serve in the National Guard for two years beyond the end of the academic *period* for which tuition is requested. AGR 621-1 defines academic/fiscal year as coinciding with the state's fiscal year which begins July 1 and ends June 30 each year. The Adjutant General has interpreted this statute and regulation to mean if a program participant completed summer school on July 1, 2000, the required two years of duty would not begin until July 1, 2001. The participants would fulfill the time requirement on June 30, 2003. If the Adjutant General interpreted the statute to require participants to serve in the National Guard for two years beyond the end of the academic *period*, the participants' time obligation would expire July 1, 2002. The AG's interpretation can add as much as one year to a program participant's obligation period, and may prevent recipients from participating in the tuition assistance program. According to an official, the Adjutant General's interpretation was adopted for "administrative convenience."

New Tuition Assistance
Program Adopted

The General Assembly enacted a new loan repayment program during the 2000 legislative session. This program requires the Adjutant General to develop a loan repayment program in consultation with the staff of the South Carolina Student Loan Corporation. The program must provide incentives for enlisting or remaining in the South Carolina National Guard in areas of critical need. These areas must be annually defined by the Adjutant General. In addition, the Adjutant General must promulgate regulations to set forth the terms of the loan repayment program, upon the advice of a loan repayment advisory board. An AG official stated they plan to phase out the current tuition assistance program when the new program is implemented.

The Adjutant General has not ensured that tuition assistance funds are given to recipients who meet program requirements and has not adequately collected program debts. The agency should implement appropriate controls in the new program to ensure that funds are used as intended.

Recommendations

11. The Adjutant General's office should strengthen tuition assistance program controls to ensure that participants adhere to the tuition assistance program criteria.
12. The Adjutant General's office should participate in the Department of Revenue's setoff debt collection program.
13. The Adjutant General's office should interpret S.C. Code §59-114-40 to mean a participant's obligation period begins after the term for which tuition assistance funds were received.
14. The Adjutant General's office should update Adjutant General Regulation (AGR) 621-1 to reflect the current criteria of the tuition assistance program.

Leave Reporting Controls

The Adjutant General's office has not implemented adequate controls to ensure accurate leave reporting by state employees who are also members of the National Guard. A sample of records indicated some employees have received unauthorized dual compensation; that is, they have been paid by both the state and federal governments for the same days of service in excess of allowed military leave. We previously identified a problem with leave reporting controls in our 1990 audit of the Adjutant General's office and recommended that guard duty reports be used to implement controls for accurate leave reporting. However, this recommendation has not yet been implemented.

Leave reporting controls are particularly important for the Adjutant General's office because many employees serve for extended periods of time on active duty. In addition to the traditional weekend drill and 15-day annual training, guard members are increasingly expected to serve with the full-time forces in missions from the Persian Gulf to the Balkans. For example, one state employee of the Adjutant General's office served on guard duty in FY 98-99 for 187 days, for which he was paid by the federal government.

The Adjutant General himself served on federal duty for 184 non-weekend days and 232 total days from 1998-2000. As a Constitutional officer, the Adjutant General is not required to take leave from his state position when on federal duty, but other state employees are entitled by law (§8-7-90) to only 15 days of military leave with pay per year, although 30 additional days may be granted in periods of emergency. Internal policy allows AG employees the

option of charging either annual leave or leave without pay for time in excess of approved military leave.

We reviewed the federal FY 98-99 state time and attendance reports and federal guard duty records of a nonstatistical sample of 21 state employees who had more than 20 days of guard duty during this period.

- The records indicated that 8 (38%) of the employees received unauthorized dual compensation. For some days, the employees were paid by the federal government for guard duty and did not take any type of leave from their state jobs. The total number of these days in the sample was 26. For individual employees the number of days ranged from 1 to 11.
- In three additional cases, the AG produced documentation to show the employees had turned in leave for the days we questioned. However, the agency did not list these days in the employees' leave reports. As a result, these employees would also receive unearned compensation for a total of 23 days.
- We also reviewed the records to determine if any employees had taken more days of military leave than allowed by law. We found the Adjutant General's office has substantially complied with state law governing military leave.

Some employees were paid by both the state and federal governments for the same days of service.

When we informed the Adjutant General's office of the leave discrepancies, they notified individual employees of the discrepancies and instructed them to correct the problems. Also, they notified all state employees of the National Guard that they are unable to receive payment from both the state and federal governments for the same days of service in excess of allowed military leave.

Controls could be implemented to ensure accurate leave reporting. Both the Army and the Air National Guards produce duty printouts which could be reconciled with time and attendance reports. Without adequate controls to prevent errors and resolve discrepancies in leave reporting, employees might continue to receive unauthorized dual compensation without penalty. Also, the state has paid for services it did not receive from these employees.

Recommendations

15. The Adjutant General's office should use guard duty reports to implement controls for accurate leave reporting. Regular reconciliation of duty reports with time and attendance reports or regular audits of leave records using duty reports should be considered.
16. The Adjutant General's office should request repayment or charge leave to employees who received unauthorized dual compensation.
17. The Adjutant General's office should ensure that all employees' leave days are entered into the agency's computerized leave system.

Funding for the State Pension Benefit

The state pension for National Guard members has not been adequately funded. Deficiencies in funding may violate the South Carolina Constitution.

Background

State law (S.C. Code §25-1-3210 *et seq.*) provides a pension benefit for members of the National Guard who began their service by June 30, 1993. Those who entered the guard after this date are not eligible for the benefit. The state pension supplements retirement benefits that guard members receive from the federal government. Guard members who complete 20 years of military service as specified in the law are eligible for a state pension of \$50 to \$100 per month beginning at age 60. As of March 31, 2000, 1,963 retired guard members were receiving the pension. The total payout for FY 99-00 was \$1,928,854.

Pension Funding

The Adjutant General's office administers the pension benefit by determining eligibility and making payments to those who receive benefits. The pension benefits are funded through the budgeting process by an annual appropriation. Guard members do not contribute to the fund. The Adjutant General's office has obtained biennial actuarial studies of the pension fund that recommend the level of annual funding needed to support the fund on an actuarially sound basis. Actuaries estimate the future liability of the fund and recommend an annual contribution that will allow investment earnings to pay

a significant portion of benefits due in the future. The Adjutant General’s office has requested the level of funding recommended by the actuaries, but the General Assembly has not appropriated this amount for several years (see table below). As a result, the pension fund has not been fully funded and could eventually suffer shortfalls.

Inadequate funding of pension benefits may violate the South Carolina Constitution. Article X, §16 of the Constitution states:

The General Assembly shall annually appropriate funds and prescribe member contributions for any state-operated retirement system which will insure the availability of funds to meet all normal and accrued liability of the system on a sound actuarial basis as determined by the governing body of the system.

Table 3.3: Actuary-Recommended Funding and Annual Appropriations for the National Guard Pension Fund

YEAR	ACTUARY- RECOMMENDED FUNDING	STATE APPROPRIATION	SHORTFALL
FY 95-96	\$2,499,066	\$2,499,065	•
FY 96-97	\$3,084,972	\$2,499,065	\$585,907
FY 97-98	\$3,084,972	\$2,499,065	\$585,907
FY 98-99	\$3,199,570*	\$2,499,065	\$700,505
FY 99-00	\$3,199,570*	\$2,499,065	\$700,505
FY 00-01	\$2,996,257	\$2,499,065	\$497,192

* Since publication of the 1998 actuary report, errors have been identified in the data given to the actuary and in the actuary’s calculations that would have an undetermined effect on the validity of the recommended amount. Subsequent actuary reports should correct for any errors in previous reports.

Role of the Budget and Control Board

Although state law mandates that the Budget and Control Board be involved in determining the required level of funding for the National Guard pension fund, the board has not been involved in this process. Section 25-1-3235 states, “The General Assembly annually shall appropriate sums sufficient over time to establish and maintain the fund on an actuarial basis as determined by the State Budget and Control Board.” The Adjutant General’s office has obtained actuarial valuations of the fund and submitted the recommended amounts in its annual budget requests, but the Budget and Control Board has not reviewed or validated these requests.

The General Assembly may be more likely to fund the pension at the recommended amount if the Budget and Control Board were involved in determining the appropriate amount. This could be accomplished by the board reviewing and approving the actuarial reports obtained by the Adjutant General. The Adjutant General’s office has obtained a new actuarial

valuation of the fund, as of July 1, 2000, which recommends an annual contribution amount of \$2,996,257.

Investment of the National Guard Pension Fund

The State Treasurer's office invests the National Guard pension fund. According to §25-1-3235, as enacted in 1993, "The State Treasurer shall invest the fund as the funds of other state retirement systems are invested." Although state law indicates that this fund should be invested in the same manner as other state retirement funds, a portion of the other retirement systems' funds has been invested in equities since 1999, and the National Guard fund has not.

In 1997 the South Carolina Constitution was amended to allow for the investment of retirement systems' funds in equities. However, the implementing legislation passed by the General Assembly in 1998 (S.C. Code §9-16-10 *et seq.*) omitted the National Guard pension fund from the list of retirement systems whose funds were eligible for equity investment. This omission is not in accord with the provisions of §25-1-3235.

Recommendations

-
18. The Budget and Control Board should annually determine the amount needed to fund the state pension for the National Guard on an actuarially sound basis. The General Assembly should appropriate the necessary funds as determined by the board.
 19. The General Assembly may wish to amend S.C. Code §9-16-10 (8) to include the National Guard pension fund in the list of state retirement systems eligible for equity investments. If the law is amended, the State Treasurer's Office should ensure that the National Guard pension fund is invested in the same type of investments as the other state retirement systems.

Employee Qualifications and Hiring Practices

We were asked to determine whether state employees at the Adjutant General's office are qualified for their positions. We found that the AG generally has controls to ensure that employees are qualified for their positions. However, we identified some areas where improvement is needed.

We reviewed the personnel files of all 14 permanent state employees hired between July 1, 1998, and June 30, 2000, to determine if the employees met the state's minimum training and educational requirements for their positions. We also reviewed the personnel files of the remaining seven employees in the state budget and finance division since a recent state auditor's report raised concerns about the qualifications and training of employees in this division.

We found that all these employees substantially met the requirements for their positions. Additionally, in May 2000, the agency hired a certified public accountant with substantial experience at the state auditor's office to work in the budget and finance division.

OHR Equivalency Approval

Although we found that all employees substantially met the state's minimum training and experience requirements, three did not meet the specific requirements. For example, one position required a bachelor's degree and relevant program experience. Although the employee hired did not have a bachelor's degree, the employee had some higher education and more than five years of relevant program experience. State human resources regulation 19-712.02 B states that applicants selected for hiring must meet the state's minimum training and experience requirements unless the Office of Human Resources (OHR) has approved an equivalency to the required training and experience established for the class. According to an OHR official, the Adjutant General's office has not requested any equivalency approvals for these employees.

Educational Documentation

The Adjutant General's office does not require documentation to support applicants' educational attainments. Accepting self-reported information about education does not provide an adequate control to ensure that applicants are properly qualified. Also, requiring documentation could help ensure that all applicants are given equal consideration.

Hiring and Selection Policy

The agency's interview and selection policy needs revision. The policy outlines several steps that the agency is supposed to take during the hiring process:

- The hiring official (supervisor conducting the interview) is to provide a list of interview questions to the agency's state director of human resources, or a designee.
- The state director of human resources, or a designee, is to be present at all interviews.
- The state director of human resources, or a designee, the immediate supervisor, and the program manager are to meet to review documentation and discuss the strongest candidate for the position.
- The state director of human resources, or a designee, is to conduct a reference check and a SLED background check.

While there was evidence of a SLED background check in the majority of files reviewed, there was no documentation that any of the other steps outlined above were completed. According to the state human resources director, the policy is not followed in its entirety due to lack of manpower in her division. To protect the agency from potential liability and ensure that policies are used as genuine controls, the Adjutant General's office should revise its policy to more accurately reflect the hiring process.

Position Descriptions

During our review of personnel files, we also found that position descriptions (PDs) were not signed by the employee currently in those positions. When an employee is hired, an accurate position description should be given to the employee to ensure that the employee fully understands his/her duties. State human resources regulation 19-708.05 states that a copy of each position description shall be maintained on a current basis for each established position. Also, employees are evaluated on how they complete the duties outlined in their PDs. State human resources regulation 19-701.05 C states that position descriptions should be reviewed by the supervisor with the employee during the performance evaluation to ensure accuracy.

We found evidence that the agency has been updating position descriptions to ensure they accurately reflect the requirements and duties of the position. According to the state human resources director, after this process is completed, employees will sign the PDs and they will be maintained in all personnel files.

Recommendations

20. The Adjutant General's office should request equivalency approvals from OHR for applicants who do not meet the state's minimum training and experience requirements.
21. The Adjutant General's office should require transcripts or official school documents to verify the educational attainment of applicants.
22. The Adjutant General's office should revise its interview and selection policy to accurately reflect steps taken by the agency during the hiring process.
23. The Adjutant General's office should ensure that position descriptions accurately reflect the employee's job duties and that each employee has signed a position description on file.

Employer Support Program

Participation in the Employer Support for the Guard and Reserve (ESGR) program offers substantive benefits to the National Guard at minimal cost to the state.

The Adjutant General's office participates in the South Carolina ESGR committee, the state component of the National Committee for Employer Support of the Guard and Reserve. The national committee is part of the U.S. Department of Defense. It was created in 1972 to promote cooperation and understanding between members of reserve forces and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. As the role of the National Guard and Reserve forces has become increasingly important and they are subject to longer periods of active duty, the potential for problems with civilian employers has multiplied. In addition to the Army and Air National Guard, the committee has members from the Army Reserve, the Air Force Reserve, the Navy Reserve, the Marine Corps Reserve, and the Coast Guard Reserve.

The state ESGR committee has 110 members with an executive committee, 15 military representatives, and 86 civilians representing the state's six Congressional districts. The committee is an informal volunteer network of business persons who mediate civilian employment conflicts for guard members. The committee also has attorneys trained to function as ombudsmen. According to one of the ombudsmen, on average he works on four to five cases a month in which employers and guard/reserve members have had disputes. The ESGR committee meets quarterly and has an annual awards banquet. The state committee had a federal budget of approximately \$25,000 for federal FY 99-00. The committee does not receive state funds. The major program that the committee sponsors is the "bosslift" program.

Bosslifts

A bosslift is an organized activity in which a group of employers and civic leaders, with military representatives and ESGR committee members, are taken to military sites to observe the military training of their employees. Each year the South Carolina ESGR committee participates in one national bosslift and at least one state bosslift. The national bosslifts are planned and sponsored by the national ESGR committee, are usually in distant locations, and often involve training sites used by forces from states other than South Carolina. The state bosslifts are planned and executed by the state ESGR committee. The federal government provides transportation on military aircraft for both types of bosslifts. The participants, who are selected by the ESGR committee, pay their own expenses such as lodging and meals. When federal funds are available, travel expenses are reimbursed for participants in the national bosslifts. The bosslifts for 1999 and 2000 sponsored by the South Carolina ESGR committee are listed on the next page.

Table 3.4: Bosslifts in 1999 and 2000

DATE	LOCATION	TYPE OF BOSSLIFT	SOUTH CAROLINA PARTICIPANTS
1999			
March 24–26	Gulfport, MS	National	34
April 16	The Citadel	State	25
June 12	Pope AFB/Ft. Bragg, NC	State	45
July 8–10	District of Columbia	State	38
2000			
January 12–14	San Antonio, TX	National	29
July 10–12	Ft. Irwin, CA	State	41
July 12–14	Ft. Irwin, CA	State	43
July 19	Ft. Stewart, GA	State	33
July 26–28	Ft. Irwin, CA	State	48

Source: Adjutant General's office.

In July 2000, approximately 5,000 members of the South Carolina National Guard participated in training exercises at the National Training Center (NTC) at Ft. Irwin, CA. The guard invited members of the media to participate in the bosslifts to Ft. Irwin. The media representatives produced television and newspaper accounts of the training operation.

State Costs and Benefits

The Adjutant General's office participates in the ESGR program at minimal cost to the state. The state employee who provides administrative support to the ESGR committee estimated that this work comprises one-third of her work time. The state also reimburses travel expenses for her and other Adjutant General's office staff who are members of the committee to attend its meetings.

Officials cited several benefits of the program. The program creates a network of people throughout the state who are volunteers and act as intermediaries between soldiers and their employers. Also, the feedback they get from the employers has affected the National Guard's policies. For example, because employers complained that soldiers' duty dates were often changed at the last minute, they now have a 90-day "lock" on the dates for typical weekend training. Participants in bosslifts stated they were impressed with the training they observed and were convinced that National Guard service could benefit the employees in their regular jobs. Also, program publicity could aid the guard in meeting recruiting and retention goals.

Appendices

Appendices

Audit Scope and Methodology

Our audit focused on the state operations of the Adjutant General's office and generally excluded review of its federal military mission. We focused on the programs detailed in our objectives and did not review other agency programs, such as the State Guard or the Youth Challenge Academy. The period of review was generally FY 98-99 and FY 99-00.

We conducted interviews with Adjutant General's officials and with officials from other state agencies. We also consulted emergency preparedness officials in other states, and reviewed reports from other states about emergency preparedness and other topics relating to the agency. We reviewed several types of records at the Adjutant General's office, including the following:

- Accounting records.
- Personnel records.
- Tuition assistance program records.
- Records of construction projects.
- Inspection and maintenance records.
- Meeting minutes.
- Actuarial studies and other reports prepared for the agency.

We also reviewed federal guard duty reports and financial reports from the Comptroller General's office. We measured the AG's performance in complying with state laws and regulations and assessed the agency's management controls for tuition assistance, leave reporting, employee qualifications, and construction and maintenance expenditures. To assess South Carolina's administrative structure for emergency management, we reviewed other states' placement of the emergency preparedness function.

We used limited nonstatistical samples as indicated in the audit report. We identified problems with some of the computer-generated data produced by the agency, but we did not rely on this information to answer our audit objectives. The state auditor's report on the Adjutant General for FY 96-97 and FY 97-98 and the state's Statewide Single Audit Reports for FY 97-98 and FY 98-99 identified many problems with the agency's accounting practices. We noted during our fieldwork that we were unable to obtain reliable financial reports on program expenditures in some areas. However, our objectives were generally based on program compliance and management. In order not to duplicate the state auditor's follow-up of its audits, we did not focus on accounting discrepancies in this review.

This audit was conducted in accordance with generally accepted government auditing standards.

Appendix A
Audit Scope and Methodology

Agency Comments

The State Budget and Control Board and the Office of the State Treasurer reviewed pages 23 – 25 of the report and elected not to submit comments for publication.

Appendix B
Agency Comments

The State of South Carolina
Military Department



Office of the Adjutant General

STANHOPE S. SPEARS
MAJOR GENERAL
THE ADJUTANT GENERAL

1 NATIONAL GUARD ROAD
COLUMBIA, S.C. 29201-4766

December 6, 2000

Mr. George L. Schroeder, Director
Legislative Audit Council
1331 Elmwood Ave., Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

We appreciate the opportunity to respond to your report, "A Review of the State Operations of the Adjutant General". Generally, we agree with your findings and appreciate your recommendations for improvement. Your staff worked well with us to minimize interruptions and keep us informed of their progress and findings. We appreciate the objectiveness of the auditors.

Based on your recommendations, we have controls in place to address the findings in this report. These controls have been discussed or forwarded to your auditors as we have implemented them. We believe this report and our response will reinforce that the operations of the Office of the Adjutant General support our federal and state missions.

We appreciate and concur with your findings regarding the inadequate funding and investing of the National Guard state pension. During the legislative session, we intend to work with the other agencies involved with the pension to bring about the needed changes no later than July 1, 2001. We have attached detailed responses to the findings in the report. Again, thank you for the support you provided to our agency. Please contact us if we can provide further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "St Stanhope S. Spears".

Stanhope S. Spears
Major General, SCARNG
The Adjutant General

Enclosures

Facilities Management

Armory Maintenance

We appreciate the recognition of the Legislative Audit Council of our inadequate maintenance funding levels. Armory maintenance is the most critical problem at the Agency. Our appropriated and rental operation funds will cover little more than utilities in this fiscal year. Our supplemental appropriation for armory maintenance was not approved. Although we agree that our priority lists and deferred maintenance lists should be better documented and kept current, these lists play a lesser role than they should because we have little money for significant maintenance needs. Most of the work performed by the buildings and grounds division is for emergency (health and safety) needs. At our current level of funding, we cannot sustain a viable maintenance program.

Regarding the “questionable emergency work order,” it is true that the National Guard Bureau does not fund the air conditioning of drill halls and that most of our drill halls are not air-conditioned. However over the years, several local governments have financed the installation of air-conditioning in the drill halls to support civic and community activities at these facilities. This is mutually beneficial in that it increases the potential rental income that the armory can derive to offset operating costs. When a drill hall is air conditioned, it is cooled only during rentals and rarely for soldier comfort. The only exception has been when a drill hall is used for sleeping quarters for soldiers during hurricane duties. Regarding the particular work order in question, the armory had been rented for a banquet. In order to fulfill our contractual obligation, it was necessary to repair the air conditioning for the drill hall. Failure to do so could have created a potential liability and certainly would have created bad will, thereby limiting the potential for future rental income.

Both the facilities committee and the board have become very active in addressing and prioritizing facility needs. The facilities construction, upgrade and repair committee meets quarterly in conjunction with the administrative officer quarterly meetings to address facilities needs less than \$25,000 and the facilities construction, upgrade and repair board is required to meet annually or at the call of the chairman.

Armory Construction and Closures

We generally concur with the findings and recommendations.

Through continued efforts and as state budget reductions become reality, we plan to increase our armory partnerships. We effectively partnered with SCANA to build a training facility at the McCrady Learning Center in exchange for SCANA using it one week a month as its management training center. SCANA has also agreed to help with deferred maintenance at a few armories along the evacuation route in exchange for joint use of these facilities during disasters.

Although armory closures would be a last resort to deal with the lack of funding necessary to adequately maintain and operate our facilities, we will continue to review the facility needs in relation to our federal and state missions and the potential effects of closures to the guardsmen and the communities. Please

note closure of armories either eliminate jobs or puts twice the operating and maintenance costs on the other armories. However, such closures may be an economic reality (without adequate funding from the State).

Controls Over Capital Improvements Expenditures

We generally concur with the findings and recommendations.

Placement of the Emergency Preparedness Division

We concur that South Carolina's situation is unique because the Adjutant General is elected and that no serious problems have occurred as a result of the structure of the Emergency Preparedness Division (EPD).

Although the Adjutant General selects the EPD director and is responsible for daily administration and budget, the Governor has a direct chain of command. For all the military department of South Carolina, the Governor is the commander in chief¹ and the Adjutant General is only the chief of staff.² There can be no clearer statement within the statute ("Commander in Chief") as to the chain of command.

The declared excepted instance of emergencies is incorrect. Though it may be more obvious at that time, that is not the only time that the command authority is in place. In a declared emergency, all of the state government is under a direct command to the governor. However, the EPD and military department, unlike other facets of the state government are always subject to its commander in chief.^{3 4} In fact, each member of the military department takes an oath to follow orders of the Governor.⁵ Therefore whether separately elected or appointed by someone other than the Governor, each official is statutorily obligated to lawful orders of the Governor, may be compelled to follow such orders, and swears allegiance to the Governor. Therefore, there is no issue of disloyalty or potential disloyalty to the Commander in Chief.

¹ **§25-1-310** "The militia of the State not in the service of the United States shall be governed and its affairs administered pursuant to law by the Governor, as commander-in-chief, through the military department..."

² **§25-1-320** "The Adjutant General...He shall be ex officio chief of staff."

³ **§25-1-430** "*(c) South Carolina Emergency Preparedness (Civil Defense) Organization shall mean all officers and employees of state government, county government and municipal government, together with those volunteer forces enrolled to aid them in an emergency and persons who may by agreement or operation of law be charged with duties incident to protection of life and property of this State during emergencies.*"

⁴ **§25-1-440** In a declared emergency, the Governor may "(6) Compel performance by elected and appointed state, county and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order.

⁵ **§25-1-540** "*I ——— do solemnly swear that I will support and defend... the Constitution of the State of South Carolina... that I will obey the orders of the President of the United States and the Governor of South Carolina..., so help me God.*"

The EPD director is working closely with cabinet agencies that would be involved during emergencies. EPD provides numerous emergency management-training programs and conducts exercises to test the state's capability to respond to emergencies. These programs and exercises include cabinet agencies, other state and local governments, private industries, and volunteer support organizations.

Personnel and Benefits Issues

Tuition Assistance Program

Recoupment Efforts.

The Adjutant General acknowledges that some participants were not in compliance with the agency regulation. It is important to note that though minor discrepancies were found, they did not create conflict with the enabling legislation nor legislative intent. At all times the TAP program was administered with the intent of the enabling legislation.

The agency does not concur with the finding that the agency has not made adequate efforts to collect funds. The agency has intentionally not participated in the DOR debt collection program for legal and fiscal concerns. The underlying rationale is as follows.

Legal. The report assumes that participants are under a legal debt to the government. The Act that established the TAP program awarded grants.⁶ There is no legislative history to imply a contractual theory. The legislature empowered the Adjutant General to implement the program, specify criteria for awarding of grants, and to set forth regulations.⁷ A grant is an endowment or gift.⁸ A grant differs from a contract in that a contract is not a gift, but a barter or trade. A “grant-in-aid” reinforces this concept.⁹ The development of the contract between the recipient

⁶ §59-114-30. Tuition assistance grants; limitations on amount and period of eligibility.

Qualifying members of the National Guard may receive tuition assistance grants, not to exceed five hundred dollars per academic year. No member may qualify for such grants for more than four separate academic years and a new application must be submitted for each separate academic year for which tuition assistance is sought.

⁷ §59-114-50. Administration of program; regulations.

The Adjutant General shall administer this program. He may delegate authority to his subordinates within the South Carolina Military Department as is necessary to implement the program. The Adjutant General shall promulgate regulations specifying additional eligibility criteria for tuition assistance grants which shall include, but not be limited to, prior National Guard service requirements, required levels of military occupational skill proficiency, and recommendations required of an applicant's National Guard supervisors. Additionally, regulations shall be promulgated setting forth standards of academic performance to be met by persons receiving assistance in order to qualify for assistance in future years and, as necessary, specifically approving vocational and training schools as eligible institutions.

⁸ Grant. To bestow; to confer upon someone other than the person or entity which makes the grant. To bestow or confer, with or without compensation, a gift or bestowal by one having control or authority over it, as of land or money.

A conveyance; *i.e.* transfer of title by deed or instrument.

As distinguished from a mere license, a grant passes some estate or interest, corporeal or incorporeal, in the lands which it embraces.

In England, an act evidenced by letters patent under the great seal, granting something from the King to the subject. (*Black's Law Dictionary, 5th edition*, West Publishing Co. 1979., pps 629-630)

⁹ Grant-in-aid. Sum of money given by a governmental agency to a person or institution for a specific purpose such as education or research. (*Black's Law Dictionary, 5th edition*, West Publishing Co. 1979.,p. 630)

and the Military Department was by a prior administration and general counsel. It is established fiscal law that an agency cannot increase rights from the legislative intent contrary to the enabling statute. The agency cannot create a contract right.

A grant (or gift) established in the statute does not allow the Adjutant General to “collect” or demand return of the gift. The sole power the Adjutant General has is made in the statute, which is to deny future grants. No provision is made for recovery of funds for failed participation. Therefore, the agency cannot legally recover the alleged “debt.”

Fiscal Responsibility of Agency. Should the Adjutant General recover funds from individuals without a legal right, the Military Department is subject to multiple lawsuits. Assuming, however, arguendo program participants could be compelled to repay under some interpretation, participation in the DOR program raises additional concerns.

Clearly by statute, the Adjutant General is a qualified agency for the DOR set-off program. It is unclear whether a recipient of TAP funds creates a “delinquent debt,” or become a “debtor.”¹⁰ If not a qualified debtor under the statute, the individual has a “takings” claim, and the agency would have an expensive and untenable position in litigation. By statute, the DOR is only an agent of the agency in collecting the alleged debt.¹¹ Current litigation in South Carolina is pending for improper recovery in the set-off program. If the Adjutant General does not have clear authority, the Military Department may be liable for the litigation expense and damages therefrom, not DOR.

The Adjutant General has accepted prudent legal advice to refrain from participation in the DOR program until the South Carolina Supreme Court rules on the appeal. The Legislative Audit Council report grossly exaggerates the amount of money potentially recouped through the DOR program if every other obstacle could be overcome. Within South Carolina, the statute of limitations for recovering a contractual debt is three years¹² (the State no longer is exempt).¹³

¹⁰ **§12-56-20. Definitions. As used in this chapter:**

(3) "Debtor" means any individual having a delinquent debt or account with any claimant agency which has not been adjusted, satisfied, or set aside by court order, or discharged in bankruptcy.

(4) "Delinquent debt" means any sum due and owing any claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made. It does not include sums owed to county hospitals when the hospital and the debtor have entered into a written payment agreement and the debtor is current in meeting the obligations of the agreement.

¹¹ **§12-56-100. Indemnification of department by agency.**

Claimant agencies shall indemnify the department against any injuries, actions, liabilities, or proceedings arising from performance under the provisions of this chapter.

¹² **§15-3-530. Three years or six years.**

[Causes of action arising or accruing after April 5, 1988, the following provisions apply within three years:

- (1) An action upon a contract, obligation or liability, express or implied
- (2) An action upon a liability created by statute other than a penalty or forfeiture;

Most of the funds identified by this report are funds that exceed the statute of limitations—at least \$88,761 of the \$152,287 were time barred when the DOR program began and \$71,251 of this amount was time barred before the current Adjutant General assumed office. Therefore, DOR recovery creates legitimate litigation issues.

In summary, the decision to pursue the DOR set-off program clearly lies with the agency.¹⁴ It is unclear that a legitimate “debt” is created by statute. There is doubt that a “grant” by statute can become a debt by a subordinate regulation. Even if a debt is incurred, a small amount falls within the statute of limitation period. Since there is doubt as to the legitimacy of using the set-off program and the amount to be recovered is minor compared to the cost of litigation, the Adjutant General’s decision to not participate in the program is founded in fiscal responsibility.

It is the Adjutant General’s position that if the DOR program indemnified the agency from legal expenses or recovery amounts, the agency would participate. Further, the absence of common law on the issue creates uncertainty as to the legality of the recovery. Absent this indemnification, the Adjutant General has a duty to make fiscal decisions in the best interest of the taxpayer. As a constitutional officer, the Adjutant General cannot knowingly pursue a legal action he believes to be unlawful. Therefore, the Adjutant General is correct in not participating in the DOR program until these issues are resolved.

New Tuition Assistance Program Adopted.

While the comments in this section are accurate, these comments fail to acknowledge the role of the Adjutant General in proposing this new legislation to the leadership in the General Assembly. This initiative on the part of the Adjutant General was motivated by shortcomings in the current TAP program including the issues surrounding recoupment.

When the new program is implemented, the Office of the Adjutant General will no longer be responsible for debt collection.

Leave Reporting Controls

The Adjutant General (TAG) works many weekends and weeknights as a constitutional officer while not in federal duty status. Therefore, no one should be misled by the significant number of days he is also in federal duty status. He serves the State well both at home and throughout the nation and the world. Also, being in military duty status when appropriate allows TAG to travel at military, not state, expense. Further, TAG has enormous duties and responsibilities that must be performed in federal duty status such as visiting Guard personnel deployed throughout the United States and overseas for contingencies and training as well as attending meetings of important national-level military policy-making boards. In particular, South Carolina is fortunate for TAG to be a member of the Department of Defense Reserve Forces Policy Board.

¹³ *Condon v. City of Columbia*, 528 S.E.2d 408.

¹⁴ **§12-56-40. Choice of claimant agency as to use of or participation in setoff program.**

If the claimant agency determines that the administrative cost of utilizing this chapter is prohibitive, it may choose not to participate in the setoff program, or it may choose to participate only in cases of delinquent debts above an amount it determines appropriate.

Prior to this report, this agency did not have access to the federal leave records and was not aware of any discrepancies between state leave and federal work. As we became aware of these problems, the employees immediately corrected these days by taking additional leave, repaying the agency, or documenting that no error had occurred. The federal government and our agency will now work together to ensure that military leave is properly accounted for in both governments.

Several of the remaining exceptions in the report involved Readiness Management Assemblies (RMAs) which are four hour periods usually conducted after a normal workday to allow part-time guard persons (with civilian or State jobs) to travel and attend after their normal workday. Therefore, we may have employees who receive state and military pay on the same day but not for the same hours. This situation is no different than a state employee having a part-time job in the evenings. In our opinion, RMAs should not have been reported as exceptions in your report.

Funding for the State Pension Benefit

We concur with your findings. We intend to work with the Budget and Control Board, especially the Retirement Systems, and the Office of the State Treasurer to ensure that the pension is operated in accordance with State laws and is adequately funded and invested.

Employee Qualifications and Hiring Practices

We will amend our policy to include OHR equivalency approvals, when required. However, our annual State Human Resource Office audits have never raised this as an issue.

One of the three exceptions was a roofing trades specialist who had trades experience (although not specifically in roofing) and some college experience. He was hired for a position that did not even require a high school diploma and paid approximately \$17,000. We have difficulty recruiting anyone for these positions. Another of the three is no longer employed with the Agency.

Employer Support Program

We agree that this is a beneficial, minimal cost program which improves recruiting and retention.



State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

December 5, 2000

Mr. George L. Schroeder
Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Thank you for this opportunity to comment on the report entitled A Review of the State Operations of the Adjutant General. Our comments are directed to Chapter 2, "Placement of the Emergency Preparedness Division."

Governor Hodges feels strongly that the Emergency Preparedness Division (EPD) should be a part of the Governor's office. While the Emergency Preparedness Division is most visible during times of emergency, some of its most enduring and important work occurs at other times of the year with such activities as assessment, prevention, mitigation, planning, preparation and evaluation. These activities are crucial to a strong response in times of emergency. Because of the current administrative structure of EPD, the Governor does not have direct authority or regular input into these most critical responsibilities.

As the person ultimately responsible for all state agencies in emergencies, the Governor of South Carolina should have complete authority and control over every aspect of emergency preparedness. This includes directing and supervising the personnel of the Emergency Preparedness Division. Under the present arrangement, the Governor relies upon the judgement and abilities of an individual who is employed by and ultimately responsible to another elected official. In the event of a policy or procedural disagreement between the Governor and the Adjutant General, the director of the Division of Emergency Preparedness may be forced to choose between one of two masters.

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Mr. George L. Schroeder
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Research conducted by the Legislative Audit Council determined that South Carolina is the only state in which the emergency management agency is not in a direct chain of command to the Governor. The LAC report also noted two very recent reports which recommended that EPD be placed under the Governor's office. Indeed, prior to being transferred to the Adjutant General, emergency preparedness was a function of the Governor's office.

The fact that the current structure has "not caused problems in the past" should not be a justification for maintaining the status quo. The ability to respond effectively to emergencies should be of sufficient importance to encourage policymakers to do everything possible to strengthen and improve South Carolina's emergency response capabilities. While the Adjutant General plays an integral part in responding to emergencies, it is the Governor who has to make the ultimate decisions regarding life and property in our state. It is the Governor, as chief executive officer of the state, who must direct all state agencies, including the Adjutant General, and coordinate with local and federal authorities in planning for and responding to emergency situations. As recognized by forty-nine other states, it should be the Governor who has the direct, fulltime, and ultimate responsibility for the day-to-day operations of the Emergency Preparedness Division.

Governor Hodges has worked very closely with the Emergency Preparedness Division and has established roles and relationships within the Governor's office to facilitate communications and integrated decision-making. This informal arrangement depends largely on the good will and an agreement on a common agenda by the participants. This informal arrangement should not be seen as a substitute, especially in times of emergency and stress, for the person with ultimate responsibility for the outcomes to have complete and unquestioned control of all personnel and operational aspects of the organization.

Thank you for the opportunity to respond to this report. We realize that the decision to move EPD is ultimately that of the General Assembly. Regardless of where the Emergency Preparedness Division is located, Governor Hodges will work to the best of his ability to ensure South Carolina is prepared and responds aggressively to any emergency.

Sincerely,

A handwritten signature in black ink that reads "Mike LeFever". The signature is written in a cursive, slightly slanted style.

Michael Grant LeFever
Deputy Chief of Staff

This report was published for a total cost of \$315.60; 120 bound copies were printed at a cost of \$2.63 per unit.
