

MILITARY DEPARTMENT

It Has Had Problems With Inadequate Personnel Management and Improper Organizational Structure and Has Not Met Recruiting and Facility Maintenance Requirements

Audit Highlights . . .

Our review of the California Military Department (department) revealed that:

- It has not effectively reviewed its state active duty positions, and as a result may be paying more for some positions than if they were converted to state civil service or federal position classifications.***
- It has convened a panel to review the propriety of its 210 state active duty positions and estimates it will take three to five years to implement the panel's recommendations.***
- It did not follow its regulations when it temporarily appointed many state active duty members to positions that do not appear to be temporary, failed to advertise some vacant positions as required, and inappropriately granted an indefinite appointment to one state active duty member after he reached the mandatory retirement age.***

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REPORT NUMBER 2005-136, JUNE 2006

California Military Department's response as of December 2006

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Military Department's (department) resource management and recruitment and retention practices. Specifically, the audit committee asked that we review the department's operations and practices regarding strategic planning, the use of state and federal funds and personnel, the current condition of its armories, its management of state military personnel, recruitment and retention practices, and reporting of military personnel's attendance at training to maintain their military skills.

The department is responsible for the command, leadership, and management of the California National Guard (Guard), including its army and air force components, and related programs, such as the State Military Reserve and the Guard's youth programs. The Guard provides military service to California and the nation and serves a threefold mission: as a reserve component of the U.S. Army and Air Force, the Guard provides mission-ready forces to the federal government, as directed by the president; it supports the public safety efforts of civil authorities during emergencies, as directed by the governor; and it provides military support to communities, as approved by the proper authorities. The state adjutant general, who is appointed by the governor and confirmed by the state Senate, serves as director of the department and commander of the Guard.

Finding #1: The department has not effectively reviewed its state active duty positions, as required by its regulations, to determine whether those positions could be filled with state civil service employees.

The Military and Veterans Code grants the governor the authority to activate or appoint part-time Guard members to full-time duty, known as state active duty. The department's regulations require that the department review its state active duty positions periodically to determine whether they would be more appropriately classified as state civil service positions or federally funded positions. These state active duty positions are staffed

- ☑ *It is deficient in its management of federal employees by using them in positions and for duties that are not federally authorized.*
- ☑ *State active duty members who become whistleblowers do not have access to an independent authority to resolve complaints of alleged retaliation.*
- ☑ *Although the department's strategic planning process was interrupted by the events following September 11, 2001, and ultimately abandoned by the former adjutant general, the department has recently revived the process.*
- ☑ *In establishing new headquarters' divisions and an intelligence unit, the former adjutant general failed to obtain state approval.*
- ☑ *The department used federal troop commands and counterdrug program funds for unauthorized purposes when it formed a field command for operations to support civil authorities and established additional weapons of mass destruction response teams.*
- ☑ *The department was unable to demonstrate that it ensured all misused counterdrug funds were reimbursed from other federal sources.*
- ☑ *In recent years, the Army National Guard and the Air Guard did not meet their respective goals for force strength.*

with military personnel who receive federal military pay and allowances that in some cases greatly exceed the costs to employ state civil service employees. For example, a colonel responsible for records management, printing, mail services, and supplies management receives an annual salary of about \$125,500, while a civil service counterpart in another state department with similar responsibilities receives an annual salary of \$62,300. The department's adjutant general has convened the State Active Duty Reform Panel (panel) to review the department's use of state active duty members. The panel's tasks include reviewing the state active duty positions to determine if the responsibilities of those positions could be performed by other state or federal position classifications available to the department. The panel is also addressing other past personnel practices of the department, such as creating more state active duty positions than the budget authorized. The department estimates it will take three to five years to implement any changes the panel recommends.

To reform its use of state active duty personnel and comply with its senior leadership's wishes for how they should be used, we recommended the department ensure that the panel completes the tasks assigned to it by the adjutant general and follows through with the panel's recommendations.

Department's Action: Partial corrective action taken.

The department reports that it has reviewed all of the 210 baseline state active duty positions and additional positions, such as temporary positions and positions already under transition to nonstate active duty status. The department states that the actions it has completed regarding the positions it reviewed include developing or modifying position descriptions, reclassifying positions when appropriate, considering downgrading or eliminating positions, and advertising those positions identified for transition from state active duty to either state civil service or federal technician.

The department further reports that although it has not completed its plan to convert positions targeted for transition from state active duty to other status, it has begun converting those positions. For example, the department reports that it has converted every targeted position that has become vacant through normal personnel actions. As of December 2006 the department has converted 10 of 60 targeted positions and the remaining positions will be converted when they become vacant through reassignment, retirement, or resignation. The department estimates it will take an additional 24-36 months to convert the remaining targeted state active duty positions.

- ☑ *The department does not maintain adequate procedures to demonstrate it accurately reports training attendance or monitors and addresses Guard members with excessive absences.*
 - ☑ *The State Military Reserve has not met its force strength goals in recent years; and the department has not identified the role for the State Military Reserve, allowing it to identify its force strength needs.*
 - ☑ *Ninety-five of the department's 109 armories are in need of repair or improvement, contributing to a \$32 million backlog.*
 - ☑ *The department's allocations of state and federal funding, including a relatively small amount of money from the Armory Fund, have not been adequate to maintain the armories.*
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Finding #2: The department engaged in questionable practices related to its state active duty workforce.

The department temporarily appointed numerous state active duty members to positions that do not appear to be temporary in nature. In many cases, the department repeatedly extended temporary appointments for set periods—usually one year—that in effect converted them into appointments of indefinite duration. The department's regulations define temporary appointments as those with specified end dates. Further, the department has not always followed its requirement of announcing a vacant state active duty position before filling it. Announcing vacant positions allows qualified individuals to compete for the positions.

Also, the department did not follow state law and its regulations when, in September 2001, it granted an indefinite appointment to a state active duty employee who had reached the mandatory retirement age. State law sets the mandatory retirement age for state active duty members at 60. For an employee to remain in a state active duty position beyond age 60, he or she must obtain approval from the adjutant general and then can hold only a temporary position. The adjutant general has directed the panel to review the department's hiring policies and practices for the state active duty program and suggest necessary changes to the department's regulations to conform to the Military and Veterans Code.

We recommended the department review its hiring policy and practices for state active duty members, as directed by the adjutant general, and make the necessary changes in its policy and regulations to provide adequate guidance to its commanders and directors.

Department's Action: Pending.

The department reports that although it originally planned to implement this recommendation by October 2006, it has since concluded that updating the department's policies and regulations was not a task suitable for the panel and has decided to form a separate team to accomplish the task. The adjutant general will appoint the team in January 2007 and expects the team's task to be completed during the first quarter of calendar year 2007.

Finding #3: The department's overall management of its federal employees is deficient.

The National Guard Bureau pays for the federal full-time military members and civilian employees the department uses to support the department's large part-time force. Yet the department does not always use those federal personnel in the positions and for the duties authorized by the National Guard Bureau. For example, the department's analysis identified at least 25 full-time active guard reserve members in the joint force

headquarters working in unauthorized positions as of January 26, 2006. As of March 1, 2006, the State was authorized to have 48 active guard reserve personnel in its joint force headquarters, yet 76 were actually assigned and working there, leaving other Guard units short staffed.

According to the chief of staff of the Joint Staff and the chief of staff of the Army Guard, numerous factors explain why the department has exercised poor control over its full-time staff. These factors include undocumented movement of personnel over a long period under the command of many past adjutants general, the department's use of outdated authorizing documents, and confusion over whether the Joint Staff or the Army Guard is responsible for issuing orders for full-time personnel.

We recommended the department develop and implement procedures to ensure that it complies with authorizations for federal full-time military personnel to support its part-time Guard forces. Those procedures should include designating the responsibility for issuing orders for full-time personnel to a single entity.

Department's Action: Partial corrective action taken.

The department states that it has always complied with overall authorizations for full-time manning and points out it believes that the issue was to what extent the department had authority to move allocations between units. The department points out that the adjutant general has the authority to assign full-time active guard reserve members to any unit or organization necessary to accomplish federal and state missions. However, the department also points out that this authority does not eliminate its requirement to consider the allocation rules used by the National Guard Bureau to provide these resources to the State, and to the extent possible, assign these resources in accordance with unit by unit allocations.

Nonetheless, the department states it has reviewed its allocations of authorized federal full-time personnel and mission requirements with the intent to more closely align staff assignments with position authorizations. As a result, the department reports it has reassigned 35 percent of the full-time active guard reserve members that were previously assigned to the joint forces headquarters. Further, the department states that ongoing management of its mission requirements and future resource allocations will, to the maximum extent practicable, minimize the future disparities between resource allocations and assignments.

Finally, the department reports that it has assigned the responsibilities for issuing orders for full-time members solely to the active guard and reserve branch within the joint forces headquarters.

Finding #4: We could not confirm that the department disseminates information on benefits to deploying Guard members.

Although regulations and department procedures require the department to inform all members who are called to active duty and deployed for service of the benefits available to them as active members of the Guard, the department could not provide evidence that it had done so. Nevertheless, nothing came to our attention that led us to believe these members did not receive benefits briefings. Among the benefits included are medical, dental, life, and unemployment insurance and reemployment rights. The department provided descriptions and handbooks containing evidence that it has processes that offer multiple opportunities to inform deploying Guard members and their families of the benefits available to them during members' active duty status. However, the department's checklists and others records are not sufficient to allow us to confirm who has received these benefits briefings, and the records are not kept for all deploying Guard members. Because the department does not retain written evidence of who has received a briefing, we could not confirm that Guard members are aware of their benefits.

Because the department has a responsibility under federal regulations to inform deploying members of the benefits available to them while on active duty, we recommended the department consider implementing a procedure for both the Army Guard and the Air Guard to demonstrate that it complies with that requirement.

Department's Action: Corrective action taken.

The department reports that subsequent to the release of our audit report, it conducted a review of the processes used during pre-mobilization activities and completed discussions with the federal oversight authorities responsible for oversight and approval of the department's pre-mobilization activities and actions. Although the department concluded it complies with federal requirements for the pre-mobilization processing, it acknowledged that additional opportunities exist to document its compliance. The department states its review and actions will improve its ability to document the actions taken during pre-mobilization activities.

Finding #5: State active duty members do not have access to an independent process to resolve complaints of retaliation against whistleblowers.

In contrast to legal protections for federal employees who act as whistleblowers, state active duty members who become whistleblowers do not have access to an independent authority to resolve complaints regarding retaliation. Rather, department regulations require that state active duty personnel attempt to resolve their complaints through the lowest level of supervision or state active duty chain of command before filing an official complaint with the department's State Personnel Office. As a result, a state active duty member lodging a complaint of retaliation is forced to first lodge a grievance with the same commander who allegedly engaged in retaliation.

To ensure that its state active duty personnel can report any alleged violations of statutes, regulations, or rules without fear of retaliation, we recommended the department establish a process independent of the chain of command to protect those state active duty personnel who wish to file complaints alleging retaliation by a superior.

Department's Action: Pending.

The adjutant general supports providing state active duty personnel the ability to register legitimate complaints without fear of retribution by superiors. In addition, the department states that because it does not have the authority to establish an independent process, it is prepared to work closely with state authorities to create an independent state inspector general.

Finding #6: The department does not adequately maintain files to demonstrate that it complies with regulations concerning allowable activities.

Reviews and recommendations regarding legal or ethical conduct are supplied by the Staff Judge Advocate's Office using Standards of Ethical Conduct (ethics standards) issued by the Department of Defense. Because the Staff Judge Advocate's Office does not keep logs of the requests for outside activities it reviews or records of the recommendations it provides to leadership, it cannot demonstrate, nor can we confirm, that the department consistently follows the guidance contained in the ethics standards.

We recommended that in order to demonstrate the department complies with the ethics standards, the Staff Judge Advocate's Office implement a system to log the activities it reviews and to maintain files of the opinions it provides to department leadership on questions of compliance with those ethics standards.

Department's Action: Corrective action taken.

The department reports that the Staff Judge Advocate's Office has established a procedure to maintain duplicate files of ethics opinions: one file of opinions by the individuals' name or the name of the operation, and one in a central file.

Finding #7: The department's lack of an adequate strategic planning process contributed to its questionable reorganizations.

The Guard's strategic planning process was interrupted after the events of 9/11 and was subsequently abandoned altogether by the former adjutant general. Without a current strategic plan and a formal strategic planning process for identifying and analyzing threats and opportunities, the department cannot measure how well it is accomplishing its federal and state missions. In the absence of a properly prepared strategic plan, the former adjutant general chose to place a greater emphasis on providing military support to civil authorities. In doing so, he sponsored the creation of unauthorized entities, such as the Civil Support Division in its headquarters and an expanded intelligence unit within it, and a field brigade, known as the MACA Brigade, to command military support to civil authorities. However, because the department at that time did not have a strategic planning process that would have justified the need for those entities, we cannot conclude that the former adjutant general's change in emphasis was warranted. Although the department recently took steps to again implement a strategic planning process, had it adhered to the principles of strategic planning in the past, many of the problems associated with the former adjutant general's organizational changes might have been avoided.

In its efforts to implement the former adjutant general's perception of the organizational mission, the department violated state and federal laws and regulations. First, the department established the new organizational entities without obtaining state and federal approval. For example, the department did not obtain the required approval from the state Department of Finance to establish the new entities within its headquarters. Second, the department used federal troop command units for purposes not authorized by the federal National Guard Bureau when it combined the resources assigned to the units and formed a field command headquarters to support civil authorities.

We recommended that in order to avoid public concern and promote transparency and to comply with state and federal laws, regulations, and administrative policies, the department continue its efforts to reimplement a strategic planning process. This process should include the in-depth analyses of the threats and opportunities facing the department, including changes in the environment and leadership. In addition, the department should obtain appropriate approvals from the state Department of Finance and the federal National Guard Bureau before making organizational changes in the future.

Department's Action: Partial corrective action taken.

The department reports that it has continued its reimplementation of a strategic planning process that involves input from staff—a process it says continues to mature. The department reports it continues to track organizational and operational goals to ensure allocation of resources and efforts on priority issues related to the strategic plan. Management's current focus requires that the status of every goal be reported to management on a monthly basis. In addition, the department states that it continues to refine and update its strategic plan, and anticipates initiating its first annual update of its strategic plan with an executive off-site meeting scheduled for April 2007.

Further, the department reports that it has confirmed with the National Guard Bureau that its current efforts to complete reorganizations are in agreement with the policies, procedures, and guidelines provided by the National Guard Bureau. The department also states that it has coordinated current organizational changes with the Department of Finance and has received approval for the current organizational configuration and is conducting discussions with the Department of Finance to ensure the department gains approval prior to any future organizational changes.

Finding #8: The department inappropriately used federal counterdrug program funds to command the MACA Brigade and establish its terrorist response capabilities.

The department directed the use of resources from the federal counterdrug program to operate the field command headquarters and to establish weapons of mass destruction response teams beyond what was federally authorized and funded. We believe this misuse of resources violated federal counterdrug laws and regulations. In addition, the department could not prove that it ensured that all the misused funds were reimbursed from other federal sources. Although we were able to confirm that most of the \$783,000 in misused counterdrug program funds were reimbursed, the U.S. Property and Fiscal Officer (U.S. fiscal officer)—the federal agent of the National Guard Bureau that handles the federal property and federal funds for the California’s Army Guard and Air Guard—was unable to provide evidence that action was taken to reimburse more than \$85,500 for Army Guard and Air Guard personnel pay and allowances and equipment costs.

To ensure that all federal counterdrug program funds used for non-counterdrug activities are properly reimbursed, the department should work with the U.S. fiscal officer to identify all the non-counterdrug costs that have yet to be reimbursed and to ensure that the transfer of costs from the appropriate accounts occurs. In the future, the department should not use counterdrug program funds for non-counterdrug activities.

Department’s Action: Partial corrective action taken.

The department reports that the U.S. fiscal officer has determined that no further reimbursement would be appropriate for \$66,000 of the \$85,500 amount we identified in our report. According to the department, the U.S. fiscal officer based his decision on his opinion that the amount was either offset by previous reimbursements or cannot be validated as costs charged to the counterdrug program. Reimbursement of the remaining amount will require a transaction at the National Guard Bureau level and the U.S. fiscal officer is working with Air National Guard Financial Management to enact the reimbursement to the counterdrug program.

Further, the department states its leadership, in conjunction with the U.S. fiscal officer, has reviewed the restrictions for the use of counterdrug program funds and will not use these funds for noncounterdrug program purposes without prior approval from the National Guard Bureau. Also, the department stated it is in the process of establishing an internal control program that will have the capability to review and audit financial transactions and cost allocations to ensure they conform with federal and state guidelines.

Finding #9: The department has not met recent force strength goals.

Although California’s Army Guard met its goal for federal fiscal year 2003, its performance in meeting its goals for federal fiscal years 2004 and 2005 declined. According to the Army Guard, maintaining prescribed force levels has become increasingly difficult because of several factors, including a perceived lack of state incentives. However, if the department does not meet its force strength targets, the

National Guard Bureau may redistribute federal resources to states that do meet their targets—resources the department needs to achieve its state mission of providing military assistance to California’s civil authorities in times of insurgence or catastrophic events.

Like the Army Guard, the Air Guard has not met its force strength targets, and its performance in meeting those targets has slipped over the past three years. Although the Air Guard achieved 93 percent of its force strength goal in federal fiscal year 2005, it ranked 38th among the 54 jurisdictions (states, territories, and the District of Columbia). The Air Guard attributes its diminished ability to meet force strength goals to the fact that goals are consciously set high to achieve optimum force strength, the ongoing war, and a smaller pool of personnel with prior service to recruit from.

We recommended that the department identify and pursue the steps necessary to meet the force strength goals set by the National Guard Bureau, including but not limited to identifying the most effective manner to use the additional recruiting resources provided by the National Guard Bureau and continuing to pursue, through the State’s legislative process, incentives it believes will encourage citizens to join the Guard.

Department’s Action: Partial corrective action taken.

The department states that its actions have resulted in the Guard meeting or exceeding its national targets for both new recruits and overall end strength for the federal fiscal year ending September 30, 2006. The department expects to sustain its success in maintaining overall force strength through the newly released recruiting initiative called the Guard Recruiter Assistance Program. Under this program, Army and Air guardsmen are encouraged to recruit for their respective units through a \$2,000 cash payment for each new member they recruit.

Further, the department points out that the federal government provides incentives to help maintain force strength, such as \$20,000 bonuses for enlistment and re-enlistment and \$20,000 for student loan repayments and education assistance. However, the department states that additional incentives from the State, such as tuition assistance, health care, state income tax exemption, life insurance tax credit for deployed soldiers, and a cash referral incentive, could considerably assist it in meeting recruiting and retention goals.

Finding #10: The department needs to improve its procedures for monitoring training attendance.

Because we found discrepancies in the attendance data reported by the Army Guard units and not all of the units we contacted provided the information we requested, we could not verify the accuracy of the reported attendance for 22 of the 25 Army Guard units we reviewed. Further, Air Guard headquarters does not monitor training attendance; rather, it relies on the units to accurately report attendance.

In addition, neither the Army Guard nor the Air Guard fully responded to our requests for evidence of actions taken for members with excessive unexcused absences from training. By retaining on its rosters members who do not meet their training obligations, the Guard could report an inflated number of members adequately trained and prepared to meet its missions. Using a January 2006 report provided by the National Guard Bureau, we identified 250 Army Guard members who had not attended training for at least three months. According to the chief of staff of the Army Guard, it strives to meet the National Guard Bureau’s standard of keeping the proportion of members on this report below 2 percent of the total roster, which it met as of January 2006. According to the personnel officer of the Air Guard headquarters, prolonged or numerous absences are a cause of concern. However, ensuring the capability of a unit to meet its mission, including preparedness through training, and accomplishment

of its mission are the responsibility of the unit commander. Commanders can use their discretion in evaluating an absent member's potential for useful service and can attempt to bring him or her back into compliance with training requirements.

We recommended that the department enhance or develop and implement procedures to monitor training attendance by its Guard members to ensure that it can verify the accuracy of reported training attendance. It should also ensure that it does not retain on its rosters members who qualify as unsatisfactory participants because they are not meeting their training obligations. Finally, the Air Guard should consider some level of oversight of the handling of members with excessive unexcused absences.

Department's Action: Corrective action taken.

The department states that both the Army and Air Guard have instituted additional measures to retain documentation that can serve to verify the accuracy of attendance reports. At headquarters, the Air Guard recently instituted a requirement that each wing provide a monthly report of members with unsatisfactory participation in training activities. These reports demonstrate the action taken on individuals with unexcused absences. The department reports that during a recent meeting with wing commanders, the commander of the Air Guard reiterated the importance of taking timely action to either return wayward members to duty or impose appropriate disciplinary measures, ranging from stern notification memorandums to demotion or involuntary separation for cause.

In addition, the department states that the Army Guard headquarters will continue to monitor local unit attendance reports and will institute corrective action for units that fail to meet the national federal standard for accurately reporting attendance.

Finding #11: The department's State Military Reserve has not met its force strength goals.

The State Military Reserve—a corps of volunteers, most with military experience, who support the Guard—also has not met its force strength goals in recent years. For calendar years 2003 through 2005, the State Military Reserve achieved only 56 percent to 65 percent of its goals. However, the department had not provided adequate guidance to the State Military Reserve regarding the department's mission for the State Military Reserve to allow it to determine its needed force strength. The State Military Reserve performs various services for the Guard, such as training, helping with mobilization, and assisting civilian authorities. Although the department appears to value the State Military Reserve's help in fulfilling the Guard's mission, as of April 2006 the department had not yet formally identified the specific role and responsibilities of the State Military Reserve within its draft strategic plan. The department's draft strategic plan calls for finalizing the plans for how the State Military Reserve can best support the needs of the Guard and the department by the end of 2006.

We recommended the department include the State Military Reserve in its current strategic planning process and ensure that it defines the State Military Reserve's role and responsibilities so as to maximize the support it provides to the Guard. Once its role and responsibilities are identified, the State Military Reserve should target its recruiting goals and efforts accordingly.

Department's Action: Partial corrective action taken.

The department reports that the State Military Reserve was included as a full partner in the department's strategic planning process, during which it collaboratively identified its vision, mission, core competencies, and priority issues. In addition, the State Military Reserve has developed action plans to implement its priorities and the department is updating the manning

document for the State Military Reserve, which will further integrate it into the overall organization of the department and facilitate a focused recruiting program to align potential recruits with vacancies. The department anticipates completing the updated manning roster and recruiting action plans before April 1, 2007.

Finding #12: The department's armories are in poor condition and the department has identified \$32 million in unfunded maintenance needs.

Of the department's 109 armories, 95 (about 87 percent) are in need of repair and improvement. As of March 2006, the department had identified about \$32 million in backlogged repairs, maintenance, and improvements it could not fund. Funding to maintain the armories is provided primarily through appropriations from the State's General Fund and matching funds through cooperative agreements with the federal government. Some additional funding comes from the Armory Fund and the Armory Discretionary Improvement Account through the sale or lease of unneeded armories and the receipts from renting armories when not in use, but those amounts are minor compared with the armories' overall needs. Moreover, as a result of a ballot initiative passed by the voters in 2004, most Armory Fund revenue will be used to reduce the outstanding Economic Recovery Bond debt and will no longer be available to the department.

According to the department's facilities director, the solution to the problems of the department's aging armories is a balanced program of replacement, modernization, and maintenance and repair. All of these activities involve some degree of federal funding that requires a corresponding expenditure of state funds. The facilities director stated that the maintenance and repair component of the program has been underfunded. He stated that the department is working with the Legislature and the Department of Finance to establish a baseline budget for maintenance and repair of the armories. The baseline would assist the department in justifying its need for increased funds to maintain, repair, and modernize its armories.

To help ensure that the department works toward improved maintenance of its armories, we recommended that the department pursue the balanced program for replacement, modernization, and maintenance and repair advocated by its facilities director. In addition, the department should continue to work with the Department of Finance and the Legislature to establish a baseline budget for the maintenance and repair of its armories.

Department's Action: Pending.

The department reports that it completed construction of two new armories in 2006 and two additional new armories are planned for completion in 2007. In addition, the department states it has completed two of the four armory modernization projects it had planned for 2006. A third modernization project is currently under construction and the fourth is in the final design stage.

The department states that it continues to work with the Department of Finance and the Legislature to establish a budget for the maintenance and repairs of its armories with a goal to eliminate the continued growth in backlogged maintenance and repair, which currently totals over \$36 million.