

**TEXAS NATIONAL GUARD ARMORY BOARD**

**Staff Report**

**to the**

**Sunset Advisory Commission**

c-10

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## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas National Guard Armory Board, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing agency functions, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

Prior to the creation of the National Guard Armory Board in 1935, facilities available for use by the National Guard were secured through public donations or rented by the Adjutant General's Department. In anticipation of federal appropriations for armory construction and to provide for the effective control of armory rentals, the National Guard Armory Board was established in 1935.

The three-member board, composed of the two senior officers of the Army National Guard and the senior officer of the Air National Guard, constitutes a corporate body possessing all powers necessary for the acquisition, construction, rental, control, maintenance, and operation of all Texas National Guard armories. Activities of the board are financed primarily through general revenue appropriations, federal reimbursements, and revenue generated from bonds issued and sold by the agency.

Review of agency operations indicated that the board has been successful in achieving its objective of providing facilities for use by the Texas National Guard and that agency operations have been administered in an efficient manner. While the agency has generally been successful in achieving its objectives, several areas of concern were identified during the review. In the area of agency administration, it was noted that the agency has not complied with provisions of the Administrative Procedure and Texas Register Act which require agencies to adopt rules setting forth the nature of agency procedures. In addition, no representatives of the general public serve on the board. The agency has engaged in lease/purchase agreements for the sale of armories which provide solely for the recovery of the existing state and federal financial interests in armories rather than for the recovery of the full market value of the property. The agency has not adopted

policies which encourage the long-term rental of armories when such rentals are compatible with national guard functions. As a result, the state may not be receiving full benefit from armory guard facilities.

With regard to armory construction and maintenance, current armory rehabilitation plans which call for the replacement of working armory fixtures with standard new fixtures have not been analyzed to determine their cost-effectiveness. In the area of armory construction, the board has not developed criteria and procedures for the review of state-funded modifications to basic armory construction requirements to ensure that such additions are appropriate.

### **Need for Agency Functions**

The need for a state entity to provide for the effective control of armory rentals and to negotiate with the Federal Government to secure funds for armory construction led to the creation of the National Guard Armory Board in 1935. Although the board was granted the authority in 1937 to issue and sell bonds to obtain funds for armory construction, no bonds were issued for this purpose until 1953, when growth in national guard strength created a need for additional training facilities.

The construction of 136 armories by the National Guard Armory Board over the last 25 years has basically fulfilled the need for national guard training facilities, although occasional construction needs may occur. The age of the armories has, however, created a continuing need for armory renovation. As long as national guard forces are stationed in Texas, the need for the performance of construction and renovation functions can be expected to continue.

The need for the agency as a separate entity with the responsibility to construct, maintain, and operate armories has resulted from the choice made by

the state of funding armory construction and renovation through the sale of bonds. Provisions of the Texas Constitution establish conditions which require that bonds for armory construction and renovation be issued by an agency other than the Adjutant General's Department. The funding of armory construction and renovation through the sale of bonds has been of economic benefit to the state up to this time. As long as this funding approach is economically viable there will be a need for an agency, other than the Adjutant General's Department, to issue bonds. Continuation of the Armory Board to perform this function would be appropriate.

Review of agency functions, other than the bonding function, indicate that these functions could be consolidated within the Adjutant General's Department. Such a consolidation would eliminate extensive duplication of agency administration, construction, and maintenance functions. If the legislature wishes to continue the bonding authority of the Armory Board, consolidation could be achieved by requiring the Armory Board to contract with the Adjutant General's Department for the performance of its construction and maintenance functions.

### **Alternatives**

If the legislature determines that the board should be continued, the following alternatives could be considered.

#### **1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.**

This approach would maintain an independent board to perform armory construction, maintenance, and operation functions. The review indicated that the following changes should be implemented if agency functions are to be properly carried out:

- a) rules setting forth the nature of agency procedures should be adopted by the board (page 24);

- b) board size should be increased to six members, and three board members should be representatives of the general public who are not associated with the national guard (page 25);
  - c) armory lease/purchase agreements should be reviewed and renegotiated where appropriate to ensure that the state receives full market value for property sold (page 12);
  - d) policies which provide for the long-term rental of armories by units of state and local government should be adopted by the agency and such rentals should be encouraged when compatible with national guard training requirements (page 13);
  - e) armory rehabilitation plans, which call for the replacement of working armory fixtures with new fixtures, should be analyzed to identify the most efficient method of armory rehabilitation (page 14);
  - f) criteria and procedures for the review of state-funded modifications to standard armory specifications should be adopted by the board to ensure that such modifications are necessary and appropriate (page 15); and
  - g) the policy of requiring formal legislative approval of armory construction and renovation projects prior to the issuance of bonds for the projects could be adopted (page 20).
2. **CONTINUE THE NATIONAL GUARD ARMORY BOARD BUT REQUIRE THAT THE BOARD CONTRACT WITH OTHER STATE AGENCIES FOR THE PERFORMANCE OF ARMORY CONSTRUCTION, MAINTENANCE, AND OPERATION FUNCTIONS.**

The basic board functions of armory construction, maintenance, and operation could be performed by the Armory Board through contract with the Adjutant General's Department. This approach would continue the independent board, consolidate agency functions within the Adjutant General's Department, and provide

for the continued funding of armory construction and renovation through revenue derived from the sale of bonds. Under this approach , legislative approval of armory construction and renovation projects prior to the issuance of bonds could also be required (page 19).

**3. ABOLISH THE NATIONAL GUARD ARMORY BOARD AND TRANSFER THE FUNCTIONS OF THE BOARD TO ANOTHER STATE AGENCY.**

This approach would eliminate the independent National Guard Armory Board but continue the agency functions of armory construction, maintenance, and operation. The transfer of armory board functions to the Adjutant General's Department would eliminate the duplication of administrative, construction, and maintenance functions existing between the agencies. If the legislature adopts this alternative and the National Guard Armory Board is abolished, the mechanism through which revenue bonds are issued to fund armory construction and renovation would not be continued (page 19).

## II. BACKGROUND

### Historical Perspective

Prior to the creation of the National Guard Armory Board in 1935, facilities available for use by the National Guard were secured primarily through rental contracts executed by the Adjutant General's Department and through public donations. Records from this period indicate that armory rentals were not controlled in an efficient manner.

In anticipation of the appropriation of approximately \$6,000,000 for the building of armories through the Federal Emergency Work Relief Program and to provide for the efficient control of armory rentals, the Forty-third Legislature established the National Guard Armory Board in 1935. The board was responsible for the construction, rental, control, maintenance, and operation of all National Guard armories in Texas and was required to cooperate with authorities of the Federal Government.

While this basis for cooperation existed in statute, in the first years of agency operation no federal funds were made available to aid the state in armory construction. In addition, though the legislature granted the board the authority to issue and sell bonds in 1937, this authority was not put to immediate use by the agency for funding armory construction. Instead, necessary training facilities were rented by the board or made available by communities at no charge to the state.

The use of this method as a primary means of providing training facilities in Texas was replaced by a construction program in the years following the passage of the National Defense Facilities Act of 1950. Under this legislation, up to 75 percent of the total cost of constructing new armories was made available to the state through the Army National Guard Armory Construction Program. The

development of this program was stimulated by a three-fold growth in National Guard strength in the ten-year period from 1940 to 1950, the resultant need for additional training facilities to support this expanded force, and the general inadequacy of the facilities available in Texas and the rest of the nation.

From 1953, when Texas entered this construction program, to 1978, a total of 136 armories were built in cooperation with the Federal Government. State funds required to match the 75 percent federal contributions were obtained through bonds issued by the board in 1953, 1958, 1963, and 1973. These bonds provided a total of \$7,363,886 for armory construction.

Upon completion of the major portion of the board's construction program in 1978, emphasis was shifted to modernization and renovation of armories. Many of these armories were 20 to 25 years old. The armory rehabilitation program was undertaken for the purposes of repairing structural damage to armories, decreasing energy consumption, standardizing armory fixtures, and bringing the armories into compliance with current safety codes. To finance a program of armory renovation, and to refund outstanding bonded indebtedness, revenue bonds in the amount of \$16,180,000 were issued by the board in 1979.

Under current law, the board is composed of the two senior officers of the Texas Army National Guard and the senior officer of the Texas Air National Guard. Board members, who serve six-year terms, must be active members of the National Guard. The board oversees a staff of 73 employees. In the 1978-1979 biennium, the board expended \$5,460,164 in support of its programs. Approximately 35 percent of these funds were from the General Revenue Fund, 37 percent from federal reimbursements and 28 percent from funds maintained by trustee or received through rentals and leases. The board manages approximately 400 buildings and 15,000 acres of land which serve as training sites for the 20,000 members of the Texas National Guard.

### Comparative Analysis

To determine the organizational pattern through which National Guard facilities are constructed, maintained, and operated within the United States, a survey of the 50 states was conducted.

The need to perform the basic functions of National Guard facility construction, maintenance, and operation is recognized by all states. From the standpoint of organizational patterns, in 46 states the staff of the Adjutant General's Department has the responsibility for the planning and construction of armories. In Texas, Indiana, Iowa, and Vermont, these functions are partially shared with a National Guard Armory Board. Texas is the only state which assigns final responsibility for armory construction to a National Guard Armory Board. In all states except six, including Texas, the Adjutant General's Department is responsible for the maintenance and operation of armories. In Texas, as in New Mexico, West Virginia, Pennsylvania, and Indiana, armories are maintained and operated by the National Guard Armory Board. Armories in Rhode Island are maintained and operated by the state Department of Public Buildings. Eleven states, including Texas, indicate that the construction and renovation of armories may be funded through the sale of bonds. In Texas and Minnesota bonds issued for armory construction or maintenance are serviced through the proceeds of armory rentals. Forty-three states, including Texas, provide legislative appropriations for armory construction and maintenance. Rents for the use of armories are collected in 30 states, as in Texas. In two states, South Dakota and North Carolina, school districts and local municipalities contribute to the cost of armory construction.

Forty-three states indicate that state armories are generally in need of renovation. Renovation needs identified include roofing, electrical, insulation, plumbing, and energy conservation improvements. Thirty-four states indicate

there exists a need for additional state armories, as in Texas, and in 21 states new armories are under construction.

### III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

#### Organization and Objectives

The purpose of the National Guard Armory Board is to provide for the construction, rental, maintenance, and operation of armories for use by the Texas National Guard. The three-member board, composed of the two senior officers of the Texas Army National Guard and the senior officer of the Texas Air National Guard, possesses the specific powers to sue and be sued, enter into contracts, employ a staff, adopt bylaws, acquire property, construct buildings, and borrow money and issue and sell bonds and other evidences of indebtedness. The board is staffed by seventy-three authorized positions. Eighteen of the board's staff are stationed at Armory Board headquarters in Austin, while the remaining forty maintenance and fifteen security personnel are located at armory facilities throughout the state.

Agency activities are funded through general revenue appropriations, federal reimbursements, rents received from the Adjutant General's Department for the use of armories, leases, and revenue generated from the sale of bonds. Armory Board bonds are serviced through rents paid to the board by the adjutant general. Principal and interest necessary to retire outstanding bonds totals \$28,262,128.

## **Evaluation of Agency Activities**

The objectives of the National Guard Armory Board are achieved through the performance of the following activities: 1) administration and 2) armory construction, maintenance, and operation. These activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with provisions of its enabling legislation and of general law, whether these provisions facilitate the accomplishment of agency objectives, whether agency organization, rules, and procedures are structured in a manner which contributes to the cost-effective accomplishment of the agency's task, and whether agency procedures provide for fair and unbiased decision-making.

### **Administration**

The objective of the administration function is to provide for the efficient performance of agency activities. The review indicated that agency administration is generally conducted in an efficient and effective manner. Based on a review of the latest audit report, the National Guard Armory Board utilizes accepted procedures in accounting, record-keeping, property management and purchasing activities. The agency has made a conscientious effort to reduce the energy requirements of armories, to purchase necessary supplies in bulk quantities, and to systematically plan its procedures for armory repair. These efforts have significantly enhanced the efficiency of agency operation.

While the agency is generally administered in an efficient manner, agency operations could be improved through modification of the following statutory provisions and agency procedures. In performing its property management function, the board has executed eleven lease/purchase agreements for armory facil-

ties. Agency staff indicate that the price of real property sold or leased to the public under these agreements was based on the dollar value of the remaining state and federal interest in the property, rather than on the property's market value. Of the eleven lease/purchase agreements executed by the board, eight may be terminated only for breach of contract. Three lease/purchase agreements may be terminated by the board after providing the leasee with sixty days written notice. In order to ensure that the board receives fair market value for its property, the terms of these three agreements should be reviewed and renegotiated where possible. In addition, the board should adopt rules which provide for a uniform policy and approach to the lease or sale of property.

The Armory Board is responsible for the construction of armories in conformance with standard National Guard Bureau designs and specifications. The Federal Government contributes up to seventy-five percent of the cost of armory construction. Under current board policies, unit commanders may rent armories to non-profit civic or governmental organizations that are not of a political or religious nature. Recurring or long-term leases must be approved by the Armory Board. Armory Board staff indicate that the long-term use of armories for other than training purposes is generally not feasible and has not been promoted due to management and maintenance costs associated with long-term rentals. While certain increased costs in the areas of maintenance and utilities would result from the long-term rental of armory drill halls and other facilities, these costs could be recovered through rentals fees.

Current policies of the board have not led to the rental of facilities to other governmental agencies. Many other states have adopted policies which encourage state and local government agencies, as well as school districts, to rent state-

owned armories for use at times which are compatible with military training requirements. State-owned armories represent a valuable resource which should be utilized to the fullest extent possible consistent with national guard training requirements. The Armory Board should implement procedures to maximize the rental of armories for public purposes where feasible.

#### **Facility Construction, Maintenance and Operation**

Tasks performed under this activity are directed to providing and maintaining facilities for the use of the Texas National Guard. Approximately 136 armories have been constructed by the board with the assistance of the Federal Government.

According to staff of the Adjutant General's Department, the armory construction program was basically completed in 1978. At that time, the Armory Board began the implementation of its first major armory rehabilitation program, to be achieved through contract with the Facilities Planning and Construction Division of the State Purchasing and General Services Commission. The Armory Board staff, which contains no professionally trained engineers or architects, performs administrative functions related to the armory rehabilitation program. Initial revenue of \$9,677,926 for armory rehabilitation was generated through the sale of revenue bonds by the Armory Board in 1979.

Staff of the Facilities and Planning Division of the State Purchasing and General Services Commission state that "no major renovations or structural repairs to the buildings have been made" since their construction in the eleven-year period from 1954 to 1965, and that "as a result of this action many of the buildings have deteriorated beyond the point where routine maintenance is able to keep the buildings safe and operable." (Project Analysis No. 405-1).

The objective of the rehabilitation project is to standardize, repair, and

update approximately 100 armories in order to simplify future maintenance work, to make the facilities more habitable and economically efficient, and to bring the buildings into compliance with current safety codes. In order to standardize the facilities, and thereby simplify future maintenance work, the Armory Board plans to "replace all locksets, latchsets, and door closers with new hardware", "replace all lavatories, water closets, and urinals with new plumbing fixtures and trim", and "to replace all non-standardized interior lighting fixtures with fluorescent fixtures." (Project Analysis No. 406-1). While the standardization of fixtures will reduce maintenance costs, no cost analysis has been performed by the agency to determine if the cost of replacing all fixtures, including working fixtures, with new fixtures will exceed the projected reduction in maintenance expenses. A second, and possibly more economical, approach to rehabilitation could be to replace fixtures with standard equipment only after the fixtures fail. The policy of replacing all armory fixtures should be undertaken by the agency only if this approach will ensure the most efficient rehabilitation of armories.

In the area of armory construction, the agency has generally acted to minimize state costs in the construction of national guard facilities. An exception to this general practice occurred in the construction of the Austin No. 1 armory at Camp Mabry in 1978. Additions to the armory consisting of a covered walkway and glass enclosure were made at a cost to the state of approximately \$15,000. These additions to the facility, which were not clearly related to training purposes, were made at the request of the Adjutant General's Department. As the steward of armory construction funds, the Armory Board should adopt criteria and procedures for the review of any state-funded changes made in standard armory plans and specifications.

### Summary

The evaluation of the National Guard Armory Board indicated that the agency has been successful in achieving its objective of providing training facilities for the Texas National Guard. Although operations of the agency are generally conducted in an efficient and effective manner, several areas of concern were identified through the review. In the area of agency administration, the agency has engaged in lease/purchase agreements which do not provide for the recovery of the full market value of the property being sold. Agency policies do not encourage the long-term rental of armories by units of state and local government and, therefore, armory facilities are not fully utilized.

With regard to armory construction and maintenance, current armory rehabilitation plans, which call for the replacement of working armory fixtures with standard new fixtures, do not appear to provide for the cost-effective rehabilitation of the facilities. The board has not developed criteria and procedures for the review of state-funded modifications to basic armory construction standards.

#### **IV. ALTERNATIVES AND CONSTRAINTS**

The material presented in this section combines several Sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies. An assessment is made of alternative methods of performing agency functions and the impact of agency abolishment is reviewed in terms of federal intervention and the loss of federal funds.

##### **Consolidation Alternatives**

The organizational pattern of armory construction, maintenance, and operation in other states was reviewed to identify potential patterns of agency consolidation in Texas. Responsibility for armory construction, maintenance, and operation is assigned to the Adjutant General in 43 of the states surveyed. In Indiana, West Virginia, Vermont, New Mexico, Pennsylvania, and Texas these responsibilities are shared with a National Guard Armory Board. In Rhode Island, armories are maintained and operated by the state Department of Public Buildings. To determine the feasibility of consolidating the functions of the National Guard Armory Board with those of the Adjutant General, the compatibility of the objectives and activities of the agencies were reviewed. In addition, identifiable benefits resulting from the consolidation of agency activities were considered.

Analysis indicates that the functions of the Adjutant General's Department and the National Guard Armory Board are generally compatible and that identifiable benefits could be derived from agency consolidation. Both the Adjutant General's Department and the National Guard Armory Board employ janitors and

watchmen at national guard facilities around the state, and the agencies share in the functions of facility maintenance and construction. Under contracts with the Federal Government, the National Guard Armory Board employs maintenance personnel, custodians, and watchmen at 13 facilities around the state. These 53 Armory Board employees are supervised at their locations by employees of the Adjutant General's Department. The Adjutant General's Department itself employs and supervises 19 full-time and nine part-time janitors at armories housing multiple guard units.

In the area of facility construction, the Armory Board is responsible for the construction of armories built totally or partially with state funds. The facilities and engineering branch of the Adjutant General's Department plans and administers the construction of facilities financed totally with federal funds. This branch of the department currently employs professionally trained engineers capable of performing the basic planning and administrative functions necessary for armory repair, operation, and construction. In virtually all other states, the facilities and engineering branch of the Adjutant General's Department is responsible for armory construction and maintenance. In Texas, these functions are assigned to the National Guard Armory Board, which must purchase engineering and architectural services through contract.

In addition to maintenance and construction functions, overlap of basic administrative functions of purchasing, accounting, and personnel management exists between the two agencies. Consolidation of these divided administration, maintenance, and construction functions within the Adjutant General's Department could serve to reduce the duplication of personnel currently existing between the two agencies.

An exception to this general pattern of compatibility results from the authority of the National Guard Armory Board to issue bonds and other evidences of indebtedness which are serviced through armory rents paid by the Adjutant General. If the two agencies were consolidated, the future issuance of revenue bonds by the single resulting agency would be of questionable legality. Therefore, as a second approach to agency consolidation, the National Guard Armory Board could be required to contract with the Adjutant General's Department for the construction, maintenance, and operation of national guard facilities. This approach would result in the consolidation of Armory Board staff and functions within the Adjutant General's Department while continuing the mechanism through which Armory Board bonds are serviced.

To summarize, statutory provisions peculiar to the state of Texas have resulted in a pattern of functional duplication in the areas of armory construction, maintenance, and operation. Employees of both the National Guard Armory Board and the Adjutant General's Department possess direct responsibility for various aspects of national guard facility construction and management. The functions of the Armory Board could be consolidated with those of the Adjutant General's Department, and such a consolidation would appear to result in a savings of administrative costs. If, however, the authority of the Armory Board to issue bonds is to be continued, consolidation should be achieved by requiring the Armory Board to contract with the Adjutant General's Department for the performance of its construction and maintenance functions. Through this approach, the mechanism which allows the Armory Board to issue revenue bonds, which are serviced through rents paid by the Adjutant General, would be continued.

### Functional Alternatives

All states recognize the need to construct and maintain national guard facilities, which are necessary if the state is to support national guard units. If the state were to terminate its facility maintenance and operation functions, national guard units could be withdrawn from the state and the annual expenditure in Texas of federal funds totaling \$92,600,000 could be considerably reduced.

In addition to alternatives to the current organizational structure of the National Guard Armory Board, there are several alternatives which could be used to perform facility construction, maintenance, and operation functions. In the area of construction, staff of the Adjutant General's Department indicate that the Texas program of armory construction, which has been funded through the sale of bonds, is basically completed and that only limited federal funds are available for new construction. Although bonds were sold in 1979 for the purpose of providing funds for armory renovation, these state funds are not matched by federal dollars. Consequently, the need to quickly generate state funds to match federal contributions no longer exists, and Texas could adopt the policy of requiring legislative approval of construction and major renovation projects prior to the issuance of bonds for these purposes. This approach would provide legislative control over the bonded indebtedness incurred by the Armory Board, which must eventually be retired through the appropriation of general revenue funds to the Adjutant General to be paid to the Armory Board as rent.

A second approach to the funding of armory construction and renovation projects would be to remove the Armory Board's authority to issue bonds. Armory Board projects would then be funded directly through general revenue appropriations. This alternative, currently used in 39 states, provides for maximum legislative control of expenditures but limits the state's funding options. Given

current economic conditions, the funding of projects through the issuance of bonds appears to result in significant economies to the state.

### Summary

Extensive duplication of administration, maintenance, and construction functions performed by the National Guard Armory Board and the Adjutant General's Department could be eliminated, and identifiable savings achieved, through the consolidation of agency activities. If the authority of the Armory Board to issue bonds is to be continued, consolidation should be achieved by requiring the Armory Board to contract with the Adjutant General's Department for the performance of its construction and maintenance functions. The policy of requiring legislative approval of construction and major renovation projects prior to the issuance of bonds for these purposes would provide control over the bonded indebtedness incurred by the Armory Board.

## V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The performance of an agency's statutory functions should be undertaken in a manner that is fair and impartial to all interests. The degree to which this objective has been met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, and through agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

### Conflicts of Interest

Board members and agency employees are subject to statutory standards of conduct and conflict of interest provisions. A review of documents filed with the Office of the Secretary of State and agency procedures indicate that the agency has complied with these provisions.

### Open Meetings - Open Records

A review of records maintained by the Office of the Secretary of State indicates that the board has complied with the requirements of the Open Meetings and Open Records Act. The board has informed the public of its meetings through the timely publication of notices in the Texas Register. Pursuant to the Open Records Act, the agency has identified certain records set out in the Act as confidential. However, no agency records viewed as confidential have been requested by the public.

### **Employment Practices**

The National Guard Armory Board has developed an affirmative action plan under the guidance of the Governor's Equal Employment Opportunity Office. The plan was last updated in December 1979. An analysis of the agency's work force in 1979 indicates that 16 of the 71 agency positions were held by minorities. All minorities were employed in the skilled craft or service maintenance categories. The agency has been informed by the federal Equal Employment Opportunity Office in San Antonio that a complaint alleging discrimination has been filed by a former employee of the agency. Investigation of the complaint by the San Antonio office is pending.

### **Summary**

The agency has complied with statutory requirements regarding conflict of interest, open meetings, and open records. One charge of discrimination is pending investigation by the federal Equal Employment Opportunity Office.

## VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it serves and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members of the board.

### Agency Activities

Review of agency activities indicated that certain state policies intended to foster public participation have not been implemented. Provisions of the Administrative Procedure and Texas Register Act state that "each agency shall: (1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available; and (2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions" (Article 6252-13a., V.A.C.S.). Although the agency is involved in complex purchasing, bid-taking, and contracting activities of interest to the general public, no agency rules or written procedures have been established to direct these activities. As a result, the state policies, established by the Administrative Procedure and Texas Register Act, of developing uniform minimum standards of agency procedure

and of providing a means for public participation in the agency's rule-making process have not been implemented by the agency. During the review, agency staff indicated a willingness to consider the adoption of appropriate procedural rules.

The agency distributes no publications or brochures which serve to inform the public of its activities and has conducted no conferences, seminars, training sessions, or public hearings. Eleven newspaper advertisements were purchased by the agency during the years 1976 through 1979 for the purpose of soliciting bids for agency leases, contracts, and sales. In its self-evaluation report to the Sunset Advisory Commission, the agency indicates that, because of the nature of its functions, there is no need to advertise agency services or to provide the public with information about agency property, with the exception of advertising for competitive bids.

#### Public Membership

Board members are required to be active officers in the Texas National Guard. While the board's function is to provide facilities for use by the National Guard, the board's purchasing, construction, and bonding activities directly affect the general public. The addition of representatives of the general public to the board could enhance the board's ability to effectively identify and act upon the concerns and views of the public in these areas. To ensure such effectiveness, three public members should be added to the board, bringing total board membership to six. These members should be prohibited from having financial interests related to the operations of the agency. The addition of public members is consistent with the Sunset Advisory Commission's across-the-board approach which recommends the placement of public members on the boards and commissions under review.

### **Summary**

The agency has not complied with provisions of the Administrative Procedure and Texas Register Act intended to foster public participation in agency activities, and no steps have been taken by the agency to inform the public of its operating procedures. The public has not been involved in agency decision-making. To help ensure that the viewpoints of the general public are represented in agency deliberations, public members should be added to the board.

## VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered concern an identification of statutory changes to determine who such changes were derived to benefit, and whether any modifications have been recommended by the agency for the improvement of functions performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

### Past Legislative Action

The National Guard Armory Board was created in 1935 and given statutory responsibility for the construction, rental, control, maintenance and operation of all national guard armories in Texas (Article 5890b, V.A.C.S.). The original board was composed of the three senior active officers of the Texas National Guard, who served until their resignation.

In 1937, the board was granted the express authority to enter into contracts, maintain a staff, acquire building sites and construct buildings, enter into leases, and issue and sell bonds, debentures, and other evidences of indebtedness (Senate Bill No. 402, Forty-fifth Legislature). In 1939, the senior cavalry officer of the guard and the senior active officer of the guard who was not already serving on the board were added to the board, bringing its membership to five, and six-year terms were provided for (Senate Bill No. 326, Forty-sixth Legislature). In addition, securities issued by the board were declared to be legal investments for life insurance companies, public funds, and other concerns.

Amendments made to the Act in 1949 authorize the board to receive from

the Adjutant General existing state-owned National Guard facilities and to administer or provide for the sale of such facilities (House Bill No. 448, Fifty-first Legislature). These amendments provided for the administration or sale of a variety of buildings and facilities, constructed by the Federal Government and released to the Texas National Guard subsequent to World War II, which were not suitable for training purposes.

In 1957, the commanding general of the 36th Infantry Division, the commanding general of the 49th Armored Division, the commanding general of the XLI Corps Artillery, the chief of staff of the Texas Air National Guard, and the commanding officer of the 112th Armored Cavalry Regiment were identified as board members (House Bill No. 416, Fifty-fifth Legislature). In 1959, the number of board members was reduced from five to three by removing the commanding general of the XLI Corps Artillery and the commanding officer of 112 Armored Cavalry Regiment from the board (Senate Bill No. 146, Fifty-sixth Legislature).

The Act was amended in 1967 to authorize the board to issue refunding bonds in those situations where a savings in interest could be achieved, and to allow the board to reconvey mineral rights and improvements at fair market value to individuals who donated or granted land to the board (House Bill No. 406, Sixtieth Legislature). Amendments made in 1967 prohibited board members from holding any other state or federal office. In 1971, the board was granted the authority to purchase necessary furniture and equipment, to supervise the taking and tabulation of bids, and to supervise authorized construction (House Bill No. 144, Sixty-second Legislature). Prior to 1971, these functions had been performed by the Board of Control.

In 1977, the board was made subject to the Texas Sunset Act (Senate Bill No. 54, Sixty-fifth Legislature). The board's authority to issue refunding bonds when a

savings of interest would result was expanded in 1979 when the board was authorized to issue refunding bonds for the purpose of refunding any outstanding indebtedness (Senate Bill 878, Sixty-sixth Legislature).

### **Proposed Legislative Action**

Apart from the successful legislation mentioned above, no other attempts to amend the National Guard Armory Board Act were made during the past four legislative sessions. No changes to the agency's enabling legislation were recommended in its self-evaluation report to the Sunset Advisory Commission.

### **Summary**

The agency's enabling legislation has been amended ten times since its original enactment in 1935. In general, these amendments have established and broadened the board's bonding authority, modified the number of board members and membership criteria, and expanded the board's authority in the area of property management. With the exception of legislation, enacted in 1979, which broadened the board's authority to issue refunding bonds, no attempts to amend the National Guard Armory Board Act were made during the past four legislative sessions. No changes to the agency's enabling legislation were suggested in its self-evaluation report to the Sunset Advisory Commission.