Formation of the National Legislative Program Evaluation Society

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By 1970, scholars had constructed a firm academic foundation for state legislative program review.\(^1\)\(^2\) Lennis Knighton wrote a comprehensive guide to state performance auditing in 1967. He became Utah’s first Auditor General and was one of the framers of the original version of the Government Accountability Office (GAO) audit standards or “Yellow Book.” Writing for NLPES in 1986, Knighton foretold issues that still challenge evaluators in the ensuing decades.\(^3\)\(^4\) Academics observed that legislatures were impaied and diminishing in power to both the executive and judicial branches. The Citizens Conference on State Legislatures formed in 1969 found legislatures were over dependent on agencies and lobbyists for information, had very few professional staff, and had failed to establish mechanisms and processes for program oversight, strategic planning and innovation.\(^5\)

Legislatures suffered from aftershocks of the Citizens Conference report and ongoing media reports of corruption and ineptitude. They yearned for ways to reform.\(^6\) David Ogle of the Eagleton Institute advised concerned Mississippi legislators in 1971 to implement shorter annual sessions, hire a full-time staff of professionals, use program performance budgeting, and develop an independent legislative post audit function. Ogle recommended that Mississippi legislators stop paying so much attention to the “pens and pencils” and instead to focus on “what was being accomplished with those pens and pencils.”\(^7\)

The Ogle report was among several other state-specific initiatives and many more to strengthen American state legislatures by the Center for State Legislative Research at Rutgers University\(^8\) under the leadership of the luminary Alan Rosenthal.\(^9\) Most relevant to NLPES, Rosenthal with Ford Foundation funding in 1971 led a two-year demonstration of legislative review and evaluation in collaboration with the Connecticut General Assembly, which led to the formation of

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8 Eagleton conducted similar Strengthening studies in Rhode Island (Tantillo, 1968), Maryland (Rosenthal, 1968), Wisconsin (Churtack and Berking, 1970), Connecticut (Ogle, 1970), Florida (Lynwood, 1970), and Arkansas (Craft, 1972).
the General Assembly’s Program Review and Investigations Committee and stimulated further research on legislative review. The Center published two seminal edited volumes about legislative program review, how legislative staffs actually did the field work required, and what insights and lessons had been learned: *Legislative Review of State Program Performance* (August 1972) edited by Ray Pethel and Richard E. Brown, both then with the New York Legislative Commission on Expenditure Review and *Legislative Program Evaluation in the States: Four Case Studies* (August 1974) edited by Mark Lincoln Chadwin, then Director of the Illinois Economic and Fiscal Commission.

Rosenthal obtained Ford Foundation funding for scholarships and travel stipends for Eagleton gatherings of “up and coming” state legislators, as Rosenthal once characterized them, in order to build networks across the country to push reforms. Eagleton held some of the meetings at the five-star Breakers Hotel in Palm Beach. Those trips would have been impossible for young and inexperienced legislators to justify and finance in many states, so the Ford Foundation scholarships were godsend and the networking idea absolutely brilliant. Legislators attending later became prime movers for better overall staffing of legislatures, the expansion of program evaluation and performance auditing, and the creation of the National Conference of State Legislatures.

**The National Legislative Program Evaluation Society (NLPES) organized in 1973 as the Legislative Program Evaluation Section (LPES) of the Governmental Research Association (GRA).** Alan Rosenthal picked up the pace of reform by arranging for fourteen legislative program and performance evaluation staff to gather in August of 1973 in St. Louis at the invitation of the Governmental Research Association. Mark Lincoln Chadwin, Director of the Illinois Economic and Fiscal Commission chaired the meeting. Participants shared contacts and described their structures, staffing, processes, and plans. At the end, participants conceptualized LPES as a professional association for legislative staff performing non-traditional audits defined broadly by many terms such as “program evaluation,” “program auditing,” “program review,” “performance post auditing,” and “effectiveness auditing.”

**Before LPES organized, there was no national association of program evaluators working within state legislatures.** The Governmental Research Association, the organization that first housed LPES, consisted of private taxpayer associations, chamber of commerce research units, and other good government watchdogs.

While legislative program evaluation as it currently exists was in its infancy, traditional financial auditors were well-organized and in control of post auditing nationwide. State auditors had organized themselves for decades within the framework of the Council of State Governments as the formidable National Association of State Auditors, Controllers and Treasurers (NASACT). NASACT included separate subsidiaries for offices of controllers and treasurers as well as a

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10 This paper uses Legislative Program Evaluation Section (LPES) to refer to the name used during the organization’s formative years before it renamed itself the National Legislative Program Evaluation Society (NLPES).
National State Auditors Association (NSAA) for auditors. In addition to state legislative audit offices, NSAA included both legislative and executive branch audit organizations.\textsuperscript{11}

In the early 1970s, the General Accounting Office (now Government Accountability Office) (GAO) began pushing states to do standardized audits including performance audits, but GAO focused its outreach almost entirely on NASACT and traditional state audit offices.\textsuperscript{12} There were a few state auditors who had already been actively engaged in legislative performance auditing without GAO nudging. However, with the exception of Hawaii, where Legislative State Auditor Clinton Tanimura contracted out financial audits and staffed his office predominantly with non-accountants beginning in 1965, accountants still dominated state legislative audit offices.

GAO paid little, if any, attention to the handful of newly-formed specialized legislative program evaluation units in the early 1970’s. GAO included standards for program audits at all levels in its first edition of Government Auditing Standards (The Yellow Book) published in 1972. The Yellow Book had more influence on traditional state audit offices because its purpose was to encourage consistency among state financial compliance audits of federal programs. Many on the federal level wanted to compare utilization and effectiveness of federal programs administered by states and were urging GAO to nudge traditional auditors to produce reports with the more cogent content that Congress demanded. As state legislators developed and financed the capacity for their staffs to do more program evaluation work as Eagleton recommended and proved in concept in Connecticut, GAO began paying more attention to these youthful renegade offices and within ten years began seeking LPES input for subsequent iterations of the Yellow Book.\textsuperscript{13}

\textbf{The formation of an NCSL staff section for legislative program evaluators triggered issues within the field about who should do legislative program reviews.}\textsuperscript{14} In the summer of 1975, the newly-formed National Conference of State Legislatures (NCSL) extended an invitation to LPES Chair Gerald Silliphant from the Division of Program Analysis in New Jersey for LPES to join NCSL as a staff section.\textsuperscript{15} The LPES executive committee accepted. But there were growing pains about who should lead and populate the new organization.

\textsuperscript{11} NASCT originated in 1915 in Washington, D.C. NASACT manages two secretariats - the National State Auditors Association (NSAA) and the National Association of State Comptrollers (NASC). Both NSAA and NASC are included under the umbrella of NASACT’s budget and utilize staff hired by NASACT. See: \url{www.nasact.org/history}


\textsuperscript{13} Long-time NLPES activist and 1990 NLPES Chair, Sam McCall, DPA, MPA, CPA, CIA, CMA, CGMA, CGFM, CGAP from the Florida Auditor General’s Office, greatly improved the Yellow Book when he served as an advisor to GAO in the 1980’s and early 1990’s. Sam McCall is probably the most highly-credentialed accounting professional in the United States. As the Florida Deputy Auditor General, McCall oversaw the formation of the office’s performance audit function, which later became the independent Office of Program Policy Analysis and Government Accountability (OPPAGA). After retiring, McCall served for 13 years as Tallahassee City Auditor and later as Chief Audit Officer at Florida State University. Sam McCall is probably the most highly-credentialed accounting professional in the United States.

\textsuperscript{14} The statements and opinions of Alan Rosenthal, Richard Brown, LPES founders, and legislators as well as those by early skeptical traditional state auditors are per the recollections of John Turcotte, the author. Turcotte was a member of the first LPES executive committee when it was part of GRA and immediately after LPES joined NCSL in 1975.

\textsuperscript{15} When organized in 1974-1975, NCSL deliberately developed staff sections only in support of various staff organizational functions and did not allow sections to form based around specific policy areas such as education,
The Kansas Legislative Auditor joined with fellow auditors to form the NCSL Post Audit Section for all types of auditors working with state legislatures. In 1975, the Kansas legislature had successfully recruited Richard E. Brown from the New York Legislative Commission on Expenditure Review to become Kansas State Auditor. Brown and other heads of traditional audit offices wanted to benefit from NCSL staff section activities and sensed the exponentially increasing legislative demand for performance reviews that LPES appeared to be capturing. At that time traditional legislative audit offices felt uncomfortable allowing its performance auditors to join LPES as full voting individual members because LPES was newly-organized and controlled solely by non-accountants, who had no connection or history with the National State Auditors Association or its parent NASACT.

In 1976, Brown approached LPES about a possible LPES and Post Audit Section merger. Brown made a compelling case because both sections served performance auditors who would have to choose between the two sections when seeking scarce travel funds for conferences and for devoting time to section activities. At the time, the only real and practical way for staff professionals to network and share best practices was through regional and national conference travel. Two sections would be competing within their states for limited out-of-state conference travel funds. LPES’ sense of urgency about laying a foundation for major efficiencies in or termination of ineffective but popular programs was also at issue. The Post Audit Section wanted each state audit agency head to decide any official state-paid affiliations to prevent challenges from potential auditees and more partisan legislators about policy positions taken by NCSL and LPES that might be viewed as unrelated to their financial watchdog jobs. There were concerns, too about potential questions from legislators about individual auditors participating as “members”, on state time and expense, in an unknown national organization that did not have the word “audit” in its name.

LPES had its own concerns about the suggested merger—the army-sized staffs of the more numerous traditional legislative financial and compliance audit offices networked nationally with executive branch auditors, could diminish the influence of small squad-sized newly-created LPES staff offices, which were doing only program evaluations. LPES politely declined the merger offer and invited the post auditors and their staffs authorized to perform evaluations to participate in any LPES training and activities subject to the approval of their home states.

criminal justice, or health. NCSL realized it would be nearly impossible to avoid partisan conflict within policy-focused sections, and instead the organization opted to produce ad hoc forums and annual meeting sessions to accommodate interest in national policy developments and model state legislation. Two functional staff sections pre-dated NCSL: the National Legislative Program Evaluation Society (NLPES) formed in 1974 and the American Society of Legislative Clerks and Secretaries formed in 1943.

16 The Post Audit Section of NCSL dissolved in 1976. Performance auditors from traditional legislative audit offices and staff of newly-formed performance audit divisions within larger offices increased their contributions to and participation in NLPES.

17 Brown reported a prominent Kansas legislator telling him when he successfully interviewed for the new job as State Auditor, “You’re supposed to be our Auditor and nothing else and this goes for your staff too.” Brown, not a CPA, said a few legislators on the interview team said they preferred to hire a CPA and felt that his Harvard PhD in public administration was a negative, “not to mention you’re coming from New York.”
There was early tension between LPES founders and some state auditors. It is important to understand that the push for LPES came from professionals who did not have a traditional financial and compliance audit background and in fact, were rebelling against the notion that program review was within the exclusive domain of state audit offices. Program reviewers were filling a void created by state auditors who would or could not do program review. LPES founders balked at anything that could lead to lockstep conformity with the accounting profession, which in turn could lead to future pressures to adhere to auditing principles enforced by accountant peer reviewers who were not considered peers by LPES founders, none of whom were accountants. LPES founders, while believing in the due diligence and documentation necessary to defend research, questioned traditional audit practices such as starting all program review projects with internal accounting control surveys. LPES founders noted how social and business researchers were producing well-documented reports underpinned by replicable, reliable and valid methods including critical thinking, hypothesis testing, and emphasis on site inspection, exhaustive literature searching, and intensive interviewing, as was generally expected of operations researchers and social and natural scientists.

Moreover, LPES had listened to state legislators at home and in national forums who complained about traditional auditing and demanded more straightforward, brief, and timely reports about what programs actually did and what results were being achieved. Legislators respected and wanted financial compliance auditing done but reported difficulty persuading traditional auditors to more closely connect with the legislative institution by producing more program audits on a legislative timetable and on topics of legislative interest—things most traditional auditors had been warned would jeopardize independence and politicize auditing. Many legislators were openly critical of thick, heavily-qualified financial and compliance audits that did not report findings and recommendations about program efficiency, economy, and effectiveness. While beneficial to the agency and state creditors, financial audits offered legislators very little that was compelling or actionable. Legislators had concerns as well with audit offices that were doing some performance audits about auditor “standoffishness” and disdain for legislators. Other than mailing reports to all legislators, the auditors acted as if the reports were somehow “self-moving” and that auditors had no responsibility beyond reporting.

18 These peer concerns manifested themselves several years after LPES formed when some members of LPES wanted to consider establishing evaluation standards equivalent to the Yellow Book. Some of the written NSAA peer review guidelines irked and insulted evaluators with advanced degrees and years of experience conducting legislative evaluations. For example, the guidelines for determining staff qualifications per Yellow Book standards were worded such that a reviewer should accept that a CPA would be automatically qualified to conduct performance audits, even one who had never done a performance audit. However, the guidelines required reviewers to verify and then analyze all available credentials of any “non-accounting professionals” conducting performance audits before rendering an opinion on their qualifications. Concern about “non-peer” review worsened when NLPES offices reported that the NSAA had a practice of assigning executive branch financial auditors or inexperienced performance auditors to peer review teams. NSAA reviewers reportedly were overly fixated on documentation including one case in which a reviewer drafted a proposed deficiency after finding no written evidence in personnel files that each employee had been annually informed in writing about mandatory Yellow Book continuing education requirements (CE) despite the fact that the office’s Standard Operating Procedures prescribed the CE requirements and all staff had documentation in their files of meeting CE requirements. Another complained that a NSAA reviewer proposed deficiencies because the reviewer agreed with an agency response and objected to the “predominant, negative and overbearing tone” of the report. These persistent complaints eventually led to NCSL and NLPES offering an alternative peer review service that met GAO standards with reviewers selected from within NLPES ranks.
findings without entangling audit staff with legislators and staff doing appropriations and policy-making. Legislators expected the opposite—more open communications, briefings on reports, and audit staff assistance to appropriations and bill drafting staff.

**Concerns were exacerbated when legislative auditors not only did not communicate, but also were of the opinion that such communications with legislators were inappropriate or even harmful.** Legislators took reluctance to communicate to mean that legislative auditors did not consider their offices part of the legislative branch. One legislator said his Legislative Auditor General actually prohibited audit staff outreach to legislators and required auditors to report to management immediately any communication by phone or in person from a legislator or legislative employee regardless of circumstances or location of the contact. Legislators cited such incidents as a motivation for wholesale retooling and repurposing of existing legislative audit offices or the creation of special purpose program evaluation committees and staff with a duty to report directly to a joint oversight committee and to share findings with other committees and staff offices.

Some legislative auditors were doing exactly what legislators were demanding. These early and enthusiastic supporters of non-traditional audit approaches predated LPES and included Clinton Tanimura in Hawaii; Utah’s first Auditor General Lennis Knighton, and James Defenbach in Idaho.

**LPES was eager to serve the increasing number of legislative staff engaged in evaluation to meet heightened demand.** Before LPES organized, legislatures had already formed evaluation units in Connecticut, Hawaii, Idaho, Illinois, Massachusetts, Mississippi, New Jersey, and New York. State legislators were eager consumers of efficiency and effectiveness research. LPES founders knew that the survival of the field depended upon ensuring relevancy of topics, using valid economic and social science methodologies as well as those used in accounting and business administration, and adjusting and quickening the pace of report production to suit legislative work cycles. However, when most legislative program evaluators were trying to institutionalize this new way of oversight, there was skepticism. There were doubts about the value of legislative program review during these formative years that NLPES members today might find difficult to understand given the positive and constructive roles of large legislative audit offices doing program evaluation in today’s NLPES.

**Just what do you “evaluators” think you are doing?** Many traditional legislative audit professionals were unsettled by legislator complaints about lack of responsiveness and the increasing positive attention that legislators paid to work products of LPES organizations. LPES founders recoiled when some highly vocal senior legislative auditors and fiscal analysts with accounting and financial audit background implied that evaluation research procedures were somehow unsound and inferior to generally accepted auditing procedures.

Some of these issues were debated beside the water coolers within specialized program evaluation and performance audit offices between accountants and their non-accountant colleagues. But criticism from outside was more intense and not always constructive. At national and regional meetings of auditors and government accountants, auditors from all levels of government attending openly questioned the validity of work done by non-accountants and doubted that specialized legislative program evaluation offices would survive professional
challenges to work products by the executive and judicial branches. Others believed that legislators, usually reluctant to challenge a CPA’s work product, would not hesitate to challenge those of non-accountant evaluators and would side with agencies and stakeholders against evaluation reports. Evaluators today will recognize many of their arguments.

1. **The legislature has budget staff that already do analysis.** Why not use the appropriations process and fiscal staff to identify poorly managed or ineffective programs instead of establishing evaluation staff units?

2. **Existing auditors should be required to do evaluation instead of creating new evaluation staffs.** If program results examinations were necessary, why not simply require traditional financial audit offices and their financial auditors to do them?

3. **It will be too costly to develop and maintain performance data.** Given that few, if any, programs track and report on performance, was program evaluation even possible without investment in expensive systems that would take many years to develop and then additional years to establish baselines?

4. **The work could be done reliably by agency self-study.** Because evaluators must interview agency managers and obtain the necessary data from agencies, why not require agencies, which are generally considered correct anyway and will benefit most from anything useful that is found, to do self-evaluation and report results to legislators?

5. **The work is too contentious, uncivil and harmful to public service.** Agencies are certain to dispute everything in an evaluation report except for the page numbers. Why put all parties involved through this process when there are existing budget and audit processes that are already contentious enough?

6. **There should be CPA in charge.** Will the work of non-accountants meet the professional standards of financial auditors if the organization is not staffed by accountants and headed by a Certified Public Accountant?  

7. **Evaluation will require expensive consultants.** Government contends with policy areas such as corrections, education and social services as well as technical issues of science, engineering, and technology. Would evaluators not have to rely upon expensive subject matter consultants or risk challenges to competence?

8. **Exogenous factors make evaluation impossible.** Is it fair to hold one program accountable for outcomes given the multitude of variables and participants affecting performance that are not under the program’s control?

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19 In 1973, the Mississippi State Board of Public Accountancy investigated the staff qualifications of the Joint Legislative Committee on Performance Evaluation and Expenditure (PEER) because the committee informally referred to itself as the “Legislative Audit Committee,” that the word “audit” could only refer to the work product of CPAs, and the majority of PEER staff were not accountants. The board wilted when powerful legislators on the PEER committee noted the audacity of the board’s demur. The board stepped back and reported it was ending the inquiry because the head of PEER staff and three of its staff supervisors were CPAs. Subsequently, the Board allowed PEER staff experience to count toward experience requirements for prospective CPAs as long as PEER staff was directed by a CPA. Since 1977, PEER has not been directed by a CPA and there have been no further issues with the State Board of Public Accountancy.
9. **Evaluation, unlike auditing, is too subjective.** Traditional auditors rely upon laws, regulations, and generally accepted accounting principles as criteria. If a program keeps necessary accounting records, has good internal controls, complies with law, and produces reliable financial statements—what is left to question? What criteria would social scientists and liberal arts types apply while conducting program evaluations?

10. **This isn't business.** Is it realistic to expect agencies to be efficient given the lack of private sector incentives? In the absence of stockholders demanding dividends, can there be any “return on investment”?

11. **No one would want to work in such a career-ending environment.** If evaluators delve too deeply into popular programs, will they not be subjected to attacks by legislators who protect programs such as universities or state game and fish commissions? If legislative evaluation staff serve at the will and pleasure of legislators, how can evaluators be expected to perform their work independently without fear of intimidation at least or termination at worst?

12. **Witch hunting is inevitable.** Would legislators focus evaluation resources on matters of statewide importance without engaging in witch hunting or investigating petty issues of concern to only a few powerful members?

**LPES persisted and honed in on the unmet needs of state legislative staffs and legislators performing program evaluation.** NLPES persevered and addressed most of the aforementioned concerns, many of which have withered away as legislatures nationwide have embraced performance auditing and program evaluation. Initial efforts of LPES founders focused on matters of importance to the new NCSL staff section.

- **Key Contact List.** This was the first networking initiative of LPES because at the time there was no internet, no email, and, until the 1980s, no fax machines. Because long distance telephone calls were too expensive to allow canvassing for help, members needing advice from another state relied on the key contact list.

- **Report Clearinghouse.** Dr. Ralph Craft at the Eagleton Institute operated a hard copy report clearinghouse. LPES agencies sent three copies of each new report and a summary transmittal form to the clearinghouse. When starting a project, evaluators could borrow a clearinghouse copy by mail, copy it back home (fast copiers that would sort and staple were considered “high tech”), and return the original to Eagleton by mail. Usually, it took “only” 3-5 days following a request to receive a borrowed report. Periodically, Craft would mail updated lists of available reports.

- **Newsletter.** James Haag, one of the founders of LPES, was the first newsletter editor when he served as publications coordinator for the New York Legislative Commission on Expenditure Review.

- **Annual Meeting Programs.** LPES held its first panel discussions at NCSL’s first annual meeting (now the Legislative Summit) in Philadelphia in 1975.

- **Training Conferences.** Roger Brooks from the Minnesota Legislative Auditor’s Office coordinated the first LPES training conference held at Macalester College in St. Paul.
• **NCSL Staff Support.** The first NCSL professional assigned to support LPES in 1975 was Bill Pound, who became Director of NCSL in 1987 and recently retired. Bill kept up with events among members and connected states with other NCSL research and publication services. NCSL also began administering annual LPES elections, distributed the LPES newsletter, and coordinated business and educational sessions at NCSL meetings.

There were many key contributors to the formation of NLPES. At the risk of missing one or more and in no order of magnitude of contribution, the following were chairs, founders, executive committee members, and other early contributors to LPES and their occupational affiliations at the time.

• **The Ford Foundation.** Funded the special gatherings of state legislators and staff, and state assistance projects of the Eagleton Institute Center for State Legislative Research, which led to the formation of LPES.

• **The Governmental Research Association (GRA).** Allowed LPES to form under its auspices from 1973 until LPES joined NCSL in 1975.

• **Alan Rosenthal.** LPES conceptualizer Director of the Center for State Legislative Research of the Eagleton Institute at Rutgers. Renowned scholar of state legislatures. Organized and obtained Ford Foundation funding for numerous meetings of legislators and staff.


• **Ray Pethel.** LPES conceptualizer. Deputy Director, New York Legislative Commission on Expenditure Review (LCER). Founding Director of the Virginia Joint Legislative Audit and Review Commission (JLARC).

• **Gerald Silliphant.** First Chair of LPES. Director of the Division of Program Analysis of the Office of Fiscal Affairs of the New Jersey Legislature.


• **Bernard Geiser.** New York LCER.

• **Peter Clendenin.** Virginia JLARC.

• **Richard Brown.** New York LCER. Kansas Legislative Auditor.

• **Ralph Craft.** Eagleton Institute of Politics at Rutgers University. Managed the first LPES report clearinghouse.

• **Linda Alcorn Adams.** Illinois Economic and Fiscal Commission. Director of the Connecticut Program Review and Investigations Committee.

• **James Haag.** First LPES newsletter editor. Publications Coordinator of the New York LCER.

• **James Kent.** Illinois Economic and Fiscal Commission.

• **George Schroeder.** Founding Director of the Connecticut Program Review and Investigations Commission. Founding Director of the South Carolina Legislative Audit Council.

• **Phil Leone.** Virginia JLARC Director.

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20 Tubbesing, Carl, “A Remarkable Man,” State Legislatures: July/August 2019, pp.10-12. Bill Pound contributed as much as Alan Rosenthal to the remarkable strengthening of the state legislative institution occurring after formation of the National Conference of State Legislatures. During his service, Pound amazed colleagues with his remarkable travel and airport stamina as well as with his keen, almost photographic, memory of political alignments and process nuances in the various states.
• Kirk Jonas. Virginia JLARC.
• Cheryl Ridings. South Carolina Legislative Audit Council staff.
• Jim Nobles. Director of Program Evaluation of the Office of the Minnesota Legislative Auditor. Nobles became Minnesota Legislative Auditor and still serves.
• Richard Tobin. Massachusetts House Post Audit and Oversight Committee.
• Doug West. Utah Office of Auditor General.
• Dale Cattanach. Wisconsin Legislative Auditor.
• Marion Higa, CPA. Hawaii State Auditor.
• Judith Frye, Wisconsin Legislative Auditor Office.
• Ethyl Detch. Tennessee Division of State Audits, Comptroller of the Treasury.
• Mark Funkhouser. Tennessee Division of State Audits, Comptroller of the Treasury.
• Jeff Reynolds. Tennessee Division of State Audits, Comptroller of the Treasury.