

# TTARA Webcast Update

June 7, 2018

TEXAS TAXPAYERS  
**TTARA**  
AND RESEARCH ASSOCIATION

400 West 15<sup>th</sup> Street, Suite 400  
Austin, Texas 78701  
512.472.8838  
[www.ttara.org](http://www.ttara.org)



# Stay Connected With Us On Social Media!



<https://www.linkedin.com/company/txtaxpayers/>



[@txtaxpayers](https://twitter.com/txtaxpayers)



[/txtaxpayers](https://www.facebook.com/txtaxpayers)

# Continuing Education Credits

We are pleased to offer 1 hour of continuing education credit for attorneys, accountants, and professionals in taxation with the State Bar of Texas, the Texas State Board of Public Accountancy, and the Institute for Professionals in Taxation.

Certificates of participation have been uploaded and can be found on the Gotowebinar toolbar on the right side of your screen under the “Handout” tab. You can download and place a copy in your files. If you have trouble locating the certificate, contact Ryan at [ryan@ttara.org](mailto:ryan@ttara.org) and he will send you a copy.

We will enter the State Bar of Texas credit, but accountants and tax professionals need to submit their credit to those organizations.

*All data and information is the property of TTARA and we ask that in sharing this data you credit TTARA with the source of information.*

# Agenda

1. TTARA Dates of Interest
2. Fiscal Update
3. Comptroller's Office Organizational Changes
4. Property Tax
5. School Finance
6. Sales Tax
7. Franchise Tax
8. Economic Development



# Register Today for Our 2018 Annual Meeting

- September 27 and 28, 2018, JW Marriott Austin, 110 E. 2nd St., Austin, TX 78701 (continuing education offered)
- Register and reserve your room at [www.ttara.org](http://www.ttara.org)



# Future Webcasts

September 13

November 8



# In the Works

Legislative Preview Sessions (date and location to be determined; 2 hours continuing education credit anticipated):

- Dallas
- Houston
- San Antonio
- Austin



# Fiscal Update

# State Revenues Healthy

## But Maybe Not in All the Right Places

|                        | Collections Through May 2018 | Increase from Same Period 2017 | Official Growth Projection for 2018 | Where does the excess go?                                    |
|------------------------|------------------------------|--------------------------------|-------------------------------------|--|
| <b>Sales Tax</b>       | <b>\$23.5 bl</b>             | <b>10.0 %</b>                  | <b>5.3 %</b>                        | <b>State Highway Fund (reducing planned deferral)</b>        |
| <b>Severance Taxes</b> | <b>\$3.5 bl</b>              | <b>50.3 %</b>                  | <b>3.1 %</b>                        | <b>75 % is split between Rainy Day Fund and Highway Fund</b> |
| <b>All Other Taxes</b> | <b>\$12.1 bl</b>             | <b>7.6 %</b>                   | <b>5.9 %</b>                        | <b>General Revenue Fund</b>                                  |

# Current Supplemental Needs

- Medicaid \$2 to \$3 billion
- Hurricane Harvey \$0.6 to \$2 billion

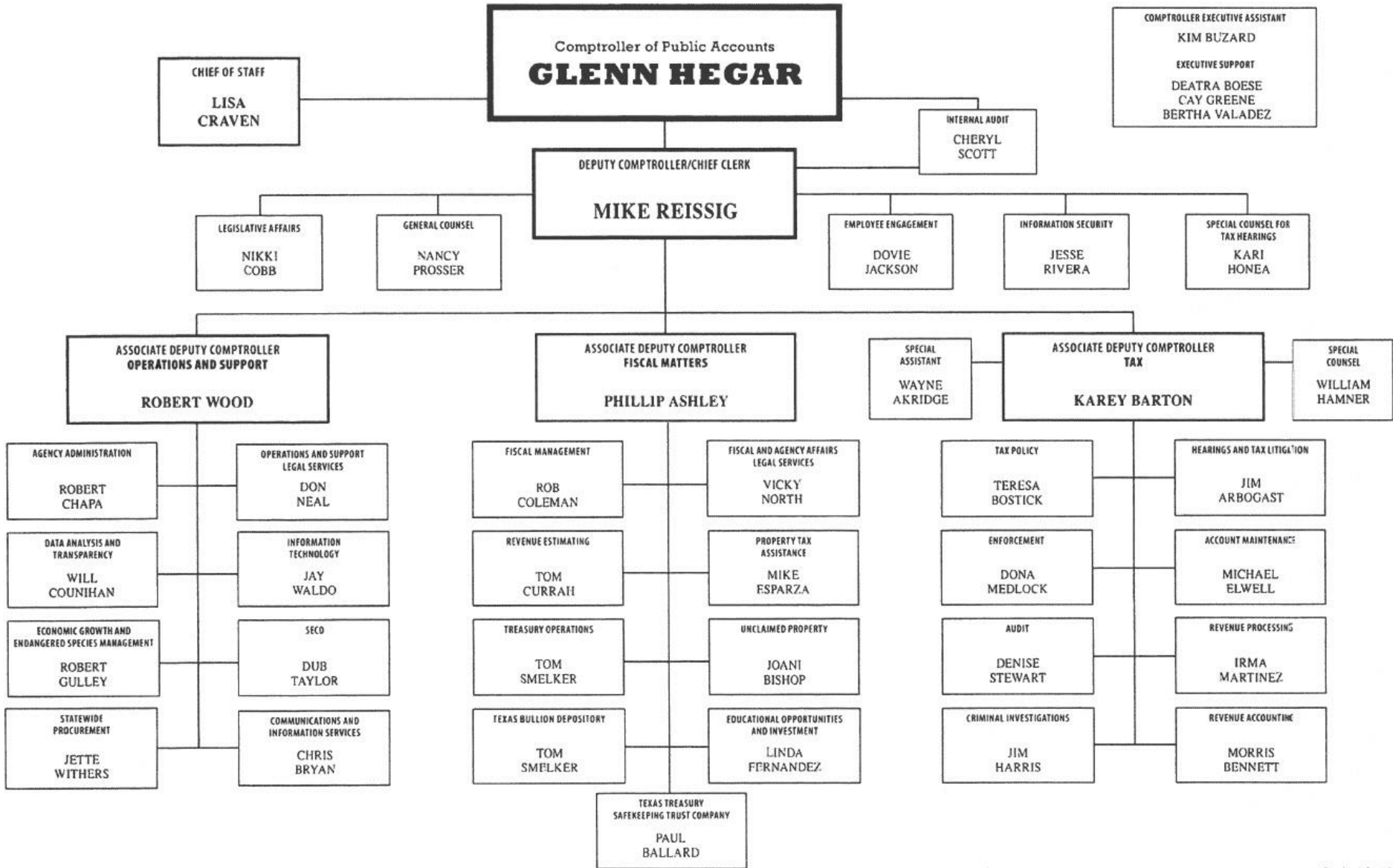
# 2020-21 Budget Pressures

- Structural imbalance from deferrals and one-time measures used to balance the 2018-19 Budget
- New dedication of a portion of motor vehicle sales taxes for the State Highway Fund takes effect (~\$142 million)
- Federal prohibition against sales taxes on Internet access takes effect (~\$440 million)
- Texas Tomorrow Fund (pre-paid tuition fund) is underfunded (~\$240 million est.)
- “Usual Suspects”: Medicaid, Employee Health Insurance and Pensions

# What to Expect

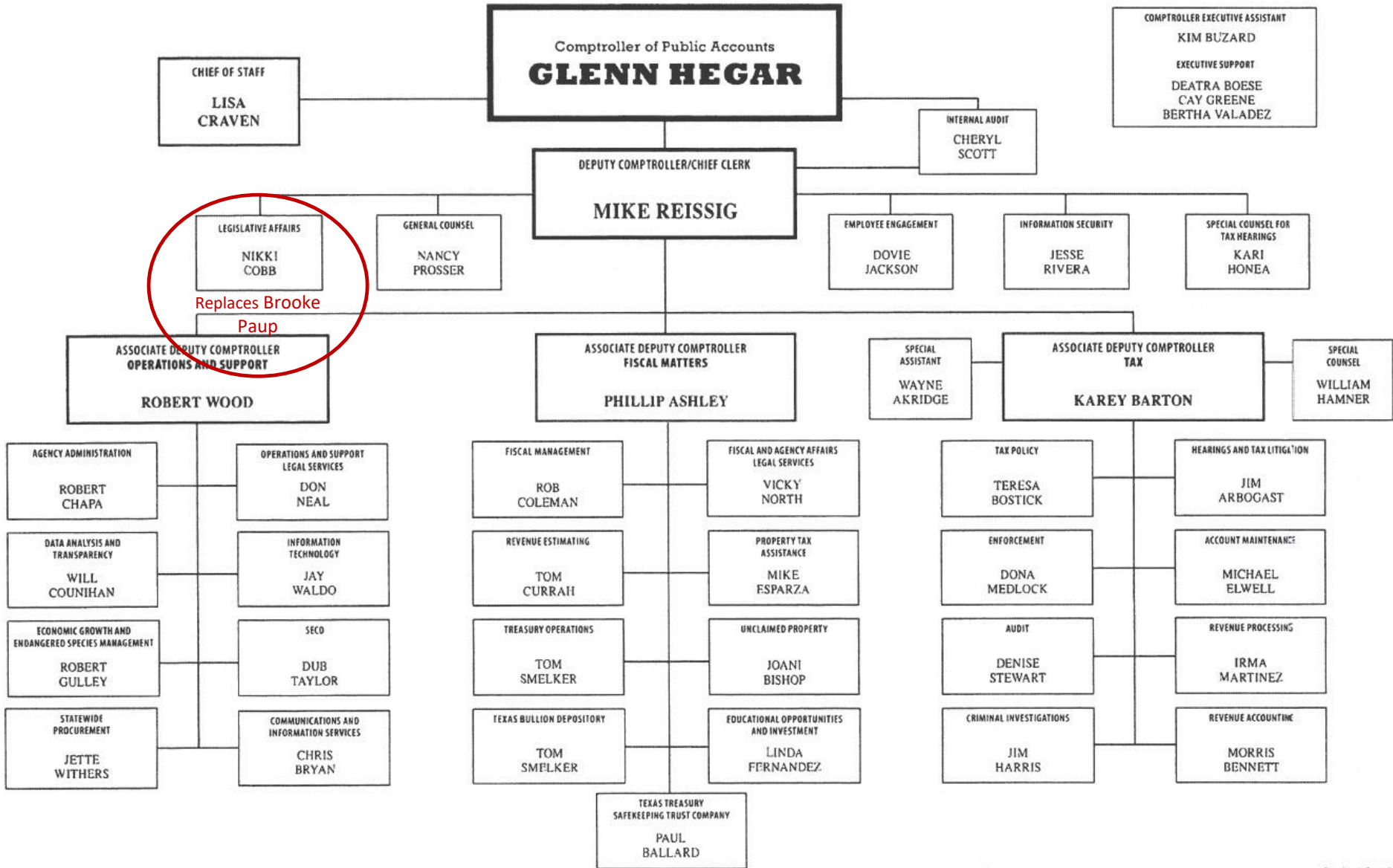
- Revenue stream unlikely to satisfy state's needs
- Strong interest in:
  - Using the Economic Stabilization Fund
  - Using one-time measures to balance the budget
- Severe hurdles to:
  - Cutting taxes (property and/or franchise tax)
  - Reforming school finance using current revenues

# Comptroller's Office Organizational Changes



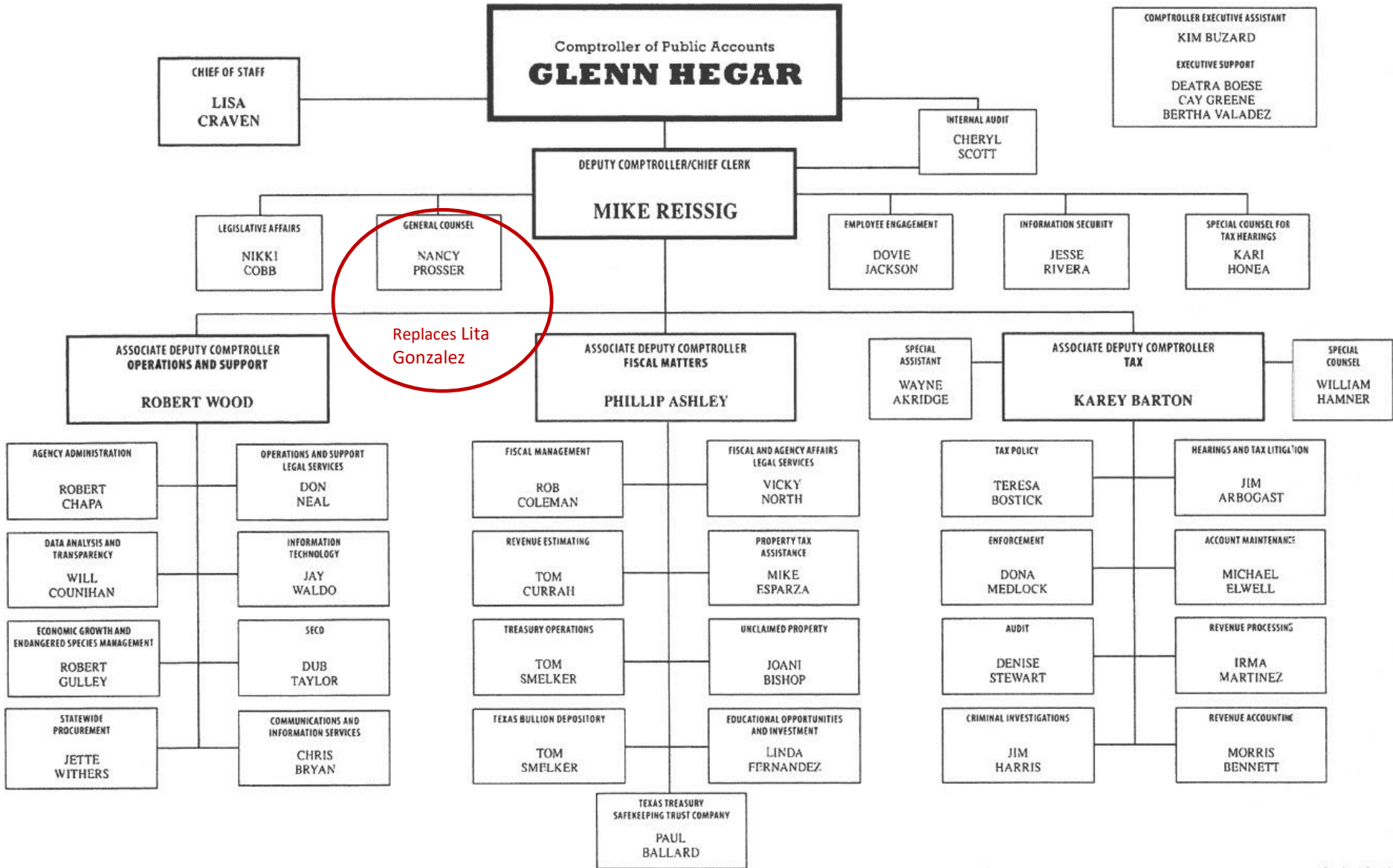
Revised 5/1/18



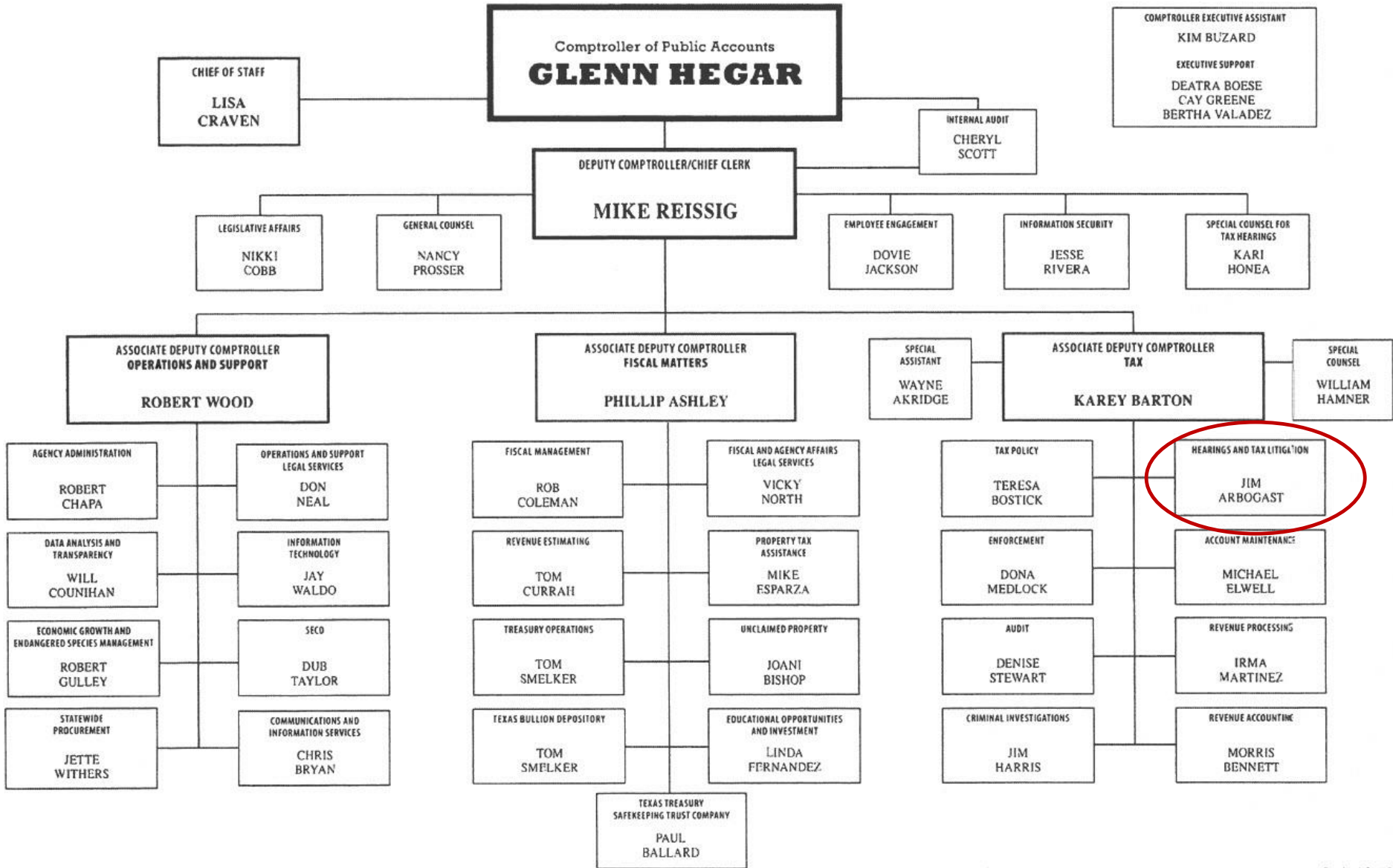


Replaces Brooke Paup

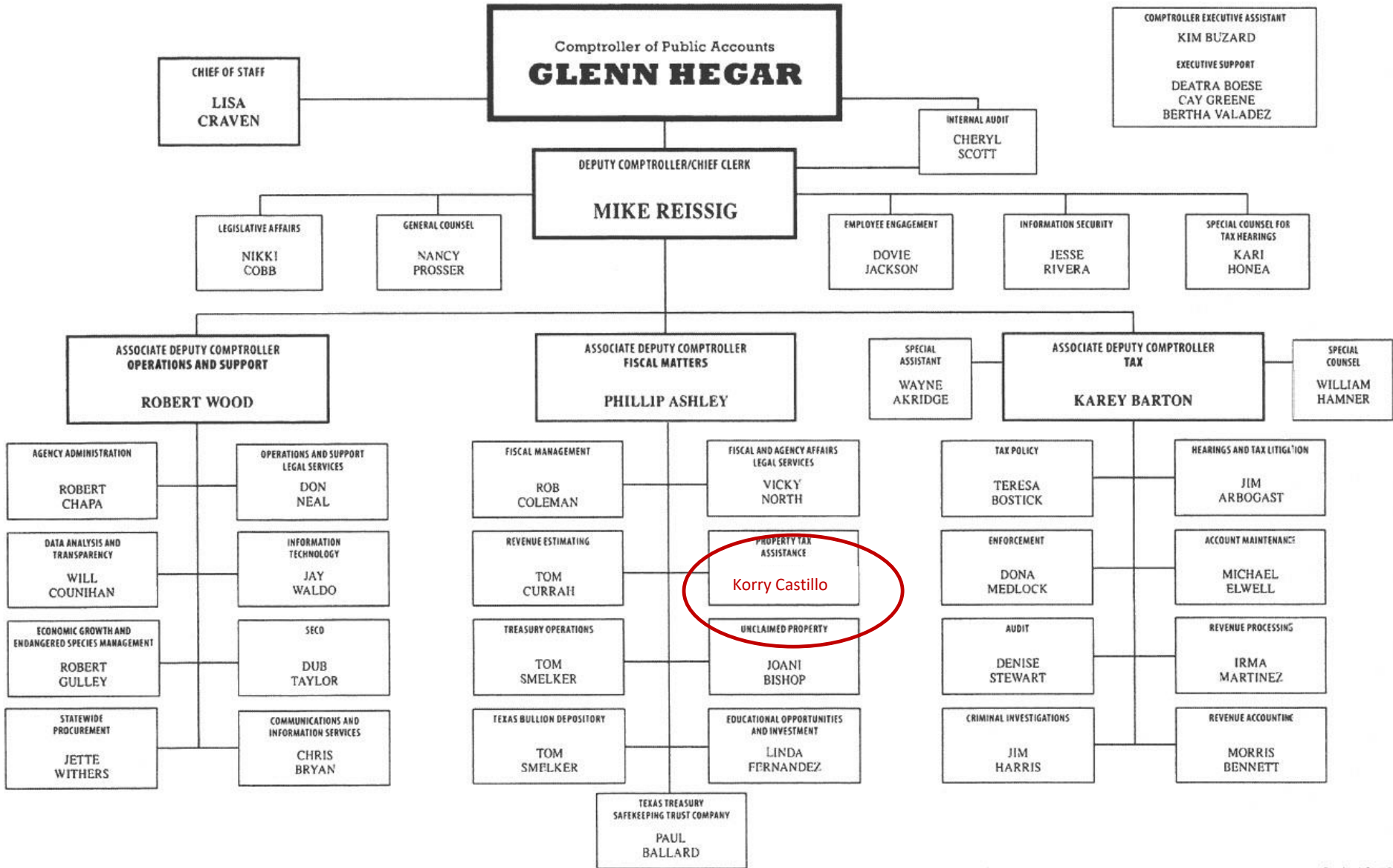




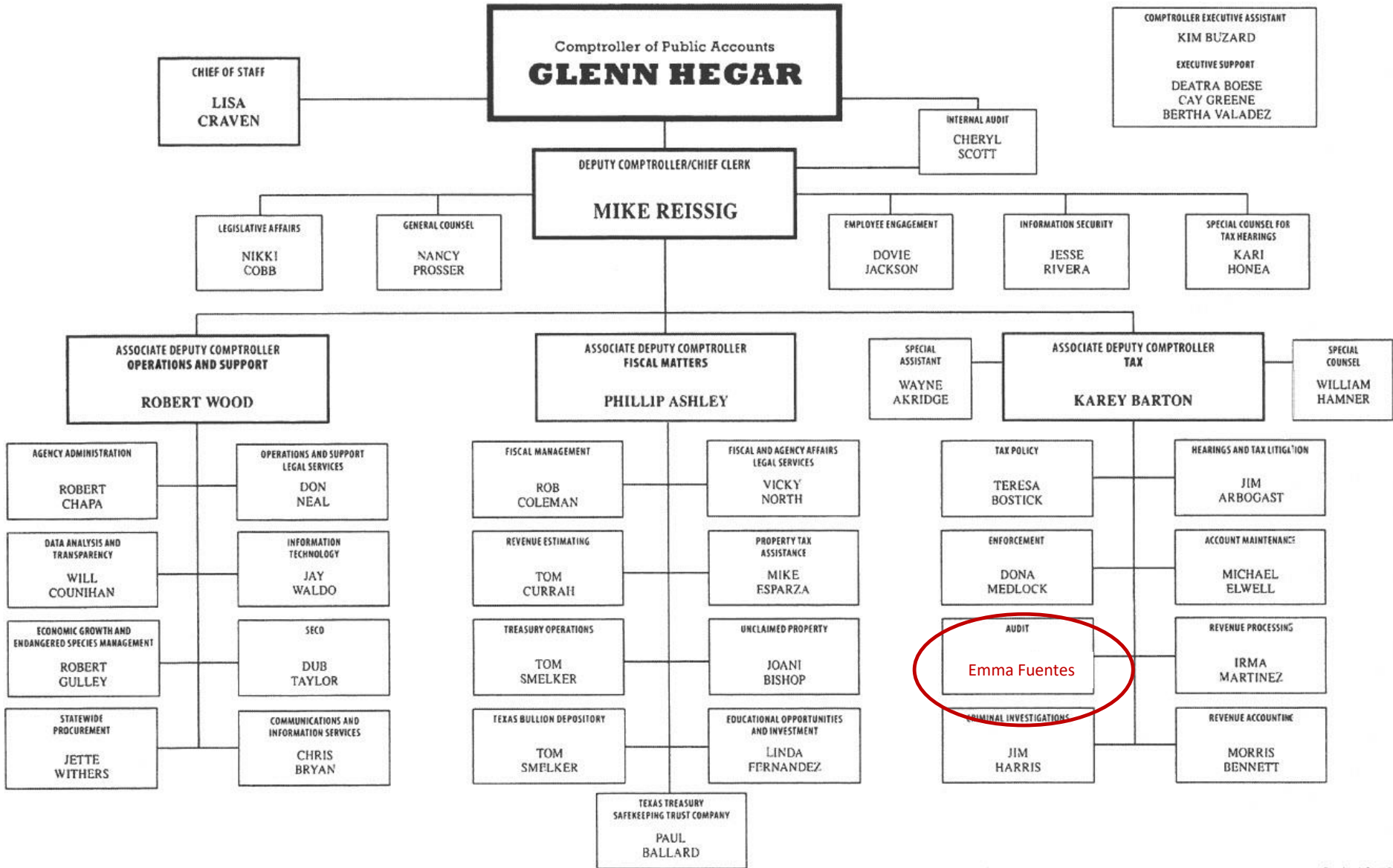
Replaces Lita Gonzalez



Revised 5/1/18



Revised 5/1/18



Revised 5/1/18

# Tax Dispute Settlements

- Keith Womack, Assistant Director of Audit, will oversee internal settlements team
- Tracy Hargrove has retired

# Property Tax

# Recent Property Tax Activity

- Summaries of recent court cases, opinions from the Texas Attorney General, proposed Comptroller rules, and issues concerning property tax are included in this presentation.
- For years, the Texas Supreme Court has not reviewed property tax cases; however, in the last year, it has heard several cases and issued three opinions in the last three months.
- TTARA actively follows property tax issues important to its members at all levels of government—local, state, administrative, and judicial.
- A challenge to the LaSalle County appraisal roll was filed on June 1 by the County alleging under-valuation of oil and gas property (Category G).



# Supreme Court Opinion

## *Bosque Disposal Systems v. Parker County Appraisal District*

- Oral arguments on Feb. 28; decision reported May 25
- Issue: taxability of underground salt water wells as distinct estates or property interests that can be appraised and taxed separately from the land when under common ownership
- Applied prior decision in *Matagorda County Appraisal District v. Coastal Liquids Partners*
- Concluded that the appraisal district did not employ an unlawful means of appraising property and the wells are part of the real property contributing to its value
- Found acceptable separate appraisal of the surface and wells
- Not double taxation merely because wells were not legally severed from the land
- Proper application of the income method to be considered on remand to the trial court



# Supreme Court Opinion

## *Willacy County Appraisal District v. Sebastian Cotton & Grain*

- Oral arguments on Jan. 10; decision reported April 27
- Issues: right of chief appraiser to change ownership on prior year appraisal rolls that result in taxpayer liability; finality of agreements between tax agents and chief appraisers; when fraud claims must be raised; and attorney's fees
- Held that ownership corrections are acceptable if property values and taxes are not increased, regardless of who must pay them, according to Tax Code Sec. 25.25(b) language ("that does not increase the amount of tax liability")
- Taxpayer and chief appraiser agreements voidable if fraud proven; need not be raised at protest hearing
- No attorney's fees to be awarded in these disputes
- Remanded to the court of appeals

# Supreme Court Opinion

## *EXLP Leasing LLC v. Galveston Central Appraisal District*

- Oral arguments on Oct. 10, 2017; decision reported March 2
- Issue: whether the appraisal methodology prescribed in Tax Code Section 23.1241 for leased heavy equipment inventory violates Art. VIII, Sec. 1(a) and (b), Tex. Const.; also inventory definition and situs addressed
- Upheld constitutionality of statute and held that appraisals must be in proportion to value (not market value)
- Market value required in Tax Code, not the Constitution
- Legislature authorized to define value methods, so long as not arbitrary and capricious, and must be equal and uniform within property classifications
- Legislature “free to adopt the mode of ascertaining the value of any class of property by such method as it might deem best”

# Supreme Court Review

## *Sheridan Hills Development v. Mike Sullivan, Tax Assessor-Collector of Harris County*

- Review by the Texas Supreme Court granted; brief for Sheridan Hills filed
- TTARA filed amicus brief supporting request for review and taxpayer's position that penalty and interest cannot be applied to supplemental tax payments until taxes become delinquent
- Issue: if supplemental taxes are due after a partial payment under Tax Code Sec. 42.08 is made in appraisal litigation, when are penalty and interest applied?
- Also issues related to government immunity

# Court of Appeals Activity

## ***Catherine Towers v. Travis Central Appraisal District***

- Oral arguments on January 10 before the Austin Court
- Issue: whether the appraisal district has the right to compel discovery of a market value appraisal report for the subject property in a case involving equal and uniform appraisal

## ***Denton Central Appraisal District v. Richard Scott Gladden***

- Oral arguments on May 22 before the Fort Worth Court
- Issue: when the 10% appraised value limitation on residence homesteads begins—the year of the exemption qualification or the year thereafter

# Recent Attorney General's Opinion

**KP-0208: whether the Harris County Department of Education may establish a relief fund to provide grant funding to independent school districts located in Harris County impacted by Hurricane Harvey**

- Yes, if the Department:
  1. ensures expenditure is to accomplish a public purpose, not to benefit private parties;
  2. retains sufficient control over the public funds to ensure accomplishment of public purpose; and
  3. receives a return benefit.
- Issued May 16

# Recent Attorney General's Opinion

## **KP-0192: procedures regarding reappraisal of property after a disaster**

- Request by the Galveston County Auditor concerning the costs and notice requirements of Tax Code Sec. 23.02
- To the extent that appraisal districts incur additional costs related to a requested disaster reappraisal, extra expenses paid by participating taxing units
- Notice to property owners required when values increase or decrease as a result of a disaster reappraisal
- Suspension of statutory deadlines by Governor possible to deal with these matters if requested by political subdivisions
- Issued April 23

# Proposed Comptroller Rule

## **Rule 9.103: Audits of School District Taxable Property Values Related to the Property Value Study**

- Revisions to the rule intended to clarify language and make non-substantive revisions
- But, substantive change included limiting requests for prior year value reductions due to judicial determinations
- Comments submitted by TTARA on May 17 opposing limits to school district ability to request changes to prior year certified PVS values in any year caused by lawsuits

# Proposed Comptroller Rules

## **Rule 9.4251—9.4266: Binding Arbitration**

- Separates existing rule into sub-parts dealing with definitions, applications, arbitrator eligibility and duties, and fees
- Conforms to statutory amendments in 2017
- Changes Comptroller appointment process
- Effective May 29



# Comptroller's Tax Abatement Registry

## Clean-up of existing data

- Reduction in number of abatements from 1,725 to 1,377
- Reduction in number of reinvestment zones from 809 to 740
- Deleted duplications and expired agreements; identified problems with reporting

## Revisions to reporting forms for the tax abatement registry (50-275), tax increment finance (TIF) registry, and new TIF reinvestment zones (50-807)

## New TIF (Chap. 311) and Abatement (Chap. 312) Brochures

# Chapter 313 Reporting

## Annual Eligibility Form 50-772A and Biennial Progress Report (Form 50-773A or 50-773B)

- Due to school districts by June 15
- Submitted by authorized company representatives
- Forms available on Chapter 313 website of Comptroller's office

# Legislative Update

## Senate Select Committee on Property Tax Reform

- Hearing on Hurricane Harvey disaster reappraisals
- No report at this time

## Senate Finance Committee

- Hearing on business personal property exemptions and interest rate parity
- No report at this time

# Taxing Unit Challenge

- LaSalle County filed a challenge to its appraisal roll on June 1 alleging under-valuation of oil and gas property (Category G).
- The appraisal district's value models and methodology for this property, appraised by Pritchard & Abbot, are questioned.
- An appraisal review board hearing is scheduled in Cotulla for Monday, July 9.

# School Finance

# Texas Commission on Public School Finance

## Meetings in 2018 (9)

- January 23** Legal Framework, Student Population, Student Outcomes
- February 8** School Finance Formulas in Texas and Other States
- February 22** Teacher Quality
- March 7** Efficiency Measures
- March 19** Advocacy Groups and Public Testimony
- April 5** Tax Policy Issues and the Property Tax Problem
- April 19** Tax Policy Issues [**Dale Craymer testified**]
- May 3** Early Childhood Education and Weights
- June 5** English Language Learners, Regulatory Inefficiencies
- July 10*
- August 9*

# Texas Commission on Public School Finance Working Group Meetings (7)

## “Expenditures” (Huberty, Ellis, Taylor, West)

- March 20** Expenditures Related to Public School Finance
- April 20** CEI, Compensatory Education, Transportation Allotment
- May 4** Special Education Weights
- June 6** Facilities

## “Outcomes” (Williams, Bernal, Killian, Martin)

- May 2** Early Childhood Education, Post-Secondary Readiness
- May 29** Lack of Healthcare Influence on Education Outcomes

## “Revenue” (Bettencourt, Johnson, King, Reyna)

- April 2** Conference Call

# TTARA Recommendations to Commission

- 1. Retain the current Tax Ratification Election requirement.** It is an effective tool that allows communities to make their own tax decisions.
- 2. Compress Tier 1 school tax rates:**
  - **Use statewide value growth** to compress the Tier 1 tax rate (i.e. the “compressed tax rate,” typically \$1.00 per \$100 of value) rather than to reduce the state share; or
  - **Use a portion of recapture** to further compress Tier 1 tax rates.
- 3. Include the property tax estimates** on which appropriations to the Foundation School Program are based in an informational rider in the budget for the Texas Education Agency.



# Texas Commission on Public School Finance

- Hope to begin hearing recommendations from working groups at the July 10 meeting.
- Need to reach a consensus on how much is currently spent and how much should be spent on public education.

# Tax Ratification Election in Disaster Area

- Section 26.08(a) of the Tax Code **exempts school districts from the requirement to hold a Tax Ratification Election** to approve a tax rate that exceeds the rollback rate in the year following the year in which the disaster occurs.
- Cannot exceed \$1.17 M&O tax rate cap.
- The **exemption would apply to the 2018-19 school year for Districts affected by Hurricane Harvey**. If you have property in one of these school districts, you may want to monitor the tax rate adoption process this summer.

# State Education Costs due to Hurricane Harvey (Legally Required)

|  | FY 2018 or<br>2019<br>Est. Cost<br>(millions) | Possible<br>Supplemental<br>Appropriation<br>Request in 2019<br>(millions) |
|--|---|--|
| <p>Replace lost M&amp;O property tax collections <b>due to reappraisals</b> of 2017 property values. (12 Districts)<br/>Conroe ISD, Fort Bend ISD, Humble ISD, Katy ISD, Lamar CISD, La Porte ISD, Magnolia ISD, Montgomery ISD, New Caney ISD, Splendora ISD, Spring Branch ISD, and Willis ISD</p> | \$150.0                                       | \$150.0  |
| <p><b>Deductions from recapture</b> to pay for repairs to facilities and other costs <u>not reimbursed by insurance or FEMA.</u></p>   | \$30.0  | \$30.0   |

# State Education Costs due to Hurricane Harvey (cont.) (Legally Required)

|  | FY 2018 or<br>2019<br>Est. Cost<br>(millions) | Possible<br>Supplemental<br>Appropriation<br>Request in 2019<br>(millions) |
|--|---|--|
| Hold harmless for <b>decline in students.</b>  | \$99.0  | \$99.0   |
| Additional students eligible for <b>compensatory education weight</b> and/or classified as homeless. | \$147.0                                       | \$147.0  |
| <b>TOTAL ESTIMATED COST (Required)<br/>2018-2019 Biennium (millions)</b>                             | <b>\$426.0</b>                                | <b>\$426.0</b>   |
| <b>Possible Supplemental Appropriation<br/>Requests in 2019 not legally required</b>                 |   | <b>\$862.0-<br/>\$1,362.0</b>  |

# Sales Tax

# ***South Dakota v. Wayfair, Inc.***

(U.S. Supreme Court Docket No. 17-494)

- Direct challenge of the physical-presence requirement to impose use tax collection responsibilities reaffirmed by the Court in 1992 in *Quill Corp. v. North Dakota*
- Argued April 17 – decision expected later this month
- Comments from several Justices had led to speculation that Court had signaled a willingness to change *Quill* nexus standard
- Questions from the bench raised uncertainty:
  - Isn't Congress better suited to craft a solution?
  - Is economic nexus OK and what should standard be?
  - Why change a decades-old standard when doing so may lead to numerous lawsuits, Congress is working to resolve problem and market changes causing more and more e-commerce companies to have a physical presence?
  - Will compliance costs be a barrier to market entry by small sellers and result in less competition?

# Franchise Tax

# Research & Development Tax Credits and Exemptions

## Comptroller Update

- All franchise tax/sales tax research & development exemption or credit claims are on hold
  - Texas uses Internal Revenue Code in effect in 2011 and Comptroller needed time to determine if federal regulation changes from 2014 and 2016 impact Texas claims
  - The number of claims are significantly more than expected
- The hold is expected to be lifted soon



# Research & Development Tax Credits and Exemptions

- HB 800 in 2013 allowed taxpayers to claim either a sales tax exemption or franchise tax credit for R&D activities
- Fiscal note on the bill estimated a cost of \$150 million a year
- However, estimates for 2018 show cost to be about \$320 million a year
- Increased cost and number of claims have resulted in increased scrutiny

# Comptroller Rule Update

## 3.355 Insurance Services

- Rule implements SB 1083 (2017)
- SB 1083 exempted public accounting firms from sales tax on insurance services as long as less than 1% of total firm revenue is from insurance services
- Prevents a CPA firm's services from being taxed because it conducted a small amount of work falling under the definition of "insurance services," a taxable service under the sales tax code
- The rule follows the language in the statute
- Adopted and in effect

# Comptroller Rule Update, *continued*

## 3.588 Margin: Costs of Goods Sold

- Incorporates language from HB 500 (2013) relating to movie theaters and pipelines
- Implements changes to comply with the recent court decisions in *CGG Veritas*, *Newpark*, and *Sunstate*
- The rule incorporates our request to remove a new definition of “production” and adjust the “legal title” ownership language
- Adopted and in effect

# Economic Development

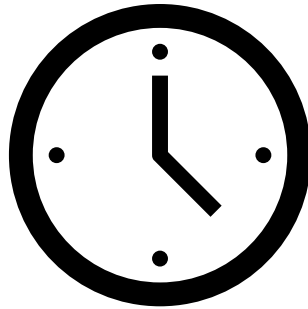


# Economic Incentives Oversight Board

## Economic Incentives Oversight Board

- Advisory body created in HB 26 (2015) composed of 9 members:
  - 3 appointed by Gov.
  - 2 appointed by Comptroller
  - 2 appointed by Lt. Gov. (1 must be from rural county)
  - 2 appointed by Speaker (1 must be from rural county)
- The Board examines effectiveness and efficiency of tax incentive programs administered by the Governor, Comptroller, or Department of Agriculture
- So far, the Board has examined one program, Chapter 313, which was unanimously voted as a high-value program for the state

# Don't Forget to Download Continuing Education Forms



Webcast will remain open for five minutes to download forms.

Certificates of participation can be found on the Gotowebinar toolbar on the right side of your screen under the “Handout” tab. You can download by clicking or right-clicking on the file and place a copy on your computer.

We will enter the State Bar of Texas credit, but accountants and tax professionals need to submit their credit to those organizations.

If you have trouble locating the certificate, contact Ryan at [ryan@ttara.org](mailto:ryan@ttara.org) and he will send you a copy.

# Thanks for Joining Us!

If you have any questions or comments, please feel free to contact TTARA staff.

**Franchise Tax & State Budget: Dale Craymer**

[dcraymer@ttara.org](mailto:dcraymer@ttara.org)

**Property Tax: Debbie Cartwright**

[dcartwright@ttara.org](mailto:dcartwright@ttara.org)

**Sales & Property Tax: John Kennedy**

[jkennedy@ttara.org](mailto:jkennedy@ttara.org)

**Franchise Tax, Sales Tax & Budget: Matt Migliore**

[mmigliore@ttara.org](mailto:mmigliore@ttara.org)

**School Finance: Sheryl Pace**

[space@ttara.org](mailto:space@ttara.org)

**Communications: Ryan Ash**

[ryan@ttara.org](mailto:ryan@ttara.org)

**Office Manager: Betty Wranischar**

[bwranischar@ttara.org](mailto:bwranischar@ttara.org)

**Membership: Cindy Ferguson**

[cferguson@ttara.org](mailto:cferguson@ttara.org)

