

TEXAS ETHICS COMMISSION

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July 29, 2022

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The Honorable Dade Phelan
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Speaker, Texas House of Representatives
State Capitol, Rm 2W.13
Austin, Texas 78768

The Honorable Joan Huffman
State Senator
State Capitol, Rm 1E.15
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The Honorable Greg Bonnen
State Representative
State Capitol, Room E2.504
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The Honorable Jane Nelson
State Senator
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The Honorable Mary González
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State Capitol, Rm E1.504
Austin, Texas 78768

The Honorable Charles Schwertner
State Senator
State Capitol, Rm 3E.10
Austin, Texas 78701

The Honorable Morgan Meyer
State Representative
State Capitol, Rm E1.302
Austin, Texas 78768

The Honorable Larry Taylor
State Senator
State Capitol, Rm 1E.9
Austin, Texas 78701

The Honorable Armando Walle
State Representative
State Capitol, Rm GW.18
Austin, Texas 78768

RE: Fiscal Emergency, Texas Ethics Commission Electronic Filing System Servers

Dear Members of the Legislative Budget Board:

The TEC's electronic filing system recently experienced a mission-critical failure. In short, the TEC's hardware—purchased in 2013-14 and operated locally from the Sam Houston State Office Building—was unable to keep up with the rapidly increasing number of political contributions being made to Texas candidates. The agency has exhausted its options for improving the performance of its existing equipment. As detailed below, the best, most reliable, and most cost-efficient solution is to move the filing system to the cloud. The agency made a request for appropriations to accomplish this migration during the last biennium; however, that request was denied.

Under any authority available to the Legislative Budget Board, the TEC requests \$756,000.00 in emergency funding to migrate the TEC electronic filing system to a managed cloud service.

I. The TEC's servers failed in July.

Every candidate, officeholder, and political committee in the state must file at least two campaign finance reports each year. The most recent deadline was July 15, 2022. While the TEC's system successfully processed approximately 3,500 such reports due on that date, one specific-purpose committee—controlled by the campaign of one of the two major-party candidates for governor—was unable to file its report despite repeated timely attempts.

To be clear, this problem was not caused by anything the candidate did or failed to do; it was caused by the agency's aging servers being unable to process a filing that included over 500,000 itemized political contributions.¹ TEC staff worked with the committee throughout the weekend of July 16-17, along with employees of the TEC's electronic filing system vendor, RFD. The problem was ultimately solved on July 18 by temporarily diverting server resources away from other critical agency systems.

II. Without an emergency grant, the system will likely fail again in October.

While the specific purpose committee's July report was exceptionally large, the TEC anticipates—based on past trends²—that the report filed by this committee on October 11 (30 days before the general election on November 8) may be even larger. The report filed by the other major-party candidate will also be very large. Between these two filings, the TEC's servers will likely be overwhelmed again. This will not only affect the two filers, but potentially others seeking to file reports. In short, the public interest in timely disclosure will not be served. Timely disclosure of campaign finance data is always important, but especially so for these pre-election reports.

Additionally, there is no reason to believe that the size of reports filed with the TEC will do anything but continue to grow. For example, reports filed with the TEC have increased from an average of 20 pages and 96 individual entries of itemized contributions in 2018 to an average of 133 and 660 individual entries in 2022.³ The passage of HB 2586 in 2019 has contributed to this increase by requiring all electronic contributions, even those under \$90 (adjusted from \$50 by 1 T.A.C. § 18.31), to be itemized.⁴ Electronic contributions are becoming the norm, and the TEC expects the percentage of electronic contributions to continue to increase, thereby increasing the amount of contributions required to be itemized.

The increase is even more pronounced when comparing gubernatorial candidates. In 2018, the major-party candidates for governor itemized an average of \$5,619,311.29 in

¹ A contribution that is "itemized" is one for which the filer includes the full name and address of the person making the contribution and the date on which the contribution was made. Contributions that are not made electronically and that do not exceed \$90 are reported as an aggregate amount under Section 254.031(a)(5), Election Code (adjusted from \$50 by 1 T.A.C. §18.31).

² In 2020, the average number of pages reporting itemized monetary contributions was 36 pages for a 30-day report and only 21 pages for a July semiannual report.

³ This compares the Schedule A1 entries for candidates, officeholders, and specific-purpose committees in the July semiannual reports. The number for 2022 does not include the report that could not be timely filed as described above.

⁴ Section 254.031(a), Election Code, requires a report to contain information that includes:
(1) the amount of political contributions, other than political contributions described by Subdivision (1-a), from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;
(1-a) the amount of political contributions from each person that are made electronically and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; ...

contributions on their July semiannual reports. In 2022, that number skyrocketed to \$25,718,569.64. In 2014, the Republican gubernatorial candidate filed a July semiannual report that was 3,356 pages long. In 2018, the same report from the same candidate was over twice as big (7,420 pages). And it was over seven times bigger in 2022 (23,668 pages). Likewise, in 2014, the Democratic gubernatorial candidate filed a July semiannual report that was 7,614 pages long. In 2022, the July report filed by the Democratic candidate was over 13 times larger at 102,407 pages, which was too large for the TEC's existing hardware to handle.

III. Moving the TEC's filing system to the cloud is the best solution.

The TEC's filing system is currently operated on local server equipment. Dell, the server manufacturer, does not publish an end-of-life date for its server models, but it does state that it prefers to not support servers that are more than five-to-seven years old because parts are difficult to find after that time period. TEC staff has already exhausted every possible avenue for optimizing the performance of its existing hardware.

There are thus two possible solutions to this problem: (1) purchasing new server equipment, or (2) moving the filing system to the cloud. For a number of reasons, moving to a cloud-managed system has a number of advantages over replacing local servers. First, cloud-managed systems have no hardware limitations because resources can be allocated on an as-needed basis. Second, a cloud-managed system is more cost efficient for an organization like the TEC with large variances in web traffic concentrated around a small number of filing deadlines each year. Third, a cloud-managed system is more resilient to natural disasters and power outages. And finally, the agency can complete a cloud migration in less time than it would take to purchase, receive, configure, and test new local hardware.

The TEC requested funding for cloud migration during the last legislative session, but the request was denied. This request outlines all of the anticipated costs of migrating to a cloud-managed filing system before the October 11, 2022 pre-election reports are due, which are significantly higher than \$200,000. However, because the transition is necessary to guarantee the reliability of the filing system this October, the agency has also outlined how it would cover the shortfall to give us the best chance of completing the work on time. The agency will also work on a "plan B" that costs no additional money and relies on our existing hardware to be better positioned for the October filings.

IV. The requested funding gives the TEC a fair chance of being ready for October.

The TEC is requesting \$756,000.00 in emergency funds to move its filing system to the cloud in advance of the October filing deadlines. Alternatively, the TEC requests \$480,000.00 in emergency funds to move the filings system to the cloud at lengthened timeline that will still accomplish the purpose of ensuring the functionality of the filing system earlier than the next legislative session. The estimate given to us by TEC's electronic filing system vendor is attached to this letter.

The TEC commits to using public money in the most effective manner to accomplish the public interest served by accurate, timely, and complete campaign finance reporting.

Sincerely,



Mary K. "Katie" Kennedy
Chair
Texas Ethics Commission



Randy Erben
Vice Chair
Texas Ethics Commission



Anne Peters
Executive Director
Texas Ethics Commission

Enclosure: RFD Estimate