Supplemental Report on Financial Exigency

by the

Committee on Governance and Funding Reform

of

The Faculty Senate of the University of Alaska Anchorage

to The Board of Regents, University of Alaska

Approved by the Committee, July 20, 2019

<u>"an elected faculty governance body…participates in the decision that a condition of financial exigency exists."</u>

AAUP, *Recommended Institutional Regulations on Academic Freedom and Tenure*, 4(c). Financial Exigency

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Our committee strongly urges the Board of Regents to vote against a system-wide declaration of financial exigency on Monday, July 22.

In summary, our recommendations are:

1) Delay a declaration of financial exigency;
2) Defer a decision on restructuring the university system and instead focus on achieving financial solvency for the system in its current form;
3) Determine the formula of allocating UGF according to student FTE, and revise that allocation if the state government increases the appropriation of UGF;
4) Ask the Chancellors to develop plans immediately on how their universities will implement the reductions in their allocations of UGF, and ask the President to develop a plan immediately on how Statewide will implement its reductions in its allocation of UGF;
5) Invite the Chancellors to request a declaration of financial exigency for the units and for the time-frame necessary to complete their cost-reducing plans;
6) Declare financial exigency, if necessary, in accordance with the Chancellors' requests;
7) Monitor implementation and execution;
8) Resume study of university restructuring and include faculty.

A declaration of financial exigency is not cost-free or risk-free. We acknowledge that in rare circumstances, some imperiled organizations might have to bear these costs and risks.

One significant risk is that current and future faculty, students and staff, as well as alumni and the Alaska community, will lose confidence in the stability of our universities and will depart, never come, or break off their engagement and interest. In particular, the dismissal of tenured faculty will undermine the confidence of future faculty candidates in offers of tenured positions. As a result, that core of the university system will be rebuilt with difficulty.

Universities are people. If the manner by which financial exigency is declared and implemented is not carefully considered, the loss of confidence will compound the blow of the cut to state aid.

Therefore, we encourage the Regents to weigh the costs and risks against the advantages of a declaration now.

Following are our specific reasons for urging a vote against the declaration at this time and of this nature (system-wide, all academic year) that the UA President has presented.

1. Moody's recent downgrading of UA's credit rating should have no bearing on the decision to declare financial exigency.

Moody's recent decision to downgrade UA's credit rating is irreversible and done. All we can do now is to act in a way that persuades them to upgrade our credit rating in the future. UA's financial management and the state government's appropriations to UA will determine Moody's outlook and a future decision to upgrade our credit rating.

Does a declaration of financial exigency, *ipso facto*, constitute sound financial management? No. Sound financial management might or might not require financial exigency, depending on its necessity, and further depends on how financial exigency is planned, implemented, and executed. It is conceivable that Moody's could downgrade our credit rating further, if they observe bad financial management, and a declaration of financial exigency poorly justified, implemented, and executed.

The only major bonded indebtedness that we have seen reported (we could be wrong) is that which financed UAF's new engineering building, UAF's power plant and UAA's University Center.

Furthermore, we are unaware of any plans by the UA administration to use bonded indebtedness for financing in the near future, which depends upon a favorable rating from Moody's.

2. The UA Administration has not presented a plan to cut costs for which the tool of financial exigency is needed.

Financial exigency is an extraordinary tool to override contractual promises, policies, and regulations that otherwise prevent cuts to specific expenses.

We are unaware of, and certainly our faculty leadership has not been consulted about, a plan presented by the UA President that identifies specific cuts that cannot be made without a declaration of financial exigency.

The AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* says that a declaration of financial exigency entailing the start of the process to terminate tenured appointments should be avoided until "all feasible alternatives…have been pursued, including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration." Also, "Judgments determining where within the overall academic program termination of appointments may occur…should therefore be the primary responsibility of the faculty or of an appropriate faculty body. The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated." But we are unaware of any plan to make any specific cuts, whether requiring financial exigency or not.

A declaration of financial exigency before such a plan is presented is simply a general grant of *carte blanche* power, and not the grant of a powerful tool for a specific purpose. A system-wide, year-long declaration essentially removes tenure system-wide for at least one year. This is putting the cart before the horse.

In any event, the UA administration will have to develop a cost-savings plan before the tool of financial exigency is used to execute that plan.

We applaud the Regents for requesting that plan, and we ask that faculty leadership receive the plan along with them, as AAUP standards require. We hope that the plan is not shielded by executive session, which is against AAUP standards.

We encourage the Board to give themselves and faculty leadership adequate time to review the plan and to inquire specifically when, where, and why financial exigency will be used. By making these inquiries and determining the specific advantages that will be gained by the use of the declaration, the Board and faculty leadership will be able to weigh them against the costs and risks. Then, if a declaration is warranted, the Regents can circumscribe financial exigency to the place and time, where and when it is specifically needed.

3. Even if a declaration of financial exigency should prove necessary, it is not necessary before August 11, nor even before several more months have passed and the fall semester is well underway.

The motion to declare financial exigency claims that "each day of delay in implementing additional cost reductions…will result in expenditures in excess of current funding, requiring still additional reductions." In theory that is true if expenses that cannot be cut without financial exigency are incurred at an equal rate over the twelve-month fiscal year. It is not true when faculty are off contract, as they are now.

The particular financial advantage of financial exigency is that tenured faculty may be dismissed with 60 days' notice. But tenured faculty are off contract until August 11 and their elimination now would generate the university system little to no savings between now and then. Before August 11, the UA President could develop and present a plan for cuts. In that same time-frame it is possible that the legislature will enact, and the Governor will sign, a new bill that restores some of the cut appropriation, which will also affect the scope of the need for financial exigency, its time-frame, and the part or parts of the university system to which it needs to be applied.

Also, with no objection from the Board on July 15, the UA President stated his intention of sustaining the planned course schedules of the universities until the end of the fall semester in December, because the elimination of faculty for the fall semester and subsequent cancellation of courses would threaten the accreditation of the universities. If no cuts requiring financial exigency are to be made during fall semester, there is more time to plan and prepare for cuts requiring financial exigency, beginning in the spring semester.

In the meantime, other parts of the university system could be reviewed and downsized without financial exigency. For example, FY18 expenditures on Institutional Support and Physical Plant make up 41.5% of UA's total unrestricted expenditures. These two categories have not seen double-digit reductions in spending during the last five years like Instruction and other student-related NCHEMS categories of spending. Reductions in these areas would not require overriding the protections of tenure. If a declaration of financial exigency is required to make significant cuts in these areas, the declaration could be restricted to non-academic units, such as UA Statewide, which has expenditures almost exclusively in these two areas.

4. Financial exigency should not be used as a reason to reorganize the universities.

The question of the reform and reorganization of the entire university system, to improve its performance, is separate from the question of its financial solvency in its current form.

Some organizational changes might very well become necessary to implement the cut. However, the purpose of financial exigency is to achieve financial solvency.

Our committee has published our own report on how the university system could be reformed in the direction of decentralization, so that the universities have greater independence. As such, we believe that they will produce better education and research, and will gain efficiencies and revenues over time. We believe that it is a mistake to omit our recommended model from the list of options that the UA President has presented. We object to the "one university" and "lead university" plans, and object to the use of financial exigency to commit the university system hastily to either of these models without due research and deliberation.

We have not seen financial forecasts or cost-benefit analyses that can show how these different organizational models will save money. Since the current problem is a financial one and we have not seen financial forecasts, it does not make sense to implement either model now for cost-savings purposes.

The experience with the UAA School of Education is a test of the "one university" or "lead university" models, because in that case similar programs at separate universities were combined. That experience cautions against committing to either of those two models without more research and deliberation.

When the schools of education at UAA, UAF, and UAS were consolidated under UAS, the loss of faculty morale and chaos that ensued contributed to the loss of specialized accreditation in four of its programs at UAA. In addition, we question whether combining the schools saved money, since the combination required another layer of administration and the retention of faculty to teach core classes and oversee internships. According to Dean Atwater, 2/3 of the UAA students in the School of Education have not enrolled in either UAF or UAS, foreshadowing the loss of tuition revenue if other programs at separate universities are combined. This does not bode well for further consolidation of our academic programs.

In addition, the NWCCU president Sonny Ramaswamy has said that normally, the chief administrators of accredited institutions, not the President of the system, would initiate the discussion and process of combining the institutions into a single accredited university. The Board of Regents can also instigate the process, but faculty must be meaningfully engaged.

We encourage the board to separate these questions and concentrate on how the university system can achieve fiscal solvency in its current form. After the university system is put on the path to certain fiscal solvency, then we recommend that the question of reform be taken up in earnest – and we respectfully request that representation from our faculty committee or from faculty leadership be included in the deliberations.

5. Financial exigency should depend upon the plans and requests of the Chancellors.

We are unaware of any reason why the UA President cannot shrink the size and cost of the statewide unit right now, without a declaration of financial exigency. Their costs and not faculty costs are burning cash at this time while faculty are off contract.

The universities are the major units where financial exigency might be needed, because they house programs and tenured faculty. The Chancellors are the administrative heads of those universities, and know best their programs, faculty, and staff. We do not see why they cannot be told what their apportionment of UGF will be and then asked to develop their plans for how they can implement the necessary cuts. We are aware that at least one Chancellor has already implemented $3.8 million in cuts.

This approach depends upon deciding and then notifying the Chancellors of what their allocation of UGF will be. This is perhaps a task for the Board to complete expeditiously before considering a declaration of financial exigency. This committee urged the Board, in our July 11 report, to follow the formula per student FTE, because this formula aims at providing "an excellent comprehensive university education to as many of our current, incoming, and future students as possible."

The presentation of the UA President to the Board on July 15 affirmed this "students first" principle, when he quoted P04.09.020. Determination of Financial Exigency:

> "B…Any action taken by the board and university in response to a financial exigency will be developed with the understanding that the action will be consistent with the basic mission of the university to provide quality education for its students." (slide 11)

But by whatever formula that the Board decides to allocate UGF, nothing prevents the Chancellors from requesting a declaration of financial exigency for their universities or part(s) of their universities, if they cannot implement their portion of the cuts without it. If one or some universities can implement their cuts without financial exigency, however, that university or those universities will be spared substantial reputational damage.

6. The use of a declaration of financial exigency at this time might increase UA's legal exposure.

Our committee recognizes that sometimes financial exigency is necessary and should not invite legal challenge when it is necessary. We even recognize that this tool may very well be necessary to stabilize UA's finances in the upcoming year. We do not recognize the declaration's necessity in its present form at this time for UA.

To a proportionate degree that financial exigency is improperly declared and implemented, resulting in the removal of tenured faculty and other contractually protected employees, the removed employees will feel aggrieved, which opens an educational institution to a mass action legal challenge. A court would determine as a question of fact, whether all remedies were exhausted and all steps standard in higher education were followed, before the administration absolved itself of its contractual obligations and removed those employees through financial exigency.

Has the administration followed those steps recommended by AAUP? Has the administration shown that they have exhausted all remedies? Have they presented a plan to achieve financial solvency and given the Board and faculty leadership time to review and discuss this plan?

We know that the legislature and Governor are now considering supplementary legislation that will provide financial relief to the university system. We believe, but have not had time to verify, that 10% of UA expenses are for the employ of tenured faculty. Let us assume that this figure is correct and that the state government restores half the cut aid to UA. The net reduction to the overall budget after a restoration of half the cut aid ($68 million) would be equivalent to 8%. Would a court find that the declaration of financial exigency and the removal of contractually protected employees is justified for a net 8% budget reduction?

We do not know, but common sense suggests that a court might, as a finding of fact, determine that the declaration was not justified. In that case, the determination of an award would go to a jury and this could be very costly to UA. Because tenured university jobs are specialized and difficult to replace, the judgment might aggregate the costs of these employees' destroyed or seriously injured academic careers.

If, on the other hand, financial exigency is implemented responsibly, the likelihood of a such a court finding is diminished, and the cost of a judgment is precluded.

7. A declaration of financial exigency now does not follow a 1986 precedent.

In 1986, UA President Donald O'Dowd, after consulting with faculty about the advisability of declaring financial exigency, decided not to make such a declaration, lest it do lasting and significant harm to the reputation and the future of the university. Thereafter, faculty leadership worked with President O'Dowd, the Board, and the campus administrations, successfully addressed the financial crisis, and built a stronger system.

We add, for emphasis, that these decisions were reached with strong faculty involvement, and that then, as now, a proposal to consolidate the universities into a single accredited, centrally administered university was considered and rejected.

Like our forebears in 1986, our committee takes their position, urges that you vote against a declaration of financial exigency, and extends our offer to work with the Board and administration to right our financial ship and to strengthen our universities that we love.