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## FACULTY SENATE MEETING MINUTES

September 16, 2020

Online via Zoom

3:00 PM - 5:00 PM

### *Present:*

**AGRUSA**, Jerry; **BANNA**, Jinan; **BATENI**, Sayed; **BEAULE**, Christine; **BIAGIONI**, Edoardo; **BINSTED**, Kim; **BOVARD**, Penny-Bee; **BUSCH**, Gerald; **CHANDRA**, Nandini; **CLAPP**, Justin; **CONWAY**, Thomas; **COONEY**, Michael; **DAVIS**, Katherine; **DE SILVA**, Kahikina; **EICHELBERGER**, Ariana; **FARRAH**, Duncan; **FARRAR**, Christine; **GAL**, Roy; **GILLILAND**, Elizabeth; **HARRIS**, Chessa; **HIGA**, Jason Kenji; **HOFFMANN**, Kathryn; **IRVIN**, Vanessa; **JHA**, Rajesh; **JOHANSEN**, Morgen; **KAO**, Peiling; **KIRS**, Marek; **LAWSON**, Kenneth; **LENTZ**, Rachel; **LENZ**, Cory; **MAYNARD**, Ashley; **MCKIMMY**, Paul; **MEDINA**, Richard; **MESSINGER**, Thane; **MIYAMOTO**, Camaron; **MOORE**, Colin; **NGUYEN**, Truc; **NÍ DHONACHA**, Siobhán; **NUTE**, Kevin; **O'BRIEN**, Maureen; **PAULL**, Robert; **PETTIT**, Jonathan; **POTEMRA**, James; **RAY**, Stacy; **SAKAGUCHI**, Ann; **SALZER**, Ku'ulei; **SANDERS**, David; **SINCLAIR**, Gwen; **SIPES**, Brent; **SORENSEN IRVINE**, Christine; **SPEETJENS**, Maile; **STEPHENSON**, Carolyn; **STIRR**, Anna; **STOKES**, Alexander; **TALLQUIST**, Michelle; **THOULAG**, Jean; **USPAL**, William; **VON DOETINCHEM**, Sandra; **WANG**, George; **WERTHEIMER**, Andrew; **WITHY**, Kelley; **YAGI**, Seanyelle; **YOSHIOKA-MAXWELL**, Amanda; and **YUAN**, Sarah.

### *Excused:*

**UYEHARA**, Lisa; **JULIEN-CHINN**, Francie; and **WONG**, Vanessa.

### *Absent:*

**SIMANU-KLUTZ**, Fata

### *Invited Guests:*

**LASSNER**, David; and **FERN**, Christian.

**Guests:** (Note: Phone numbers removed for privacy reasons and listed as “Phone” if name not known)

AFS2020; Alan Tokunaga; Alison Sherwood; Allison Yap; Amy Brown; Amy McKee; Ania Wiecezorek; Ann Auman; Barb Dougherty; Barbara Endicott-Popovsky; Barbara Yee; Benito Quintana; Betsy Fisher; Beverly McCreary; Bjoern Kjos-Hanssen; blazelovell; Brett Oppegaard; Brian Shevelenko; Cassie Ordonio; Catherine Chan; Cheryl Albright; Cheryl Squair; cherylal; Chip Fletcher; Dan Suthers; Dave; Dave Karl; David Duffy; David Ross; Debbie Wong; Emilee Turner; Erik Guentner; Floyd Reed; Garrett Apuzen-Ito;

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Gernot Presting; Guylaine Poisson; Hailiopua Baker; Hawaii Sea Grant Account #5; Hua Zan; iPhone (2); Ivette Stern; Jack Barile; Jenee Odani; Jennifer Brown; Jhalak Miller; Ji-Yeon Kim; JL; Joanna Philippoff; John Kinder; Judy Lemus; Julie Iezzi; Kapena Shim; Kay; Kehau Newhouse; Ken Reyes; Kevin Hamilton; Kirsten Mollegaard; Klaus; Laura Lyons; Lauren Prepose-Forsen; Lee Altenberg; Linda Venenciano; Lorenzo Perillo; Lori Andersen; Lori Fulton; Lorna Holmes; Lucia Aranda; Lynn Mayekawa; Margaret McManus; Marguerite Butler; Marianne Berry; Marie Iding; Marielle Hampton; Marilyn; Marina Karides; Mark Yap; Markus Wessendorf; Martha Crosby; Maryann Overstreet; Maya Ward; MB O; Michael Bruno; Michael Nassir; Michelle Bisbee; Michiko Kahmann; Mirjana Jovovic; MJ Noonan; Monica Ghosh; Monique Chyba; Na Hua Kepau; Nhu Nguyen; Nodari Sitchinava; Participant; Patrick Gilbert; Phone; Phone; Rheta Kuwahara; Rich Gazan; Richard Halverson; Richard Rocheleau; Robert; Rosela Balinbin Santos; Roy Gal; royce; Sandy French; Sarah Post; Scott Robertson; Seth Quintus; Seunghye Hong; Shannon Johnson; Shauna Sibonga; Steven Singer; Susanne Still; Sven Vahsen; Teresa Kono; Tetine Sentell; Thao Le; Tim Slaughter; Tonia Sutherland; Vernadette Gonzalez; Vivek Nerurkar; Wayne Smith; Wendy Kawabata; and Wendy Pearson.

### 1. CALL TO ORDER:

Called to order by Chair P. McKimmy at 3:00 PM.

### 2. MINUTES:

- [May 13, 2020 Senate \(DRAFT\) Minutes](#)
- Chair asked if there were any corrections to the minutes. There being no corrections, the minutes were approved.
- As an exercise, Chair McKimmy opened the polling feature for Senators to practice approval of minutes, if needed, in future meetings. Vice Chair Sorensen Irvine moved to approve the minutes. Seconded by Potemra. No discussion. McKimmy opened the polling feature for approval of minutes. Note that the minutes approval question transitioned to display visibly as the motion to adjourn due to a technical error; a verbal correction was made that it was the motion to approve the minutes, not to adjourn. 49 aye, 2 nay, 3 abstentions. Minutes approved.

### 3. CHAIR'S REPORT

- Chair McKimmy welcomed new and returning Senators.
- Chair McKimmy reviewed online meeting interaction norms. He asked everyone to change their participant name to both their first name and last name. The mute feature on all participants was reviewed. The process to request the floor to speak, to ask a question for guest speakers, the process of using Zoom for the meeting including the polling feature, the raising hand feature, and the yes/no feature were covered. He shared the question and answer feature of Google slides, which is not connected to Zoom. Future voting on important motions and resolutions will be via Google form. Only votes from Senators will be counted; must be logged in with hawaii.edu account.
- SEC Officers invited to introduce their liaison role as well as introduce the officers of the committees.

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- Christine Sorensen Irvine, SEC Vice Chair.
  - GEC. Jonathan Pettit Chair. Betsy Gilliland Vice Chair.
- Truc Nguyen, MFS Secretary.
  - CFS. Christine Beaulieu Chair. Richard Medina Vice Chair. Seanyelle Yagi Secretary.
- Brent Sipes, SEC Secretary.
  - CAB. Justin Clapp Chair. Vice Chair Michell Tallquist, Vice Chair Robert Paull.
- Penny-Bee Bovard, SEC Member.
  - COA. Kenneth Lawson Chair. Jerome Agrusa Vice Chair.
  - CSA. Lisa Uyehara Vice Chair. Chair to be decided on Sept 28.
- Tom Conway, SEC Member.
  - CPM. Camaron Miyamoto Chair. Gerald Busch Vice Chair.
  - CEE. Stephanie Kraft-Terry Chair.
- Jim Potemra, SEC Member.
  - CAPP. Carolyn Stephenson Chair. Michael Cooney Vice Chair.
  - COR. Sayed Bateni Chair. Kevin Nute Vice Chair.
- John Kinder introduced as administrator of UHM Faculty Senate office.
- Officer Orientation was announced. Chairs and Vice Chairs invited on Wednesday September 30 at 3:30. Please let John if there is a conflict via [uhmfs@hawaii.edu](mailto:uhmfs@hawaii.edu)
- Senator Nguyen asked Chair McKimmy to check the access privileges on the Question and Answer site because at least eight Senators shared they could not access the site. Access privileges were changed.
- Chair McKimmy shared the SEC Summer 2020 Report.
  - Over the summer SEC had continuous meetings with Provost and President. SEC also met with University Librarian Clem Guthro and Vice President [Yoshimi] for IT on various issues. Met with General Education Office and Vice Chancellor's Office for Academics on governance issues.
  - Jim Potemra and others have participated in Provost working groups on research. Chair McKimmy participated as the co chair of the student learning working group, which had five subcommittees. Working groups spent a huge amount of time preparing plans and reviewing options for the fall opening. Chair McKimmy thanked all faculty who served and participated in the working groups.
  - SEC submitted testimony to the BOR opposing parts of their resolution for claiming exigency and testimony opposing unvetted executive appointments.
  - If there are any questions, please post to [slides.app.goo.gl/JQtaV](https://slides.app.goo.gl/JQtaV) (also displayed on screen). Seems some people could not post; access changed and fixed during the meeting.
  - SEC compiled a large set of recommended revisions for the Senate bylaws.
  - SEC was consulted by Provost on where there should be a one-time waiver of the policy requiring exams for undergraduates in the fall, which SEC did support.
  - SEC worked with the Distance Course Design & Consulting group on revamping the faculty senate website, which is now live. Chair McKimmy encouraged Senators to look around the website and share if there are any areas that might need revision. SEC is open to revision suggestions. The menus and the integration with Google Docs and Google Drive should make it much easier to find what faculty are looking for. Chair McKimmy thanked Faye Furutomo and John Kinder for their work.

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- Chair McKimmy encouraged everyone of their responsibilities to their constituents. Get input and report back to them what is happening in the Senate. Use the college listservs to help with communications (see <https://www.hawaii.edu/uhmfs/new-senator-resources/>)
- Mānoa Faculty Senate has primary responsibility to represent the faculty in academic areas like curriculum content, subject matter method, instructions and research. And we act for the faculty on academic policy matters. That extends to reorganizations, especially in those areas where reorganizations affect our academic programs. Chair McKimmy shared that there is a lot of stress and anxiety happening now around the budget crisis, and especially around what's happening in terms of the administration's effort to try to respond to their mandate to curtail expenses and make appropriate adjustments throughout the wage. He acknowledged he has received many messages from our faculty, some of whom are senators, and there are a lot of difficult discussions happening right now. He reminded Senators of the basic idea that there are consultations required for these major changes, both through our union and through our faculty senate. Chair McKimmy encouraged everyone to become familiar with R20, on page 108 of the UHPA contract, and the memorandum of agreement between UH and UHPA on what items need to be consulted through the Senate and which items need to be consulted to UHPA. Some specifics are joint referral. Two were mentioned by Chair McKimmy. One is transfer programs between campuses. And the other is reorganizations involving multiple colleges and programs. The role of senators includes referrals that happen under this R20.
- Chair McKimmy discussed the Provost's recent website on post pandemic planning for Hawai'i. He shared that UH administration formed a budget team over the summer and subsequently made a series of recommendations to all the deans at Mānoa. Most of the deans provided some initial responses, which are also posted on that website. Some of them did not respond. The Deans have been directed to discuss these ideas with their faculty. Chair McKimmy shared that as senators, it's really important for us to be engaging in these conversations, which can be difficult and obviously causing a lot of stress and anxiety. And there are some suggestions to change or even eliminate academic programs that many of us find very important, and we need to be part of this discussion. Not every college at Mānoa has an internal college Senate, but those of us who do need to make sure our college Senate's are engaged and he recommended to our senators to contact their college senate chairs where those exist and make certain that the Senate in the college has also been engaged.
- Chair McKimmy shared that a short document circulated to chairs and directors the previous day titled The Mānoa budget follow up approach, and it states that in the next three to four weeks, deans and faculty are supposed to discuss and debate the suggestions made by administrators to the colleges and Deans. It also states that on Monday, the 12th of October, there's going to be an extended meeting with the deans each to present their recommendations, and that the provost and President intend to have meetings with the leadership and faculty in "highly impacted programs" after that fact. That administration is planning on October and November townhall discussions. And it cites that consultation meaning a formal consultation with the Senate and probably with UHPA, I'm interpreting here, could come as soon as mid November. This is an extremely short timeline. It's tied to the directors the Board of Regents is providing to administration to make adjustments to account for budget shortfalls that are yet to be quantified. Chair

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McKimmy assured the Senate that the Senate executive committee will be looking at this very regularly as this proceeds.

- Testimony to the BOR has been submitted stating that the rprocess had not yet been defined adequately. The process doesn't yet make commitments that we're comfortable with. The faculty will be consulted in the intervening time period. Chair McKimmy intends to continue discussion with the Provost and the President.
- The Senate schedule and the Congress schedule are on our website. Our next Congress meeting is October 21, as is our next Senate meeting. The Senate schedule is integrated into Google Calendar. If you find that on our website, you can actually subscribe to it. You won't have to transfer all these dates manually to your calendar, you will have that integrated with Google Calendar automatically choose to do it that way.
- MFS Secretary and Senator Nguyen shared that the parliamentary review will be sent as a video prior to the next meeting along with how voting will occur electronically. There are currently vacant Senate seats. The Senate will be putting out a special call for nominations and run a special election sometime in the next two weeks.

#### 4. Guest Speakers:

- **President & UHM CEO David Lassner:**

- [University of Hawai'i: Navigating to a Sustainable Future](#)

- **3:30 - 4:10 PM**

- Prior to presentation, Chair McKimmy advised Senators and guests to ask questions in a Google Q&A tool and to upvote questions that they were also interested in hearing answered.

- President Lassner shared a [slidedeck](#) of 15 slides. [Transcript is available](#).

- President thanked everyone for their ability to transition with almost no notice. He expressed that what was most gratifying was that we were able to graduate thousands of our students. Over summer, many faculty participated in the working groups to help the entire campus. He acknowledged we were all worried about our classes, working conditions, service obligations, and research without knowing what conditions would be like in Hawai'i. He acknowledged that UH and every other part of the state has had to pivot. He thanked the SEC for meeting regularly with him and hopes that will continue. He thanked everyone for all that they have done.
        - President Lassner emphasized that the budget crisis is real and deep. He last saw figures of a \$2.3 billion deficit for last fiscal year and this fiscal year associated with COVID on an \$8 billion budget. It is about 7% of the general fund budget. We receive about half of our budget from state general funds, which is good support for an R1 university. Bad news is that when the state suffers, UH suffers. The other half of our operating budget comes from tuition. Our headcount numbers are up and billed tuition is up, but we have a higher number of unpaid tuition. In last recession, we increased tuition to make up for the budget shortfall. We cannot and will not do that. In March, we started tactical moves to try to stop the bleeding of the current fiscal year. After this fiscal year, it gets worse. Governor plans to borrow money for a short time, but it

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means the more we borrow in FY21, the more we have to pay back in FY 22, 23, 24. Some parts of the state are in denial. We can't be in denial. SEC and deans are saying we need to make structural changes. Others are saying we need to make vertical cuts. Others are saying to have strategy instead of tactics like freezes and across the board reductions.

- President Lassner shared his vision for UH and identified it as about three years old. It comes from an integrated academic and facilities plan that was adopted by the Board of Regents. The vision has four priorities and a full paper is available on the Provost's webpage. The vision is founded on the idea that UH is essential to the recovery of Hawai'i and that UH needs to ask what Hawai'i needs from us the most. President Lassner stated that the ideas have been tested out over the summer with community groups and businesses and with the philanthropic community.
  - i. One: Hawai'i needs a more educated citizenry that addresses our challenges and opportunities.
    - Our fundamental mission is to provide a great general education. When our graduates thrive, it's good for our community and has incredible social benefits. He identified looking forward to working on general education and expressed that we have a 25-year old approach to general education. President Lassner stated that general education provided by those in the arts of Arts and Sciences is essential just as much to our engineers, business graduates and computer scientists, as it is to our English majors, and our sociology, graduates and others.
  - ii. Two: Hawai'i needs more of our residents prepared and qualified to full the jobs Hawai'i needs.
    - President Lassner said we have a responsibility to educate people for the jobs that Hawai'i needs filled. He identified the teacher shortage as tragic and that we lose 50% of our teachers within the first five years out of our public schools. He mentioned high needs in Hawaiian immersion schools. He identified healthcare needs in mental health and social welfare. He mentioned community colleges being important in construction and UH Mānoa as the primary source of architects and engineers.
  - iii. Three: Hawai'i needs to grow healthy new economic sectors and develop new approaches to existing sectors.
    - He shared that no one he has talked to wants to go back to an economy where hospitality relies on tourism where 10 million tourists sought the lowest budget opportunity they could, thereby stressing our infrastructure, communities, and large numbers of jobs on low wage jobs. President Lassner described possible opportunities in computer science and engineering; the LAVA lab and data science institute; teleworking opportunities in information technology companies, food, agriculture, and aquaculture for local consumption and export; a different kind of tourism that is more sustainable and engages our local communities with our visitors in positive ways, including around our culture, and creating a healthier relationship between the tourism sector and our community.



- iv. Four: UH research and innovation must become more substantial economic and intellectual drivers.
- UH research and training is a major industry in this state. We hire thousands of people across the islands, those tend to be high quality living wage jobs. President Lassner suggested that when you look to places that have built strong economies, great research universities are always at the core of that success.
  - To move forward, President Lassner pointed out that the number \$100 million (of general funds reductions to UH per year) and suggested we see Vice President Young's presentations to the Board of Regents to understand that number. The longer the state does not reopen, the more that number will go up. UH Mānoa is about half of that number. He stated that we've always been good at adding units, at requesting for more money from the state, but we have never learned how to consolidate and shrink and look at what is best for the campus as a whole. President Lassner mentioned that this is his fourth recession as a leader at UH, though his first as President. Student headcount is down about 10% and we are not going to make 18,000 students this fall. He pointed out that we have dropped students faster than we have reduced anything else. Browsing through budget and enrollment charts will see that we have more degree programs per student than any of our peers.
  - Our argument has been that we are the only research university for 2,500 miles. That's true. But we don't educate veterinarians here. We don't educate dentists. We have still prevailed. What are we willing to say, if you want X, you will have to go somewhere else? President Lassner emphasized that we are unable to afford doing everything we do and ensuring that it is high quality. He shared that he has received hundreds of messages and many stress that their programs should not be cut, but invested in to ensure quality. The money is not there. He shared that he has been accused of only caring about the money, and rebutted by saying that he does not care about the money other than it is necessary to help us support a great university. We are also not very good at changing and take a really long time to talk about things. The Regents aren't giving us time either. He stated that every proposed change has opposition. And we just need to figure out how we are going to get through this and in an expeditious manner.
  - President Lassner identified that we need to consolidate, share, and realign. And we will need to tighten up our stewardship of resources. We will need to make some investments. We are looking at a retirement incentive program as well. We need to increase revenue.
  - President Lassner expressed that he and Provost are open to all ideas. President Lassner asked that we be relentless in our focus on what Hawai'i needs. He believes administration is in informal consultation and will finalized a formal consultation process with both UHPA and faculty senate that week. He expressed that the Board (of Regents) wants to see what is his and leadership's plan in December.
  - Chair McKimmy thanks President Lassner for his presentation.
  - Questions and answers: Chair McKimmy read from Qs submitted via the online system.
  - **From Senator Maynard (SOCSCI): When will [we] be informed of the savings projected if we make the changes proposed in the "budget process" to address the projected shortfall? We deserve to**



know whether changes or cuts in programs would actually address the problem. Upticked by 17 others.

- UH President Lassner responded that our goal is to address the reductions over a multi-year period through attrition. He said that we do need to teach out programs. He also expressed that it doesn't help to eliminate a position that is not currently occupied and that it doesn't help if people think their program is only going to save \$200,000, so it's not worth it to suggest. Don't wait to see if money will come back.
- **From Anonymous: Is there going to be a formal consultation with students? Upticked by 13 others. Downticked by 2 others.**
  - UH President Lassner responded yes. Met with both ASUH and GSO that week, the leaders of both. Will absolutely be consulted.
- **Senator Hoffmann (CALL): The salary budget alone for the UH administration is I believe, \$36.5 million per year. What percentage of that budget for administrative salaries are you willing to reduce to help us cope with the crisis? Upticked by 18 others.**
  - UH President Lassner responded that he thought most knew that every unionized employee in this University is receiving collective bargaining increases, and that the governor was going to sign the bill that day since it was the veto deadline. However, no administrator was getting a raise although those funds were appropriated. He mentioned that Civil Beat covered the story. He shared that the governor has built into his financial plan salary reductions. President Lassner said that administrators will be participating at and above the levels of any others and that they have also been looking at how to reduce executives and are trying to minimize that. He mentioned that a lot of it is optics and there are other ways of doing things. He suggested that if you go to the UH website, UH including Mānoa, is not over administered relative to our peers. And UH administrators are not overpaid relative to peers. He stated that administrators are working every bit as hard as everyone to lead our way through this pandemic crisis. So there will be reductions and that will be part of the equation as well, particularly as discussions of salary reductions emerge. He emphasized that E/M employees get lumped as part of overpaid loaded groups, but large numbers of E/Ms are paid substantially less than many faculty and even many APTs. E/Ms go from anywhere from the low \$100,000s up to the highest paid E/Ms who tend to be Deans at UH Mānoa.
- **Senator Gilliland (CALL): Languages are a key factor in the new economy. Why are several of the cost-saving proposals cutting language programs, especially those that are not offered elsewhere in the country (such as Filipino and other southeast Asian languages)? Upticked by 10 others. Downticked by 1 other.**
  - UH President Lassner suggested that rather than try to defend each and every one of those things, people read the analyses regarding both the numbers and the program reviews and the basis for





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those decisions. He acknowledged it is really difficult, but if there is a shrinking program, if we aren't actually teaching and graduating students in the program, then it isn't other than a bragging point saying that we offer the language isn't necessarily beneficial to our students. He added that eliminating a degree program does not mean eliminating the teaching of that language. So for people who want to learn a language that can happen perfectly well without graduate programs without masters programs and likely even without all of the bachelors programs.

- **Guest Lorna Holmes: We can educate teachers, but there will continue to be a shortage as long as they don't get paid enough to live decently in Hawaii. Does the University coordinate with the legislature on issues like this? Upticked by 12 others. Downticked by 1 other.**
  - UH President Lassner responded that he communicates that concern. The loss of teachers is higher for those who come from out-of-state rather than for those who are from Hawai'i and are educated in Hawai'i. The second thing is the view of acceptable salaries is pretty different when unemployment is at 13% than when it's under 3%. President Lassner said he would love to get teacher salaries up and is completely supportive. He shared that he does not know how to solve the K-12 budget process, and that they have challenges equally as great as ours, if not greater. He thinks it's a community challenge and there are many more, including early childhood education.
- **Senator Sinclair (LIBSVCS): Provost Bruno mentioned in his meeting with dept. chairs on 9/11/20 that there could be a retirement incentive. Can we have more info about what is being discussed? Upticked by 9 others.**
  - UH President Lassner responded that he thinks it would be useful to discuss the question with the next guest speaker. But, he did say that administration was in active conversation about what a proposal would look like for faculty.
- **Senator Chandra (CALL): A university's prestige lies in offering qualitative education, beyond STEM, and beyond courses that are identified as assuring enrollments. There will be long-term consequences of cutting smaller programs, such as lower rankings and lower prestige. Have you given any thought to this? Upticked by 10**
  - UH President Lassner responded that UH has a whole lot of things to balance. He said there's no one metric that we can use. He noted that there are observations that the program reviews are out of date, and that's why they are going through a consultation process. He encouraged those faculty who are in programs, if you believe those reviews are out of date and you have achieved excellence and have addressed the concerns that were relevant, that's part of the conversation we should be having. But having an excellent university that isn't educating students also doesn't serve us well. We have to do both.
- **Vice Chair and Senator Sorensen Irvine (ED): Do you have an estimate of how large the UH budget deficit might be for FY21 and FY 22? Upticked by 4**

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- For FY 21, UH President Lassner referred to the proposed operating budget for FY 21 that was linked on the Provost's webpage and it was presented to the Board of Regents budget and finance committee two weeks ago. BOR chose not to act on it. They were not supportive of spending into reserves. He stated he would be meeting with the governor again that week, and hoped to find out more about the governor's intention on what will be released to FY21. For FY 22 it is President Lassner's understanding that there is not yet a plan for how much general fund fees to any state agency. That will depend on how much [Governor Ige] borrows, how bad the economy continues to decay, what other budget tools [Governor Ige] has available, such as differing payments into the post employment benefits funds, cutting back in other state departments, and whatever rainy day funds are available to the governor as well. So not much certainty about FY21 and even less certainty about FY22.
- **Senator Stokes (JABSOM): Can UH Foundation help with financing at all? A loan to UH perhaps?**  
**Upticked by 4.**
  - UH President Lassner responded that there are a couple things. One is it is not clear to him that we can borrow our way out of this. Last time around, the general fund appropriation did not return to pre-recession levels from 2008. It took about six years and that's not accounting for inflation. So even restoring to the same level in dollar amount and large amounts of our general fund increases work for the negotiating of collective bargaining increases; they didn't address the actual operating budget needs of the University. So if we borrowed money, let's just say to get through FY 21, 22, 23, and 24, then we would have to be paying it back, and we would essentially just be digging that whole deeper. President Lassner also shared that the UH Foundation, nearly all of its endowment, is restricted. So if it's in an endowment for a particularly endowed chair, scholarship program, or some such, it cannot then be taken out and loaned to the university to generate operating funds for us today to pay our bills. It has to be used for the purposes for which the donors intended it. President Lassner does think increased philanthropy can be a big help to us, but thinks it will help us more with scholarships and research support than it will paying our electric bills. That's not very inspiring for donors.
- Chair McKimmy thanked President Lassner for coming and expressed appreciation for answering faculty questions. President Lassner asked that someone save the chat and email it to him. 4:14pm
- **UHPA Executive Director Christian Fern**  
**[UHPA Update](#)**  
**4:15 - 5:00 PM**
  - Prior to presentation, Chair McKimmy advised Senators and guests to ask questions in a Google Q&A tool and to upvote questions that they were also interested in hearing answered.
  - UHPA Executive Director Fern shared a [slidedeck](#) of 15 slides. [Transcript is available.](#)



- Director Fern thanked Chair McKimmy and UHPA Board President Ashley Maynard for their help in facilitating his presentation.
- The approach and process in initial development has been less than stellar and definitely not a model to follow. The past several months have not been fruitful, as preliminary discussions have not been meaningful or actionable. He shared that time is of the essence and patience for many people is running thin. He hoped that his presentation would serve as the foundation and background for some of the statements he had just made. He expressed appreciation to the Mānoa Faculty Senate for the time and the opportunity to discuss these matters
- Director Fern reviewed the employee's duty to consult as well as collective bargaining negotiations. In Hawaii Revised Statutes, Chapter 89, is the collective bargaining law. It was enacted by constitutional mandate by Hawaii's people at the 1968 constitutional convention. In Chapter 89-1 is the preamble that sets forth the goals. He wanted faculty to know about it and read it. He emphasized that the legislature finds that joint decision making is the modern way of administering government and it makes government more effective when public employees share in the decision-making process affecting wages and working conditions. He stated that the legislature further finds that the enactment of positive legislation, establishing guidelines for the public employee Employment Relations is the best way to harness and direct the energies of public employees eager to have a voice in determining the conditions of work.
- In 89-9(c), all matters affecting employee relations, including those that are or may be the subject of a rule adopted by the employer shall be subject to consultation with the exclusive representatives of the employees concerned. He stated that the employee shall make every reasonable effort to consult with exclusive representatives and consider their input along with the input of the other affected parties.
- Director Fern distinguished the difference between consultation versus bargaining. If a topic is the subject to the duty of the bargain, it is not considered consultable and vice versa. If contract language on a topic exists, decision on the topic is governed by that language of the contract and the grievance procedure and not the duty to consult.
- The duty to consult is mandatory and enforceable. The Hawaii Labor Relations Board has made it clear that the duty to consult is a basic tenet of collective bargaining law chapter 89. And that fulfillment of this duty is mandatory. Failure to properly consult is subject to the employer may subject the employer to be subject to a prohibited practice charged by the union, which is brought under Chapter 89-9(c) and 89-13. It's important to note that the costs in money, time, and testimony to satisfy the legal obligations of an HLRB case are quite significant.
- Though in the academic setting, administrators normally attempt to establish a collegial relationship with the faculty, it does not satisfy chapter 89 duty to consult under the law. Information sharing via actions like media press releases, news conferences or interviews also do not fulfill the requirement under the law.
- The duty to consult requires employer initiation. It is incumbent on the union to seek or request consultation. The employer generally offers consultation to the union in writing that helps to make consultation clear. The duty to initiate consultation falls on the employer because the



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employer is the one who has the knowledge of their plans and the information pertinent to the decision making process.

- There is a consultation test that can be put forth.
  - i. Notice to the union
  - ii. Of proposed personnel practices and policies of a major, substantial and critical nature, other than those requiring negotiations
  - iii. In reasonable completeness and detail
  - iv. Requesting the opinion, advice or input of the Union thereto
  - v. Listening to, comparing views, and deliberating thereon (i.e. meaningful dialogue); and
  - vi. Without requirement of either side to concede or agree on any differences or conflicts arising or resulting from such consultation.
- Director Fern shared that the carousel of campus leadership hasn't helped this process
- Director Fern shared information about the HLRB case CE-07-833 on December 3, 2013 that alleged that the UH intended to circumvent the UHPA, while dealing directly with the MFS instead. The outcome of that case was R-20. R-20 Memorandum of Agreement lists clearly items for consultation, items for MFS, and items that are joint.
- With respect to the planning for a post pandemic Hawai'i, UHPA believes that consultation has not yet taken place, although Director Fern recognized that the university administration is going to be engaging both UHPA and faculty senates. Because no consultation had yet taken place, there have been a lot of calls to UHPA resulting in chaos and confusion. If no action is taken, UHPA will be compelled to seek the appropriate relief and actions.
- Director Fern shared information on collective bargaining negotiations. There is both information and misinformation out there. From the governor and his administration and discussions with respect to furloughs, pay cuts and layoffs, Director Fern assured everyone that UHPA is in the middle of an agreement and that agreement runs through June 30 2021. No public sector union has been contacted to engage in negotiations with respect to any talks of furloughs, pay cuts or layoffs. We are all under contract at this time. The employer cannot unilaterally implement; mutual consent must be reached.
- Regarding retrenchment, Article XVI of the UHPA BOR agreement discusses retrenchment in detail. Director Fern provided a background since the 1970s. Article XVI has never been invoked in 40 plus years and the economic cycles which have gone up and down, this article never been invoked. Exigency must be initiated by the Board of Regents.
- Director Fern shared information about successor bargaining. The bargaining team has been assembled. Negotiations shall commence no later than 90 days prior to January 30 of the year the Contract expires - November 1, 2020. UHPA's goal is to protect and work on making language gains okay. If an agreement is not met, by January 30, the Hawaii Labor Relations Board on February 1 will declare an impasse. That is not something uncommon. That's something that occurred in the last round of bargaining in 2017. UHPA wants to protect the current language and to work mainly on making language gains that benefit the faculty. Director Fern then welcomed questions.

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- Questions and answers: Chair McKimmy read from Qs submitted via the online system.
- **Senator Potemra (SOEST): UH and UHPA workgroup on online learning was formed back in March, is this group still active? Are there any updates or news from that? Upticked by 3**
  - UHPA Exec Director Fern responded that the UH and UHPA workgroup is still active. But he thinks it's going to be met on an as needed basis, or they're going to start scheduling monthly meetings instead. They had started by having weekly meetings, then moved to meetings every other week. He feels it's been valuable because it's provided a venue for both admin and faculty to have open discussions on matters. Although it started off discussing online learning, there are a number of other issues that came up as a result of the pandemic situation, one of them being health and safety issues. So there was a lot of discussion on health and safety matters at the meeting. Both sides wanted to ensure that things went smoothly into the fall. He believes they're going to be meeting on Friday and there will be a request by both him and Vice President Straney to change the timeframe of the meetings to monthly on an as needed basis.
- **From Guest Marilyn: Can you tell us anything about incentives for early retirement? How likely is it since you HS and consulted with you, but it's not clear how this would happen? Upticked by 0.**
  - UHPA Exec Director Fern responded that retirement incentives were actually a topic of discussion in the last round of bargaining. When Former Vice President Morton was the chief negotiator representing the administration, he wanted to keep that an open discussion. When some of these issues came up with respect to the budget situation, UH reached out to UHPA to see if we could begin those discussions. Once again, the collective bargaining team is looking at information and data. UHPA Exec Director Fern said he thinks that initial discussion had to do with a fixed payment, a fixed dollar amount payment that would not impact ERS or EUTF. There's a negotiating team trying to look at a number of different factors and how to craft something for the employee-employer to consider. He does believe that something will come forth and he thinks that the negotiating team believes that this is something that the faculty would want to see at this time. He hopes that it's done sooner rather than later. But any type of memorandum of understanding that we can reach with the employer, it will expire at the end of this current contract.
- Vice Chair Sorensen Irvine advised Chair McKimmy of the new Q&A link that Senator Nguyen created to separate the questions from the earlier set for President Lassner
- **From Senator Gal (ORU): Given the rapid timeline needed to respond to the large budget cuts, and the failure of admin to consult as legally required, what does UHPA see as a way forward that is legal, collegial, and responsive to the situation? Can you provide a set of steps and a timeline? Upticked by 0**
  - UHPA Exec Director Fern responded that with respect to the consultation process, the union's position is that we cannot be placed on a timeline. Often when UHPA is consulted on





reorganizations, etc, the employer asks for a response by a specific date. But UHPA is not bound by that date, although UHPA tries to meet that date in order to provide the employer an opportunity to assess the responses and come back and forth. But strictly, we're seeking an avenue so that faculty have separate entities to go through and then UHPA can filter the information back to the employer. And that's typically the process how it takes place. But UHPA was clear that there's both statutory requirements as well as contractual requirements that the employer needs to meet, which would mean both UHPA and the faculty senates. People can provide feedback on that website. But the normal process of consultation makes it more efficient for both the employer and the exclusive representative at the Faculty Senate to provide a meaningful response with respect to any type of proposals, even if they're in their infancy stages. He pointed out, going back to the first question with respect to the temporary workgroup, he thought one of the big accomplishments had to do with memorandum of understanding, addressing concerns for tenure, promotion and contract. He forgot to mention that and apologized for skipping back. He did not want to miss the opportunity to address that.

- **From Anonymous: When the contract runs out in June 2021, what happens? Can they impose furloughs, cuts, retrenchment unilaterally at that time? Upticked by 15**
  - UHPA Exec Director Fern responded no, because the terms and conditions should continue as they were and they still need to engage in discussions. The employer may have a different perspective on that, but UHPA believes no. The governor and the administration may see a need to implement it before the end of the contract, and that's why UHPA discussed midterm bargaining. Everything UHPA is hearing, although it's all secondhand information, is that the state needs to address the current fiscal year and those are their immediate concerns. If UHPA had to address something at that time, UHPA would try to get an agreement beforehand. And again, if UHPA came to a tentative agreement, it would need to go out to the faculty for ratification. UHPA Exec Director Fern's position is that the administration cannot simply unilaterally implement it even at the end of the contract.
- **From Guest Mary Berry: What are the "appropriate actions" that UHPA will take if not "consulted" by UH? Upticked by 14**
  - UHPA Exec Director Fern responded that there's a couple of different directions UHPA could go in. UHPA could file a class grievance, which represents more than one faculty member, or UHPA could possibly file a prohibited practice. UHPA is hoping that the administration ends up consulting with them because those actions will take away from UHPA's ability to work on providing the feedback, because it's going to have to go through the grievance process or the Hawaii Labor Relations Board process. So he is hopeful that the employer agrees that it's incumbent upon them to consult, but those are a couple of the possible options that UHPA could consider if the employer chooses not to consult.



- **From Senator Pettit (CALL): Should faculty members in departments under closure prepare for immediate termination? Will UHPA assist programs who have "suggested" to disappear? Upticked by 12**
  - UHPA Exec Director Fern responded, first of all, yes, absolutely. UHPA will assist in any way possible. He said he understands the ideas as simply suggestions, and that's why UHPA thinks it's important that the university begin the consultative process. If they take actions and they did not consult, then UHPA can again, take either the grievance route or go to the Hawaii labor relations board. Those discussions should not be taking place directly with the faculty. The consultative process should have run through the union and to the Faculty Senate.
- **From Guest Mary Berry: So, contrary to what Pres Lassner said earlier, UHPA does NOT have information about early retirement packages? Upticked by 10**
  - UHPA Exec Director Fern responded that what might matter is that the employer shared with UHPA was that as long as retirement doesn't impact the Employee Retirement System, and it doesn't impact the EUTF and the university would be required to pay for it, they're open to suggestions. The initial discussion had to do with a fixed dollar amount. So the negotiating team, there was a meeting on Monday, they deliberated on whether or not that would be appropriate or if we should look at a percentage of faculty members' salary. And so that's where the deliberations are taking place at this time.
- **From Guest David Ross: Just to be clear, is it UHPA's position that the actions of the BOR last month do \*not\* constitute a legal declaration of exigency? Upticked by 10**
  - UHPA Exec. Director Fern asked if it was in respect to the recent BOR resolution. Chair McKimmy clarified yes, BOR used the term exigency but not the term fiscal exigency. UHPA Exec Director Fern stated that UHPA believes not. He does not believe UHPA was put on notice because in the contract, it's specific that if they declare fiscal exigency, then UHPA has 30 days to respond. And then there's a time clock that starts and then the Board of Regents has 45 days. There's a 75 day timeframe. UHPA Exec. Director Fern said he does not believe UHPA was put on notice by the BOR resolution.
- **From Senator Gal (ORU): I suspect employees are willing to make some sacrifices to deal with the budget situation. Can you provide any insight into why the employer and the State don't engage in required consultation on, say, salary? It would seem that timely engagement is more likely to result in earlier cost savings. Upticked by 7**
  - UHPA Exec Director Fern said he thought it was a great question. UHPA is the exclusive representative, and he said that UHPA was shocked that they were called into a meeting with the governor in April and the first thing that they put on the table was a 20% pay cut. That's where they started the discussions, and they haven't spoken to UHPA since. When Director Fern has been asked that question, he thought there could have been opportunities, since then, to determine



perhaps postponing some of the pay increases for all of the bargaining units that could have helped save money. Director Fern said he thought that could have been negotiated. But the state failed to engage with any of the unions. It's not the unions' place to go and engage on a pay cut for our members. It's the employer. Director Fern expressed his shock that a quarter into the fiscal year, none of the exclusive Chapter 89 negotiators have been contacted about this. If there is a specific dollar amount that needs to be reached, it's just going to cost more and more as we go on through the fiscal year. Director Fern said that he honestly believes President Lassner has been pushing the governor to try and reach out to the exclusive representatives but no one has no one from the governor's administration has reached out.

- **From Anonymous: For those of us that are non-tenured faculty, if our instructional positions get cut, what kind of transition support can UH or UHPA provide us, especially during this state hiring freeze. Moving to the mainland for a job is not an option. Locally made. Upticked by 7**
  - UHPA Exec Director Fern responded that if retrenchment is initiated, there is actually a process to follow for faculty, even if it goes into a non faculty position. He said that he has been clear, in any discussions he has had with the administration, that if retrenchment is invoked, the hiring freeze must not limit us and that the contract shall prevail in that in any of those instances. So there is a process within the retrenchment article that can be followed in order to assist with that.
- **From Anonymous: Does UHPA have guidelines on preventing the use of Interdisciplinary Studies as a means of "slow retrenchment"? Upticked by 6**
  - UHPA Exec Director Fern responded that as far as he was concerned, there's no slow retrenchment. It's either you are going to invoke retrenchment or not. Director Fern said he would appreciate it if any clarity could be provided on the question. Chair McKimmy clarified that in the chat, senators were sharing that interdisciplinary studies was seen as a loading zone to move programs and people out. Another person put it as using interdisciplinary studies as a programmatic graveyard. UHPA Exec Director Fern responded that he thought if we get to the consultation phase, this is where we can try and address some of these concerns from management. Typically, if there's any ambiguity, or if we believe that there's something taking place like this, this is where UHPA can seek clarity from the administration in the consultative process.
- **Senator Sorensen Irvine (Education): How and when do faculty impacted by reorganization/retrenchment consult with the union? Upticked by 5**
  - UHPA Exec Director Fern responded that it should be immediately. The consultative process requires the employer to engage with UHPA contractually and with the faculty senate. And until that consultative process is completed, the action cannot take place. So if it gets to the point where they're going to implement something that does impact faculty, then we can engage on how UHPA can best provide faculty with the services needed. Again, retrenchments has not been



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invoked. So it's difficult to tell exactly how things will play out from there, although the language is pretty specific. It's never been tested. Director Fern shared that he does not know if it's going to result in potential lawsuits or anything else. The sooner UHPA is able to engage in consultation, then UHPA can ask some of these questions and in a format that the university administration can respond to.

- **Chair McKimmy asked a question from the chat. One senator says the university has made their “suggestions” so is that not the start of a consultative process?**
  - UHPA Exec Director Fern responded that the University typically puts things in writing, and that initiates the consultative process. The suggestions that were put out there went directly to the deans or through the administration directly to faculty. And again, that does not fulfill consultation and is not a part of the consultative process under the chapter 89 statute. UH Administration needs to engage directly with the exclusive representative, which for the faculty is UHPA. Chair McKimmy responded that he remembered UHPA Exec Director Fern stated earlier that it needs to be in writing and there is a follow-up on when consultation does begin. It would be at that point, yes? UHPA Exec Director Fern said that that's how the administration initiated it in the past. So, if we go based off of past practice, he would say yes. UHPA should expect something in writing.

## 5. BUSINESS

- None

## 6. NEW BUSINESS

- None

## 7. ADJOURNMENT

Chair McKimmy declared the meeting adjourned at 4:57pm. Several senators inquired why there was not a motion. Per RONR, the Chair can declare a meeting adjourned when there is no additional business or when the hour adopted for adjournment has arrived. However, given it was not yet 5:00 pm, Senator B. Sipes moved to adjourn. Vice Chair C. Sorensen Irvine seconded.  
Meeting adjourned at 4:59 pm.

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Respectfully submitted by Truc Nguyen, MFS Secretary  
Approved on October 21, 2020