

1 Bill Wielechowski, Alaska State Bar # 0505035
wielechowski@yahoo.com
2 (907) 242-1558
1300 Farrow Cir.
3 Anchorage, AK 99504

4 Andrew Erickson, Alaska State Bar #1605049
erickson@peak2law.com
5 (202) 930-2564
6 PEAK 2 LAW
7 P.O. Box 90217
8 Anchorage, AK 99509-2017

9 Attorneys for Plaintiffs

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12 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
13 THIRD JUDICIAL DISTRICT AT ANCHORAGE

14
15 BILL WIELECHOWSKI, RICK
16 HALFORD, and CLEM TILLION,
17 Plaintiffs,

18 vs.

19 STATE OF ALASKA, ALASKA
20 PERMANENT FUND CORPORATION,
21 Defendants.

Case No.: _____

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**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Bill Wielechowski, Rick Halford, and Clem Tillion bring this civil
action to compel the Alaska Permanent Fund Corporation ("APFC") to comply with its legal

obligation under Alaska Statute (“AS”) 37.13.145(b). In 1992 the Alaska Legislature passed and the governor signed legislation enacting AS 37.13.145(b). The law was authorized pursuant to Alaska Constitution, article IX, section 15, which was passed by the voters of Alaska in 1976 and created the Alaska Permanent Fund.

2. AS 37.13.145(b) requires the APFC to transfer from the Permanent Fund Earnings Reserve Account (“Earnings Reserve Account”) to the Dividend Fund established under AS 43.23.045 (“Dividend Fund”), 50 percent of the income available for distribution. The funds are then distributed to eligible Alaska residents in the form of the Alaska Permanent Fund Dividend (“PFD”) by the Alaska Department of Revenue.

3. On or about May 31, 2016, the Alaska Legislature passed an appropriations bill, Conference Committee Substitute for House Bill 256 (“HB 256”), which was presented to Governor Bill Walker for his signature or veto. Section 10 of HB 256 accounted for the statutorily required funds transfer from the Earnings Reserve Account to the Dividend Fund, and thus, the annual PFD payment to eligible Alaska residents. On June 28, 2016, Governor Walker signed HB 256 but vetoed certain provisions. Governor Walker vetoed \$666,350,000 in Section 10, just over half of the amount authorized for transfer from the Permanent Fund Earnings Reserve Account to the Department of Revenue’s Dividend Fund. Consequently, each Alaska resident’s PFD was reduced by over half.

4. House Bill 256, along with the governor’s vetoed terms and inserted amount, provided:

“Sec. 10. Alaska Permanent Fund.

(a) The amount required to be deposited under AS 37.13.010(a)(1) and (2), estimated to be \$333,000,000,

1 during the fiscal year ending June 30, 2017, is appropriated
2 to the principal of the Alaska permanent fund in satisfaction
3 of that requirement.

4 (b) The amount authorized under ~~AS 37.13.145(b)~~ for
5 transfer by the Alaska Permanent Fund Corporation on June
6 30, 2016, ~~estimated to be \$1,362,000,000~~ **\$695,650,000**, is
7 appropriated from the earnings reserve account
8 (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for
9 the payment of permanent fund dividends and for
10 administrative and associated costs for the fiscal year ending
11 June 30, 2017.”

12 5. Notwithstanding Governor Walker’s veto, the APIFC was required under
13 AS 37.13.145(b) to transfer an estimated \$1,362,000,000 from the Earnings Reserve Account
14 to the Dividend Fund at the end of Fiscal Year 2016, which ended on June 30, 2016. APIFC
15 did not transfer this amount but instead transferred only \$695,650,000.

16 6. More than sufficient funds reside in the Earnings Reserve Account to allow
17 the APIFC to meet its statutory obligation. According to the APIFC Fund Financial History
18 and Projections, as of June 30, 2016, the Earnings Reserve Account had a balance of \$8.57
19 billion.

20 7. This is a civil action for declaratory and injunctive relief brought under
21 Alaska’s declaratory judgment statute, AS 22.10.020. Plaintiffs seek (1) a declaratory
22 judgment that the APIFC violated AS 37.13.145(b), and (2) an order requiring the APIFC to
23 transfer the full statutorily prescribed amount of funds pursuant to AS 37.13.145(b) from the
24 Earnings Reserve Account to the Dividend Fund.

PARTIES

Plaintiffs

8. Bill Wielechowski is an Alaskan resident in Anchorage who has lived continuously in Alaska for over 17 years. He is an Alaska State Senator who was first elected to the State Senate in 2006. He currently represents over 35,000 Alaskans who reside in East Anchorage and on Joint Base Elmendorf-Richardson. He has been contacted by hundreds of Alaskans who have urged him to file this lawsuit on behalf of the people of Alaska. He has made public statements on this topic that have resulted in thousands of Alaskans commenting in support of this lawsuit.

9. Rick Halford is an Alaskan resident in Chugiak who has lived continuously in Alaska for over 50 years. He served in the Alaska Legislature for 24 years, including as House Majority Leader, Senate Majority Leader, and Senate President. He was a member of the House in the years of 1979 to 1982, the time during which many of the relevant pieces of legislation dealing with the PFID program were enacted. He brings this litigation in part based on an obligation to defend the intent of the Legislature to create a PFID program linking Alaska residents' dividends to ownership of the Permanent Fund. He has been urged by Alaskans to file this claim on behalf of the people of Alaska.

10. Clem Tillion is an Alaskan resident in Halibut Cove who has lived continuously in Alaska since 1947. He was first elected to the House in 1962 and served for 18 years in the House and Senate including as the Senate President in 1979-1980. He was in office during the passage of the 1976 Constitutional Amendment creating the Permanent Fund and many of the initial laws dealing with the creation of the PFID program. He brings

1 this litigation in part based on an obligation to defend the intent of the Legislature to create a
2 PFD program linking Alaska residents' dividends to ownership of the Permanent Fund. He
3 has been urged by Alaskans to file this claim on behalf of the people of Alaska.

4
5 11. This case is one of tremendous public and constitutional significance.
6 Plaintiffs are the appropriate parties to bring this lawsuit. Former Senators Halford and
7 Tillion are long-time public servants who fought to create the current PFD program. Senator
8 Wielechowski has been actively involved in Legislation dealing with the PFD program for
9 many years.

10
11 12. All the Plaintiffs are eligible to receive a PFD from the State of Alaska and
12 have standing because they are residents of Alaska.. However, Plaintiffs bring this lawsuit
13 acting as public interest litigants and on behalf of the people of Alaska for the primary
14 purpose of deciding a critical constitutional issue.

15 DEFENDANTS

16
17 13. Defendant State of Alaska is a sovereign state of the United States of America.

18
19 14. Defendant Alaska Permanent Fund Corporation is a state-owned corporation
20 created by AS 37.13.010 that manages the assets of the Alaska Permanent Fund and other
21 funds designated by law.

22 JURISDICTION AND VENUE

23
24 15. This Court has jurisdiction of this matter pursuant to Alaska Constitution
25 article IV, section 3, and AS 22.10.020.

26
27 16. This case is properly filed in the Third Judicial District at Anchorage pursuant
28 to Alaska Rule of Civil Procedure 3.

FACTS GIVING RISE TO PLAINTIFFS' CAUSES OF ACTION

The Permanent Fund Constitutional Amendment

17. On September 19, 1969, the State of Alaska received lease bids from oil companies worth \$900,041,605.34 for the right to explore and develop newly acquired state land at Prudhoe Bay. On the day before the lease sale, Governor Keith Miller declared, "I shall seek to amend the state constitution to establish a permanent fund for some of the proceeds from tomorrow's sale and all future sales of non-renewable petroleum and mineral resources."

18. In January 1970 Governor Miller proposed putting \$500 million from the Prudhoe Bay lease sale in a "permanent fund" that would be "a revenue-producing fund in perpetuity for future generations of Alaskans." The first bill to create such a permanent fund was introduced during the 1970 legislative session, and although it passed the Alaska Senate, the bill died in the Alaska House of Representatives.

19. In the years following Governor Miller's efforts to establish a permanent fund, the perceived spending and misuse of the Prudhoe Bay lease revenues captivated public attention. In 1970 the state's total budget was approximately \$172.8 million. The influx of revenues from increasing oil exploration on the North Slope prompted public demands for the creation of a permanent fund – a state savings account for oil revenues.

20. In 1975 Governor Jay Hammond stood at the forefront of a renewed effort to establish a permanent fund for revenues from Alaska's oil and mineral wealth. But the legislative efforts to create a permanent fund through statutes encountered serious legal problems. One of the earliest pieces of legislation, HB 324, proposed dedicating oil and

1 mineral revenues to a permanent fund, and was passed by the Senate and House. Even
2 though he supported creating a permanent fund, Governor Hammond, vetoed the bill.
3 According to Governor Hammond, HB 324 conflicted with the dedicated funds clause in
4 Alaska Constitution, article IX, section 7, which provided:

5
6 “The proceeds of any state tax or license shall not be dedicated
7 to any special purpose, except when required by the federal
8 government for state participation in federal programs. This
9 provision shall not prohibit the continuance of any dedication
10 for special purposes existing upon the date of ratification of this
11 constitution by the people of Alaska.”

12 21. Governor Hammond supported a constitutional amendment creating an
13 exception to the dedicated funds clause for Alaska’s oil and mineral revenues. On January
14 15, 1976, a resolution was introduced by the House Rules Committee on behalf of Governor
15 Hammond, proposing a constitutional amendment creating a permanent fund and an
16 exception for the permanent fund from the dedicated funds clause. House Joint Resolution
17 39 (“SJHR 39” or “the Resolution”) proposed amending article IX, section 7 to provide,

18
19 “The proceeds of any state tax or license shall not be dedicated
20 to any special purpose, *except as provided in section 15* and except
21 when required for state participation in federal programs. . . .”
(emphasis added).

22 22. The Resolution also proposed adding section 15 to article IX of the
23 Constitution, establishing the “Alaska Permanent Fund.” Proposed article IX, section 15
24 directed mineral lease rentals, royalties, and other payments to a permanent fund, “the
25 principal of which shall be used only for income investments.” The initial 1976 draft of the
26 Resolution provided simply that “[a]ll income from the permanent fund shall be deposited in
27 the general fund.” In Governor Hammond’s January 15, 1976 Transmittal Letter to the
28

1 Legislature regarding SSHJR 39, the governor noted, "[t]he income of the fund would be
2 deposited into the general fund without any permanent fund restrictions."

3 23. On February 21, 1976 the House Finance Committee held the first hearing on
4 SSHJR 39. The Committee discussed whether the language of proposed article IX, section
5 15 should be changed to explicitly allow the Legislature to direct income from the
6 permanent fund to a specific purpose. Testimony from the hearing demonstrates the
7 Committee's intent to draft language that would let the Legislature dedicate the permanent
8 fund's income for specific purposes:
9

10
11 "HOUSE FINANCE CHAIR MALONE: What about the
12 question of fund income for securities of the state? Would that
13 be allowable under the language of the resolution as drawn?

14 REVENUE COMMISSIONER GALLAGHER: The
15 dedication of income?

16 MALONE: Not the way it's drawn right now. It wouldn't be I
17 guess.

18 GALLAGHER: As you have seen the Morgan report, they feel
19 it would be, could be, a great enhancement to be able to
20 dedicate that income to whatever purpose the legislature so
21 feels. And I also, personally, feel it would be a great
22 enhancement. It's one of the things I've gotta talk to the
23 governor about. I would hope also a week or so to get back to
24 you on that one.

25 REPRESENTATIVE COWPER: You mean like a dedication
26 of debt service?

27 GALLAGHER: To debt service or whatever purpose the
28 legislature sees fit."

1 24. At the same February 21 House Finance Committee hearing, Chair Malone's
2 staff member, James Rhodes testified that an additional phrase – "unless otherwise directed
3 by the legislature" – should be added at the end of proposed article IX, section 15:

4 "RHODES: Mr. Chair, I discussed this matter with
5 representatives of White Weld in New York who felt that if the
6 phrase 'unless otherwise directed by the legislature' appeared in
7 the constitution that would be a sufficient legal peg so that
8 income from the permanent fund could be pledged in the bond
9 covenants for the security of state agencies or general obligation
10 bonds or, they said, it could also permit the legislature to make a
11 dividend payment to citizens of Alaska from the income of the
12 fund. . . . and also if you put 'unless otherwise directed' it
13 would permit the fund to go into joint ventures with private
14 corporations and pledge income from the fund as partial
15 security of that debt. So it would give you maximum flexibility,
16 they felt, by just adding the phrase 'unless otherwise directed by
17 the legislature' or words to that effect."

18 25. The House Finance Committee recommended amending SSHJR 39 to include
19 the phrase "unless otherwise provided by law" at the end of proposed article IX, section 15.

20 26. On March 15, 1976, the House Judiciary Committee voted to amend SSHJR
21 39 in accordance with the Finance Committee's recommendation. On March 24 the chairs of
22 the House Finance and Judiciary Committees submitted a joint report on SSHJR 39 to the
23 whole House. The report explained the reason for the addition of the phrase "unless
24 otherwise provided by law":

25 "The purpose of the language in the last sentence of the
26 resolution is to give future legislatures the maximum flexibility
27 in using the Fund's earnings – ranging from adding to the Fund
28 principal to paying out a dividend to resident Alaskans."

29 27. The Resolution was approved 36 to 1 in the House, and 18 to 1 in the Senate.
30 The proposed constitutional amendment was placed on the November 1976 election ballot.

1 28. In November 1976 Alaska voters approved the constitutional amendment by a
2 vote of 75,588 to 35,518. Amended Alaska Constitution, article IX, section 15 thus provided:

3 "At least twenty-five percent of all mineral lease rentals,
4 royalties, royalty sale proceeds, federal mineral revenue sharing
5 payments and bonuses received by the State shall be placed in a
6 permanent fund, the principal of which shall be used only for
7 those income-producing investments specifically designated by
8 law as eligible for permanent fund investments. All income
9 from the permanent fund shall be deposited in the general fund
10 *unless otherwise provided by law.*" (emphasis added)

11 29. James Rhodes, an architect of the permanent fund amendment, later described
12 the phrase "unless otherwise provided by law" as a critical addition to the constitutional
13 amendment. The phrase allowed the Legislature to direct income from the fund to dividend
14 payments, among other allocations:

15 "Perhaps the most important break with the past may have
16 been the language dispersing the earnings of the fund to the
17 general fund 'unless otherwise provided by law.' This opened
18 numerous possibilities, including the pledging of earnings as
19 security for state and local debt (or debt of the fund itself),
20 increased municipal revenue sharing, and *cash payments to specified
21 Alaskan residents (the seed of the Alaska, Inc. proposals).*" (emphasis
22 added).

23 The 1980 Permanent Fund Act

24 30. After the constitutional amendment's adoption, the Legislature began
25 considering legislation to implement the Permanent Fund. Governor Hammond was once
26 again instrumental in bringing the vision of the Permanent Fund to fruition. Governor
27 Hammond urged the Legislature to provide a cash payment to each Alaskan resident in the
28 form of a dividend from the Permanent Fund's earnings. Thus, each Alaskan would have a

1 personal financial stake in the state's natural resources and the governance of the state's oil
2 wealth.

3 31. On February 8, 1979, the first version of the Permanent Fund Act was
4 introduced in the Senate as SB 122. The bill proposed a simple distribution of the income
5 from the Permanent Fund to each Alaska resident. The bill gained little traction in the
6 Legislature and was not enacted.

7
8 32. More than a year later, on February 21, 1980, a second version of the
9 Permanent Fund Act was reintroduced in the Senate as CSSB 122. The second version
10 proposed to create a general tax refund under the Alaska Net Income Tax Act, which would
11 be paid to Alaska resident taxpayers from income produced by the Permanent Fund.
12 CSSB 122 provided that "[f]or each tax year after December 31, 1977, each person filing an
13 Alaska net income tax return on or before June 30 of the succeeding year is entitled to a
14 share of the general tax refund." The money for the tax refund would be generated from the
15 Permanent Fund: "Ten percent of the income from the Alaska permanent fund is allocated
16 for the general tax refund provided under this section." But most importantly, CSSB 122
17 made it clear that the payment of refunds was subject to annual appropriations by the
18 Legislature:

19
20 "Payment of refunds under this section is subject to annual
21 appropriation. The appropriation for payment of refunds may
22 include the amount of money from the general fund needed to
23 provide for refunds under this section and the amount available
24 from the permanent fund income"

25
26 33. On March 18, 1980, the House Finance Committee offered a substitute
27 version of the Permanent Fund Act. The House Finance version provided for an outright
28

1 repeal of the existing Alaska income tax and provided for payments to Alaska residents
2 calculated by a formula that awarded dividend shares based on the length of an individual's
3 residency in the state. The length of residency formula reflected Governor Hammond's
4 belief that it was crucial to provide dividend payments as a way of incentivizing involvement
5 in the management of Alaska's natural resources and Permanent Fund, recognizing the
6 tangible and intangible contributions of long-time Alaskans, and encouraging current Alaska
7 residents to remain in the state. The bill enumerated three purposes reflecting Hammond's
8 goals:

11 “(1) to provide a mechanism for equitable distribution to the
12 people of Alaska of at least a portion of the state's energy wealth
13 derived from the development and production of the natural
resources belonging to them as Alaskans;

14 (2) to encourage persons to maintain their residence in Alaska
15 and to reduce population turnover in the state; and

16 (3) to encourage increased awareness and involvement by the
17 residents of the state in the management and expenditure of state
18 revenues derived from natural resources development and
production.”

19 34. The final bill passed both the House and Senate, and was signed by Governor
20 Hammond on April 15, 1980. The new law provided:

21 “AS 43 is amended by adding a new chapter:

22
23 AS 43.23.010. Eligibility for Permanent Fund Dividend. (a) An
24 individual who is eligible under (b) of this section is entitled to
25 one permanent fund dividend for each full year that the
individual is a state resident after January 1, 1959.

26 . . .

27
28 AS 43.23.050. Dividend Fund Established. (a) The dividend
fund is established as a separate fund in the state treasury. . . .

1 (b) Each year the commissioner shall transfer to the dividend
2 fund 50 percent of the income of the Alaska permanent fund
3 which was earned during the fiscal year ending June 30 of the
4 preceding year and which is available for distribution under
5 AS 37.13.140. (c) The legislature may annually appropriate
6 money from the general fund to the dividend fund if there is
7 not enough money in the dividend fund to pay each eligible
8 individual an annual permanent fund dividend valued at \$50.”

9 35. The 1980 Permanent Fund Act set the amount of the 1979 PFD at \$50 per
10 share, and specifically conditioned the PFD on an appropriation made from the general fund
11 to the dividend fund. Importantly, Section 3 of the 1980 Permanent Fund Act effectuated
12 that appropriation:

13 “For 1979 the value of the permanent fund dividend is \$50. The
14 payment of permanent fund dividends for 1979 shall be made
15 from an appropriation from the general fund to the dividend
16 fund for that purpose. The amount appropriated from the
17 general fund to pay permanent fund dividends for 1979 less 50
18 percent of the income of the Alaska permanent fund earned
19 during the fiscal year ending June 30, 1978 is a loan to the
20 dividend fund from the general fund which shall be repaid as
21 provided in AS 43.23.050(c) enacted by sec. 2 of this Act.”

22 36. By enacting the 1980 Permanent Fund Act with a detailed plan for paying
23 Alaska residents annual dividends and specifying that the Legislature may appropriate
24 additional money if there was insufficient income from the Permanent Fund to pay at least
25 \$50 per year, the Legislature demonstrated that the dividend plan was self-executing and no
26 further annual appropriations were necessary. In Section 3 of the Act, the Legislature
27 demonstrated that it knew how to condition dividend payments on annual appropriations.
28 But for the ordinary annual dividend payments, no separate appropriation was needed.

29 37. Almost immediately after the 1980 Permanent Fund Act passed, it was
30 challenged in federal court. Two individuals who had recently moved to Alaska challenged

1 the residency provision, alleging that it unconstitutionally favored long-term Alaska residents
2 over those who had recently moved to the state. The individuals claimed the Permanent
3 Fund Act violated the U.S. Constitution's equal protection clause. In 1982, the U.S. Supreme
4 Court agreed, and ruled that "[t]he only apparent justification for the retrospective aspect of
5 the program, 'favoring established residents over new residents,' is constitutionally
6 unacceptable." *Zobel v. Williams*, 457 U.S. 55, 65 (1982).

7 8 **The 1982 Permanent Fund Act**

9
10 38. Anticipating that the 1980 Permanent Fund Act's residency preference would
11 not withstand federal constitutional scrutiny, the Legislature enacted two revisions of the
12 Permanent Fund laws. First, the Legislature revised Alaska Statutes Title 37, Chapter 13 to
13 redefine how income from the permanent fund would be distributed. AS 37.13.145 provided
14 "net income as defined in AS 37.13.140 *shall be transferred to the undistributed income account in the*
15 *Alaska permanent fund*" (emphasis added). Thus, the Legislature wanted all income from the
16 Permanent Fund to be transferred automatically to a newly created "undistributed income
17 account" within the permanent fund.
18
19

20 39. The Legislature did not include any language – as it had in previous legislation
21 – requiring a future annual appropriation.
22

23 40. Second, the Legislature revised Alaska Statutes Title 43, the dividend payment
24 program, to eliminate the residency preference and distribute dividends equitably to all
25 Alaskan residents. Amended AS 43.23.005 provided: "an individual is eligible to receive one
26 permanent fund dividend each year in an amount to be determined by AS 43.23.025 . . ."
27
28

1 41. The 1982 Permanent Fund Act also established a separate fund in the state
2 treasury for distributing dividend payments and directed the Department of Revenue to pay
3 dividends each year:

4 “AS 43.23.050(a) is amended to read:

5
6 (a) The dividend fund is established as a separate fund in the
7 state treasury. . . . Money in the dividend fund shall be used to
8 pay permanent fund dividends annually.

9 (b) Notwithstanding any contrary provision of law, each year
10 the commissioner shall transfer to the dividend fund 50 percent
11 of the income of the Alaska permanent fund earned during the
12 fiscal year ending June 30 of the current year and available for
13 distribution.

14 (c) Each year the department shall pay from the dividend fund
15 all permanent fund dividends payable to individuals for the
16 current year and all permanent fund dividends for prior years.”

17 41. The Legislature did not include any language – as it had in previous legislation
18 – requiring a future annual appropriation.

19 42. When the U.S. Supreme Court announced its decision in *Zobel v. Williams*,
20 invalidating the 1980 Permanent Fund Act, the 1982 Act became effective.

21 43. On or about June 1982, the first PFD payments were issued to eligible Alaska
22 residents.

23 44. The 1982 PFD was paid under the authority of the 1982 law; there was no
24 intervening appropriation by the Legislature.
25
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The Earnings Reserve Account

45. In 1992 the Legislature amended AS 37.13.145, creating a new account within the permanent fund for income produced from the fund. The revised version of AS 37.13.145 renamed the “undistributed income account” – the name of the account originally called for in the 1982 law – as the Earnings Reserve Account. Thus, the Earnings Reserve Account was a separate account in the permanent fund, controlled by the APIFC. Amended AS 37.13.145 provided,

“(b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund established under AS 43.23.045 50 percent of the income for distribution under AS 37.13.140.”

46. The Legislature did not include any language – as it had in previous legislation – requiring a future annual appropriation, and the Legislature did not change the requirement for an automatic funds transfer that was first established in 1982.

47. In 1994 the Alaska Supreme Court confirmed that AS 37.13.145(b) was a statutory directive to the APIFC and that no further legislation or appropriations from the Legislature were required before the APIFC executed the transfer. In *Hickel v. Conper*, the Court was asked to review a different law in which the Legislature defined the Alaska Constitution’s phrase “amount available for appropriation.” 874 P.2d 922 (Alaska 1994). The Court concluded that under the constitution, the “amount available for appropriation” meant “all funds over which the legislature has retained the power to appropriate and which require further appropriation before expenditure.” *Id.* at 927.

48. The *Hickel* Court explained that whether money was available for appropriation depended on whether there had already been a valid appropriation “such that

1 the funds involved are no longer available.” *Id.* at 932. “[I]t is clear that one of the
2 fundamental characteristics of an appropriation, in the public law context, is that it
3 authorizes governmental expenditure without further legislative action.” *Id.* at 933.

4 49. The Court then examined whether the funds in the Earnings Reserve Account
5 should be considered available for appropriation. The Court described the intricacies of the
6 Permanent Fund statutes and observed that “money in the earnings reserve account never
7 passes through the general fund, and is never appropriated as such by the legislature.” *Id.* at
8 934.
9

10 50. The Court noted that AS 37.13.145(b) required 50 percent of the funds in the
11 Earnings Reserve Account to be “automatically transferred to the dividend fund at the end
12 of each fiscal year.” *Id.*
13

14 51. Under the Court’s interpretation of AS 37.13.145(b) no further legislative
15 action or annual appropriation was necessary before funds in the Earnings Reserve Account
16 are transferred to the Dividend Fund. The transfer is “automatic.”
17

18 52. In a 2009 opinion from the Attorney General’s office, Senior Assistant
19 Attorney General Michael Barnhill acknowledged the Court’s interpretation of AS
20 37.13.145(b) in *Hickel*, but opined that the Court was wrong: “While the Alaska Supreme
21 Court has apparently assumed that the permanent fund dividend transfer is made
22 automatically without an appropriation, this is incorrect.”
23
24
25
26
27
28

The 2016 Budget and the Governor's Line-Item Veto

53. Alaska is currently experiencing one of the most significant fiscal crises in the state's history. Prior to the 2016 legislative session, numerous bills were conceptualized to cut spending and raise revenue.

54. In January 2016 Governor Walker introduced his "New Sustainable Alaska Plan," which called for spending reductions and revenue increases through a variety of new taxes and reforms to existing taxes.

55. Governor Walker proposed restructuring the PID laws so that income from the Permanent Fund would go directly toward paying for government expenditures. Governor Walker's proposal would have reduced each eligible Alaska resident's PID by more than half.

56. Governor Walker's New Sustainable Alaska Plan was introduced in the Senate as SB 128. The Senate passed a modified version of the bill, but the measure died in the House Finance Committee.

57. Instead of reducing the PID payment to Alaska residents, the Alaska Legislature passed a budget, HB 256, that acknowledged no change to the PID payout.

58. The 2016 budget provided:

"Sec. 10. Alaska Permanent Fund.

...

(b) The amount authorized under AS 37.13.145(b) for transfer by the Alaska Permanent Fund Corporation on June 30, 2016, estimated to be \$1,362,000,000, is appropriated from the earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the payment of permanent fund dividends

1 and for administrative and associated costs for the fiscal year
2 ending June 30, 2017.”

3 59. The Legislature clearly intended that the 2016 PFD payment be made
4 pursuant to the same statutory program established in AS 37.13.145(b) and 43.23.050, which
5 required the APFC to transfer 50 percent of the available funds in the Earnings Reserve
6 Account to the Dividend Fund for distribution to eligible Alaska residents.

7
8 60. On or about June 28, 2016, Governor Walker purported to use his authority
9 under Alaska Constitution, article II, section 15 to reduce the amount provided in Section 10
10 of HB 256 from approximately \$1,362,000,000 to \$695,650,000. Governor Walker also
11 crossed out substantive provisions of Section 10, including striking “authorized under
12 AS 37.13.145(b)” and “estimated.”

13
14 61. Governor Walker’s transmittal letter explaining his line-item vetoes of HB 256
15 stated: “The \$1.28 billion vetoed from this appropriation bill preserves nearly \$600 million
16 of Alaska’s Constitutional Budget Reserve and maintains an adequate permanent fund
17 earnings reserve balance to implement the Permanent Fund Protection Act if should it pass
18 [sic].”

19
20 62. Governor Walker’s transmittal letter indicated that his line-item veto of
21 Section 10 – purporting to reduce the PFD amount for 2016 by half – was intended to
22 preserve the Legislature’s ability to enact the governor’s fiscal policies, even though the
23 Legislature had earlier rejected most of the governor’s proposals.

24
25 63. On or about August 10, 2016, Senator Wielechowski sent a letter to Angela
26 Rodell, APFC Executive Director, requesting that the APFC “pay a full Permanent Fund
27 Dividend (PFD) to every eligible Alaskan.” The letter argued that the APFC had an
28

1 independent legal duty – “the statutory law is crystal clear” – to transfer the amount
2 necessary to pay the full dividend regardless of the 2016 governor’s line-item veto and
3 regardless of the Legislature’s 2016 appropriations bill.

4 64. As of September 15, 2016, the APFC has not transferred the full amount
5 required by AS 37.13.145(b) to the Dividend Fund. The APFC transferred \$695,650,000 to
6 the Dividend Fund – half of the legally required amount.

7 65. As of September 15, 2016, the Earnings Reserve Account had a balance of
8 had a balance of \$8.57 billion. The Earnings Reserve Account contains sufficient funds to
9 transfer the full statutorily mandated amount to the Dividend Fund for distribution.

10 66. The 2016 PFD is now estimated to be approximately \$1,000 per Alaska
11 resident. Under the statutes duly enacted by the Legislature and approved by the Governor,
12 the PFD amount is legally required to be approximately twice that amount, or approximately
13 \$2,100.

14 67. The funds not transferred from the Earnings Reserve Account to the
15 Dividend Fund remain under the control of the APFC, and are not available to be spent by
16 the State of Alaska for any purpose unless specifically authorized by a new appropriation
17 from the Legislature.

18 68. The failure of the APFC to transfer the full amount required by
19 AS 37.13.145(b) will deprive each eligible Alaska resident of approximately \$1,100. Until the
20 Legislature changes the law, the PFD program enacted in 1982 and amended 1992,
21 AS 37.13.145(b) and 43.23.050, remains in effect and requires the payment of the full PFD
22 amount.

CLAIMS FOR RELIEF

Plaintiffs' First Claim for Relief

69. The Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 68.

70. Alaska Constitution article IX, section 15 provides that all income from the Permanent Fund shall be deposited in the general fund "unless otherwise provided by law."

71. The Legislature has otherwise provided by law at AS 37.13.145(b) that the APFC must transfer from the Earnings Reserve Account to the Dividend Fund established under AS 43.23.045, 50 percent of the income available for distribution.

72. The APFC is required under AS 37.13.145(b) to transfer an estimated \$1,362,000,000 from the Earnings Reserve Account to the Dividend Fund at the end of Fiscal Year 2016, which ended on June 30, 2016. The APFC did not transfer that amount, instead APFC transferred only \$695,650,000.

73. More than sufficient funds reside in the Earnings Reserve Account to allow the APFC to meet its statutory obligation. According to the APFC Fund Financial History & Projections, as of June 30, 2016, the Earnings Reserve had a balance of \$8.57 billion. Because the APFC transferred less than 50 percent of the income available for distribution, APFC has violated AS 37.13.145(b), and the Plaintiffs are entitled to the relief requested below.

Plaintiffs' Second Claim for Relief

74. The Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 73.

1 75. Alaska Constitution, article II, section 15 grants the Governor the authority to
2 veto items in appropriation bills.

3 76. The Legislature's passage of Section 10 of HB 256 accounted for a transfer of
4 funds from the Earnings Reserve Account to the Dividend Fund. The transfer of funds does
5 not constitute an appropriation. Thus, Section 10 was not subject to the line-item veto.
6

7 77. The APFC's reliance upon the veto of these funds in its decision to not
8 transfer from the Earnings Reserve Account to the Dividend Fund 50 percent of the income
9 available for distribution under AS 37.13.140 was therefore in error and the Plaintiffs are
10 entitled to the relief requested below.
11

12 Plaintiffs' Third Claim for Relief

13 78. The Plaintiffs incorporate by reference each of the allegations in paragraphs 1
14 through 77.
15

16 79. Article II, section 15 grants the Governor the authority to veto items in
17 appropriation bills.
18

19 80. Governor Walker unconstitutionally deleted descriptive language from Section
20 10 of HB 256, specifically the words, "authorized under AS 37.13.145(b)."
21

22 81. The APFC's reliance upon the veto of these funds in its decision to not
23 transfer from the Earnings Reserve Account to the Dividend Fund 50 percent of the income
24 available for distribution was therefore in error and the Plaintiffs are entitled to the relief
25 requested below.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment providing the following relief:

- A. Declare that Defendants violated AS 37.13.145(b);
- B. Order the Defendants to transfer from the Permanent Fund Earnings Reserve Account to the Dividend Fund established under AS 43.23.045, 50 percent of the income available for distribution under AS 37.13.140;
- C. Award Plaintiffs the costs of this action including expenses, fees, and reasonable attorney fees; and
- D. Grant such other relief as the Court deems just and proper.

Respectfully submitted this _____ day of September, 2016.

By: 

Bill Wielechowski, Alaska State Bar # 0505035
1300 Farrow Cir.
Anchorage, AK 99504
wielechowski@yahoo.com
(907) 242-1558

By: 

Andrew Erickson, Alaska State Bar #1605049
PEAK 2 LAW
P.O. Box 90217
Anchorage, AK 99509-2017
erickson@peak2law.com
(202) 930-2564

Attorneys for Plaintiffs

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2 FONT CERTIFICATION

3 I hereby certify that the font used in this filing is Garamond, size 13, and conforms to Alaska
4 Rule of Civil Procedure 76.
5

6 s/ Bill Wielechowski

7 Bill Wielechowski
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