

1 Bill Wielechowski, Alaska State Bar # 0505035
2 wielechowski@yahoo.com
3 (907) 242-1558
4 1300 Farrow Cir.
5 Anchorage, AK 99504

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

12 Attorneys for Plaintiffs

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

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.: _____

22 **COMPLAINT FOR DECLARATORY
23 AND INJUNCTIVE RELIEF**

24 **INTRODUCTION**

25
26 1. Plaintiffs Bill Wielechowski, Rick Halford, and Clem Tillion bring this civil
27 action to compel the Alaska Permanent Fund Corporation ("APFC") to comply with its legal
28

FILED
STATE OF ALASKA
THIRD DISTRICT
2016 SEP 16 AM 10:50
CLERK, TRIAL COURTS
BY
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1 obligation under Alaska Statute ("AS") 37.13.145(b). In 1992 the Alaska Legislature passed
2 and the governor signed legislation enacting AS 37.13.145(b). The law was authorized
3 pursuant to Alaska Constitution, article IX, section 15, which was passed by the voters of
4 Alaska in 1976 and created the Alaska Permanent Fund.

5
6 2. AS 37.13.145(b) requires the APFC to transfer from the Permanent Fund
7 Earnings Reserve Account ("Earnings Reserve Account") to the Dividend Fund established
8 under AS 43.23.045 ("Dividend Fund"), 50 percent of the income available for distribution.
9 The funds are then distributed to eligible Alaska residents in the form of the Alaska
10 Permanent Fund Dividend ("PFD") by the Alaska Department of Revenue.

11
12 3. On or about May 31, 2016, the Alaska Legislature passed an appropriations
13 bill, Conference Committee Substitute for House Bill 256 ("HB 256"), which was presented
14 to Governor Bill Walker for his signature or veto. Section 10 of HB 256 accounted for the
15 statutorily required funds transfer from the Earnings Reserve Account to the Dividend
16 Fund, and thus, the annual PFD payment to eligible Alaska residents. On June 28, 2016,
17 Governor Walker signed HB 256 but vetoed certain provisions. Governor Walker vetoed
18 \$666,350,000 in Section 10, just over half of the amount authorized for transfer from the
19 Permanent Fund Earnings Reserve Account to the Department of Revenue's Dividend
20 Fund. Consequently, each Alaska resident's PFD was reduced by over half.

21
22 4. House Bill 256, along with the governor's vetoed terms and inserted amount,
23 provided:

24 "Sec. 10. Alaska Permanent Fund.

25
26 (a) The amount required to be deposited under
27 AS 37.13.010(a)(1) and (2), estimated to be \$333,000,000,
28

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 APFC 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. APFC
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 APFC to meet its statutory obligation. According to the APFC 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 APFC violated AS 37.13.145(b), and (2) an order requiring the APFC 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

1
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3 8. Bill Wielechowski is an Alaskan resident in Anchorage who has lived
4 continuously in Alaska for over 17 years. He is an Alaska State Senator who was first elected
5 to the State Senate in 2006. He currently represents over 35,000 Alaskans who reside in East
6 Anchorage and on Joint Base Elmendorf-Richardson. He has been contacted by hundreds of
7 Alaskans who have urged him to file this lawsuit on behalf of the people of Alaska. He has
8 made public statements on this topic that have resulted in thousands of Alaskans
9 commenting in support of this lawsuit.
10
11

12 9. Rick Halford is an Alaskan resident in Chugiak who has lived continuously in
13 Alaska for over 50 years. He served in the Alaska Legislature for 24 years, including as
14 House Majority Leader, Senate Majority Leader, and Senate President. He was a member of
15 the House in the years of 1979 to 1982, the time during which many of the relevant pieces of
16 legislation dealing with the PFD program were enacted. He brings this litigation in part
17 based on an obligation to defend the intent of the Legislature to create a PFD program
18 linking Alaska residents' dividends to ownership of the Permanent Fund. He has been urged
19 by Alaskans to file this claim on behalf of the people of Alaska.
20
21

22 10. Clem Tillion is an Alaskan resident in Halibut Cove who has lived
23 continuously in Alaska since 1947. He was first elected to the House in 1962 and served for
24 18 years in the House and Senate including as the Senate President in 1979-1980. He was in
25 office during the passage of the 1976 Constitutional Amendment creating the Permanent
26 Fund and many of the initial laws dealing with the creation of the PFD program. He brings
27
28

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 (“SSHJR 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

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.
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
21

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

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

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:
9
10

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
14 resources belonging to them as Alaskans;

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

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

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

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

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

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.

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

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 . . .

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

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

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

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

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

The Earnings Reserve Account

1
2 45. In 1992 the Legislature amended AS 37.13.145, creating a new account within
3 the permanent fund for income produced from the fund. The revised version of
4 AS 37.13.145 renamed the “undistributed income account” – the name of the account
5 originally called for in the 1982 law – as the Earnings Reserve Account. Thus, the Earnings
6 Reserve Account was a separate account in the permanent fund, controlled by the APFC.
7 Amended AS 37.13.145 provided,

8
9
10 “(b) At the end of each fiscal year, the corporation shall transfer
11 from the earnings reserve account to the dividend fund
12 established under AS 43.23.045 50 percent of the income for
13 distribution under AS 3713.140.”

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

17 47. In 1994 the Alaska Supreme Court confirmed that AS 37.13.145(b) was a
18 statutory directive to the APFC and that no further legislation or appropriations from the
19 Legislature were required before the APFC executed the transfer. In *Hickel v. Cowper*, the
20 Court was asked to review a different law in which the Legislature defined the Alaska
21 Constitution’s phrase “amount available for appropriation.” 874 P.2d 922 (Alaska 1994). The
22 Court concluded that under the constitution, the “amount available for appropriation”
23 meant “all funds over which the legislature has retained the power to appropriate and which
24 require further appropriation before expenditure.” *Id.* at 927.
25

26
27 48. The *Hickel* Court explained that whether money was available for
28 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
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The 2016 Budget and the Governor's Line-Item Veto

1
2 53. Alaska is currently experiencing one of the most significant fiscal crises in the
3 state's history. Prior to the 2016 legislative session, numerous bills were conceptualized to
4 cut spending and raise revenue.
5

6 54. In January 2016 Governor Walker introduced his "New Sustainable Alaska
7 Plan," which called for spending reductions and revenue increases through a variety of new
8 taxes and reforms to existing taxes.
9

10 55. Governor Walker proposed restructuring the PFD laws so that income from
11 the Permanent Fund would go directly toward paying for government expenditures.
12 Governor Walker's proposal would have reduced each eligible Alaska resident's PFD by
13 more than half.
14

15 56. Governor Walker's New Sustainable Alaska Plan was introduced in the Senate
16 as SB 128. The Senate passed a modified version of the bill, but the measure died in the
17 House Finance Committee.
18

19 57. Instead of reducing the PFD payment to Alaska residents, the Alaska
20 Legislature passed a budget, HB 256, that acknowledged no change to the PFD payout.
21

22 58. The 2016 budget provided:

23 "Sec. 10. Alaska Permanent Fund.

24 ...

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

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

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

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

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

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

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

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

11 66. The 2016 PFD is now estimated to be approximately \$1,000 per Alaska
12 resident. Under the statutes duly enacted by the Legislature and approved by the Governor,
13 the PFD amount is legally required to be approximately twice that amount, or approximately
14 \$2,100.
15

16 67. The funds not transferred from the Earnings Reserve Account to the
17 Dividend Fund remain under the control of the APFC, and are not available to be spent by
18 the State of Alaska for any purpose unless specifically authorized by a new appropriation
19 from the Legislature.
20

21 68. The failure of the APFC to transfer the full amount required by
22 AS 37.13.145(b) will deprive each eligible Alaska resident of approximately \$1,100. Until the
23 Legislature changes the law, the PFD program enacted in 1982 and amended 1992,
24 AS 37.13.145(b) and 43.23.050, remains in effect and requires the payment of the full PFD
25 amount.
26
27
28

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.

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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FONT CERTIFICATION

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

s/ Bill Wielechowski

Bill Wielechowski