

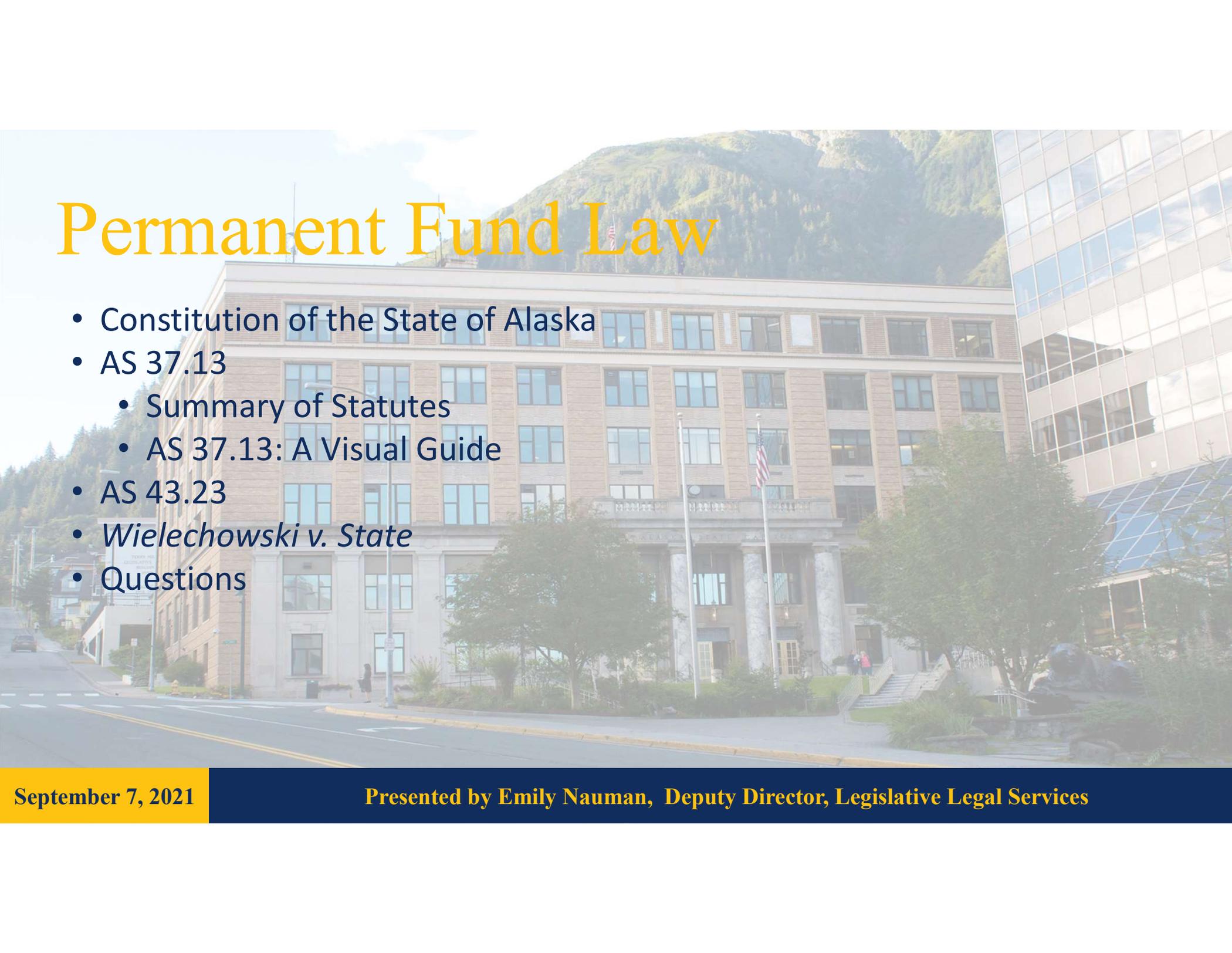


# Permanent Fund Law

September 7, 2021

Presented by Emily Nauman, Deputy Director, Legislative Legal Services

# Permanent Fund Law



- Constitution of the State of Alaska
- AS 37.13
  - Summary of Statutes
  - AS 37.13: A Visual Guide
- AS 43.23
- *Wielechowski v. State*
- Questions

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# Constitution of the State of Alaska

## Article IX, Section 15

**Section 15. Alaska Permanent Fund.** At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

# Constitution of the State of Alaska

## **Article IX, Section 15: Principle Concepts:**

*At least* twenty-five percent of all [mineral revenue] received by the State shall be placed in a permanent fund

the principal [of the fund] shall be used only for ... income-producing investments ....

All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

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ALASKA STATE CAPITOL

# AS 37.13: Alaska Permanent Fund and Corporation

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.010. Alaska permanent fund.** (a) Under art. IX, sec. 15, of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980; and

(3) any other money appropriated to or otherwise allocated by law or former law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund within three banking days after the day the amount due to the fund reaches at least \$3,000,000 and at least once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter.

(§ 5 ch 18 SLA 1980; am § 2 ch 134 SLA 1992; am §§ 1 - 4 ch 22 SLA 2003).

# AS 37.13: Alaska Permanent Fund and Corporation

## Sec. 37.13.010(a): Principle Concepts:

This statute remains substantially the same as enacted in 1980

The Alaska permanent fund consists of

- (1) **25 percent** of all mineral revenue and bonuses from mineral leases issued on or before December 1, 1979/February 15, 1980;
- (2) **50 percent** of all mineral revenue and bonuses mineral leases issued after December 1, 1979/February 15, 1980; and
- (3) any other money appropriated to or otherwise allocated by law or former law to the Alaska permanent fund.

### *Article IX, Section 15, Constitution of the State of Alaska:*

*At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund. . .*

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.020. Findings. Principle Concepts:** The legislature finds with respect to the fund that

- (1) the fund should provide a means of conserving a portion of the state's revenue from mineral resources to benefit all generations of Alaskans;
- (2) the fund's goal should be to maintain safety of principal while maximizing total return;
- (3) the fund should be used as a savings device managed to allow the maximum use of disposable income from the fund for purposes designated by law.

(§ 5 ch 18 SLA 1980; am § 3 ch 134 SLA 1992)

This statute remains substantially the same as enacted in 1980

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.030. Purpose.** It is the purpose of AS 37.13.010 - 37.13.190 to provide a mechanism for the management and investment of those fund assets by the Alaska Permanent Fund Corporation in a manner consistent with the findings in AS 37.13.020.

(§ 5 ch 18 SLA 1980; am § 7 ch 66 SLA 1991; am § 4 ch 134 SLA 1992)

This statute remains substantially the same as enacted in 1980

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.030.** Purpose of the Alaska Permanent Fund Corporation (APFC).

**Sec. 37.13.040.** Establishes APFC.

**Sec. 37.13.050.** Composition, qualifications of the Board of Trustees, APFC.

**Sec. 37.13.060.** Terms of office for the Board of Trustees of APFC.

**Sec. 37.13.070.** Removal of APFC board members; vacancy provisions.

**Sec. 37.13.080.** Quorum and voting of the APFC.

**Sec. 37.13.090.** Compensation of board members.

**Sec. 37.13.100.** Staff authorization.

**Sec. 37.13.110.** Conflicts of interest, APFC.

**Sec. 37.13.120.** Investment responsibilities.

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.140. Income.** (a) Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in AS 37.13.145.

(b) The corporation shall determine the amount available for appropriation each year. The amount available for appropriation is 5.25 percent of the average market value of the fund for the first five of the preceding six fiscal years, including the fiscal year just ended, computed annually for each fiscal year in accordance with generally accepted accounting principles. In this subsection, "average market value of the fund" includes the balance of the earnings reserve account established under AS 37.13.145, but does not include that portion of the principal attributed to the settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District).

(§ 5 ch 18 SLA 1980; am § 8 ch 81 SLA 1982; am § 1 ch 28 SLA 1986; am § 18 ch 134 SLA 1992; am § 1 ch 16 SLA 2018)

# AS 37.13: Alaska Permanent Fund and Corporation

## Sec. 37.13.140(a): Principle Concepts:

- Income of the fund includes income of the earnings reserve account (ERA).
- Net income of the fund is computed annually as of the last day of the fiscal year
  - in accordance with generally accepted accounting principles
  - excluding any unrealized gains or losses.
- ***Income available for distribution*** equals 21% of the net income of the fund for the last five fiscal years, including the fiscal year just ended
  - but may not exceed the net income of the fund for the fiscal year just ended plus the balance in the ERA.

# Putting it Together



Income available for distribution =  
21% x (Net income of the fund for  
the last 5 fiscal years)  
(AS 37.13.140(a))

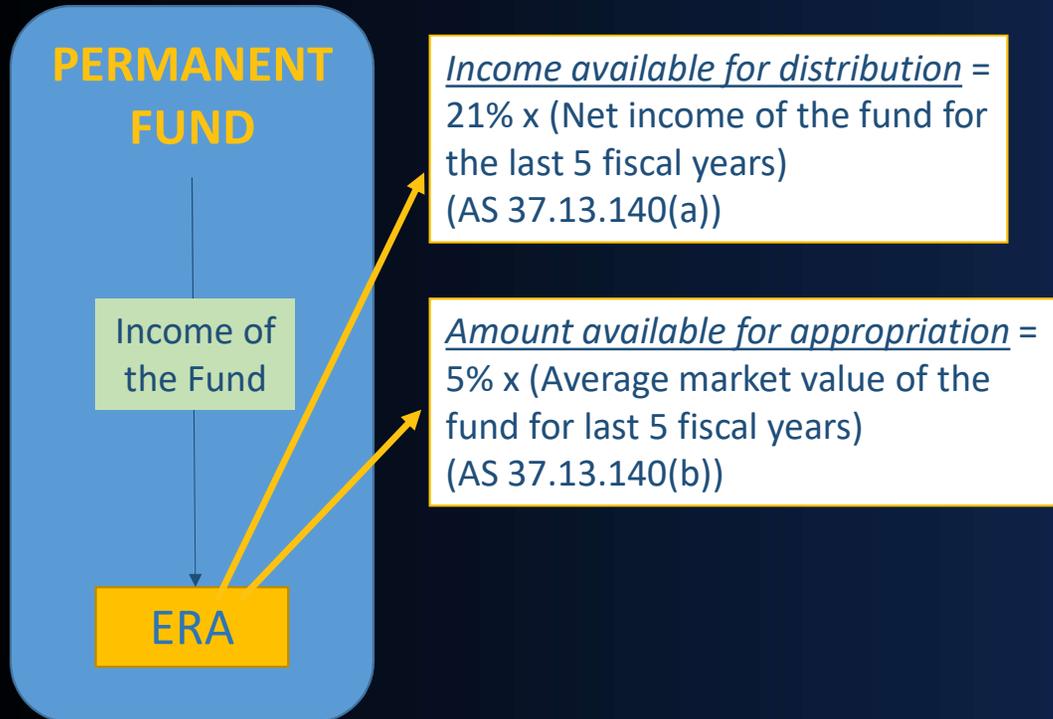


# AS 37.13: Alaska Permanent Fund and Corporation

## Sec. 37.13.140(b): Principle Concepts:

- The corporation shall determine the amount available for appropriation each year.
- The **amount available for appropriation** is 5%\* of the average market value of the fund for the first five of the preceding six fiscal years, including the fiscal year just ended
  - computed annually for each fiscal year in accordance with generally accepted accounting principles. In this subsection
  - "average market value of the fund" includes the balance of the earnings reserve account established under AS 37.13.145, but does not include that portion of the principal attributed to the settlement of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District).
- \*Under 2, ch. 16, SLA 2018, eff. July 1, 2021, this was changed from 5.25% to 5%.  
(§ 5 ch 18 SLA 1980; am § 8 ch 81 SLA 1982; am § 1 ch 28 SLA 1986; am § 18 ch 134 SLA 1992; am § 1 ch 16 SLA 2018)

# Putting it Together

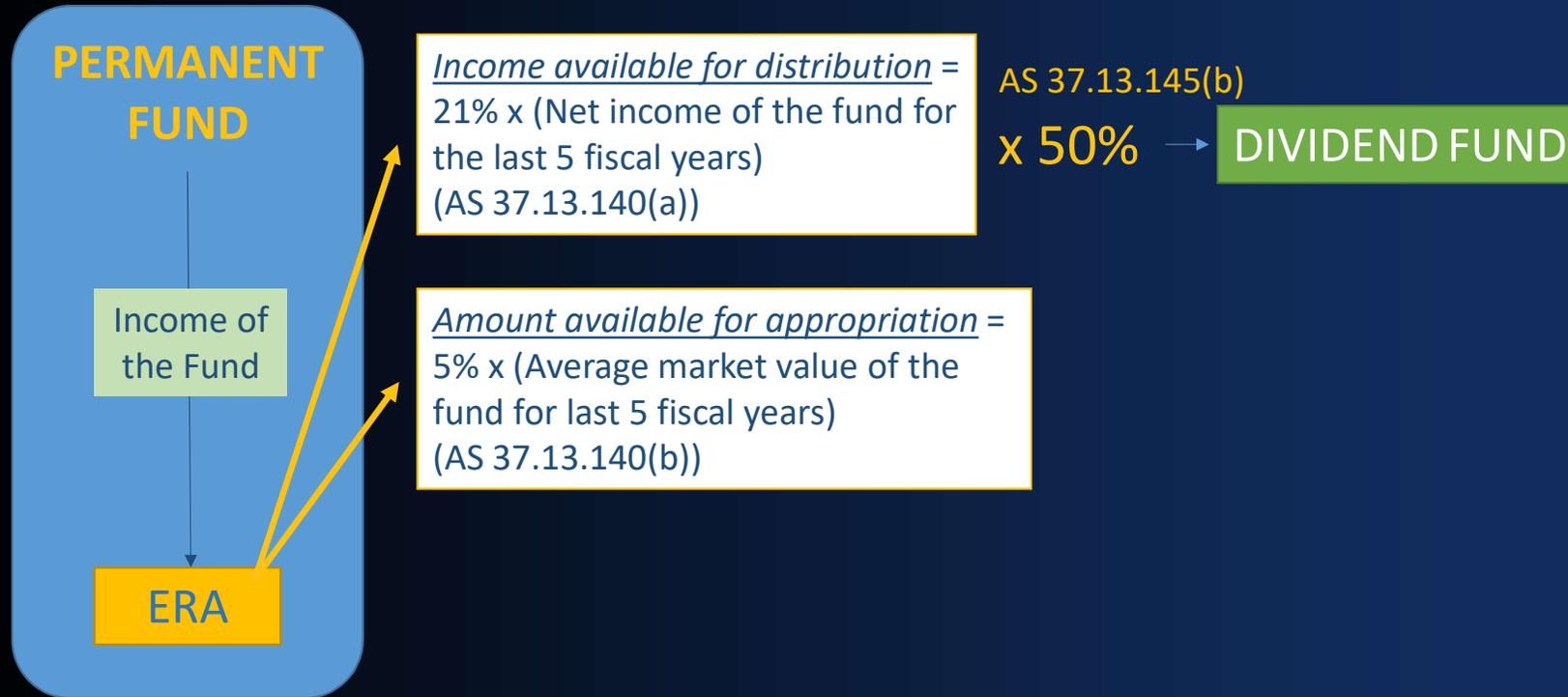


# AS 37.13: Alaska Permanent Fund and Corporation

## **Sec. 37.13.145. Disposition of income: Principle Concepts:**

- (a) The earnings reserve account is established.
- (b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund, 50 percent of the income available for distribution under AS 37.13.140.

# Putting it Together

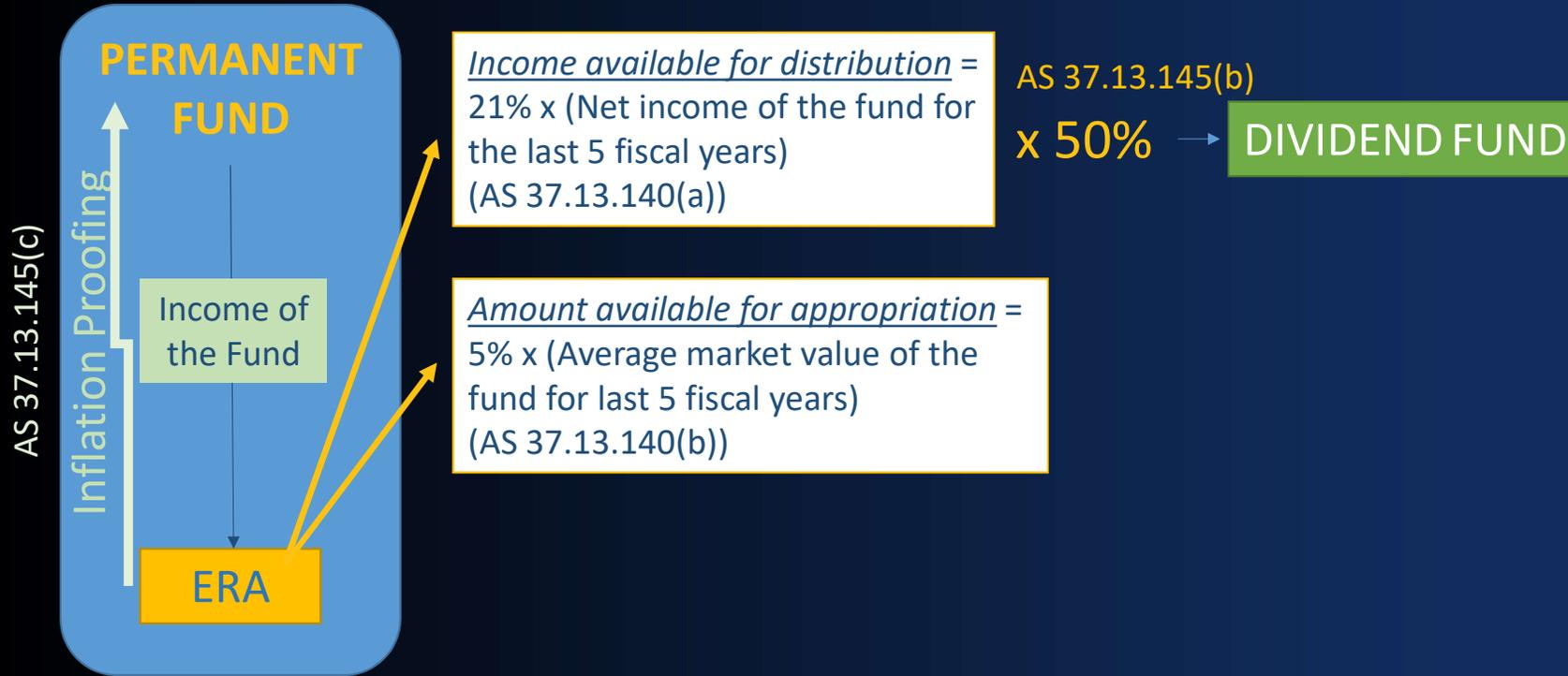


# AS 37.13: Alaska Permanent Fund and Corporation

(c) After the transfer under (b) and an appropriation under (e) of this section, the corporation shall transfer from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on the principal of the fund during that fiscal year. The corporation shall calculate the amount to transfer to the principal under this subsection by

- (1) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;
- (2) computing the percentage change between the first and second calendar year average; and
- (3) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended, including that portion of the principal attributed to the settlement of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District).

# Putting it Together



# AS 37.13: Alaska Permanent Fund and Corporation

(e) The legislature may not appropriate from the ERA to the general fund a total amount that exceeds the amount available for appropriation under AS 37.13.140(b) in a fiscal year.

\* (e) authorizes money to go from the ERA to the general fund

(f) The combined total of the transfer under (b) of this section and an appropriation under (e) of this section may not exceed the amount available for appropriation under AS 37.13.140(b).

(§ 9 ch 81 SLA 1982; am § 2 ch 28 SLA 1986; am § 19 ch 134 SLA 1992; am §§ 2, 3 ch 49 SLA 2005; am §§ 3 - 5 ch 16 SLA 2018)

# AS 37.13: Alaska Permanent Fund and Corporation

**Sec. 37.13.150.** APFC budget.

**Sec. 37.13.160.** Audits of APFC.

**Sec. 37.13.170.** Reports and publications of APFC.

**Sec. 37.13.180.** State tax exemption for APFC and fund.

**Sec. 37.13.190.** Political activity prohibition.

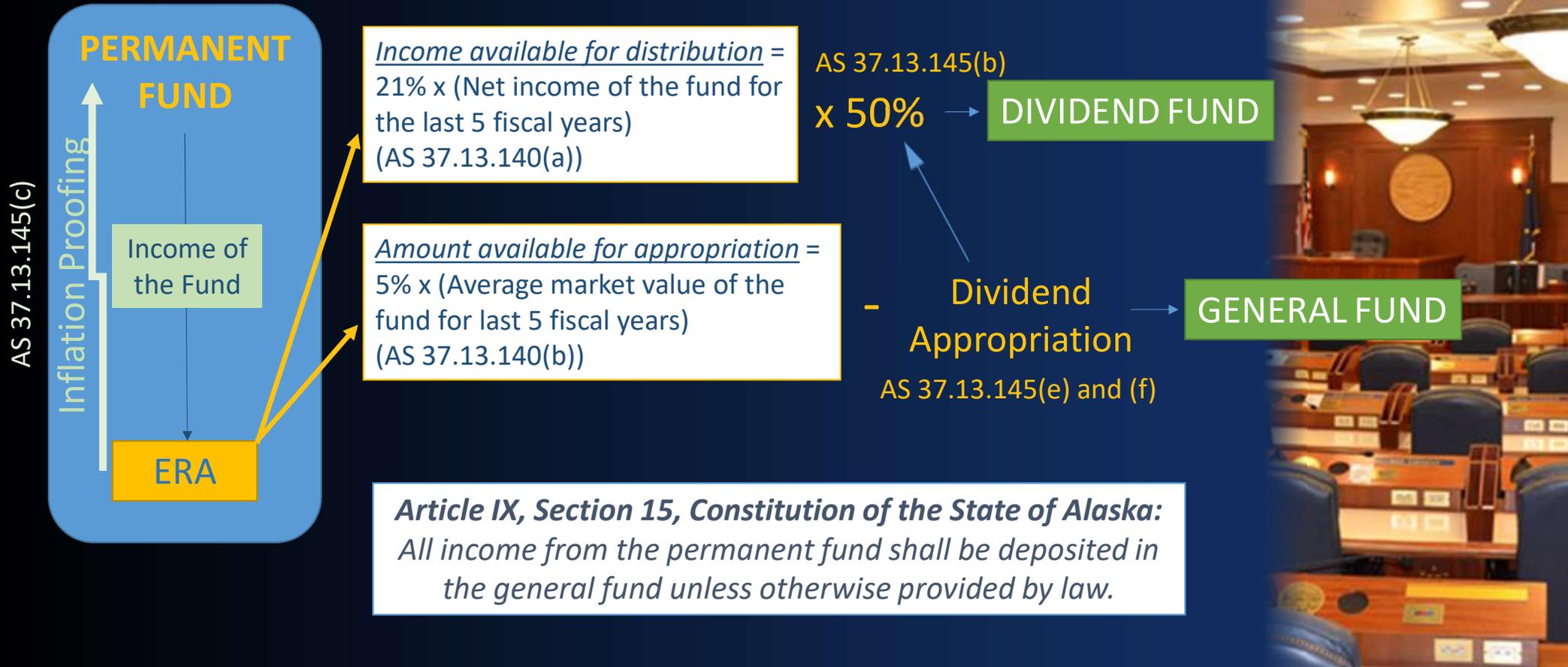
**Sec. 37.13.200.** Public records of APFC.

**Sec. 37.13.206.** Promulgation of regulations by APFC.

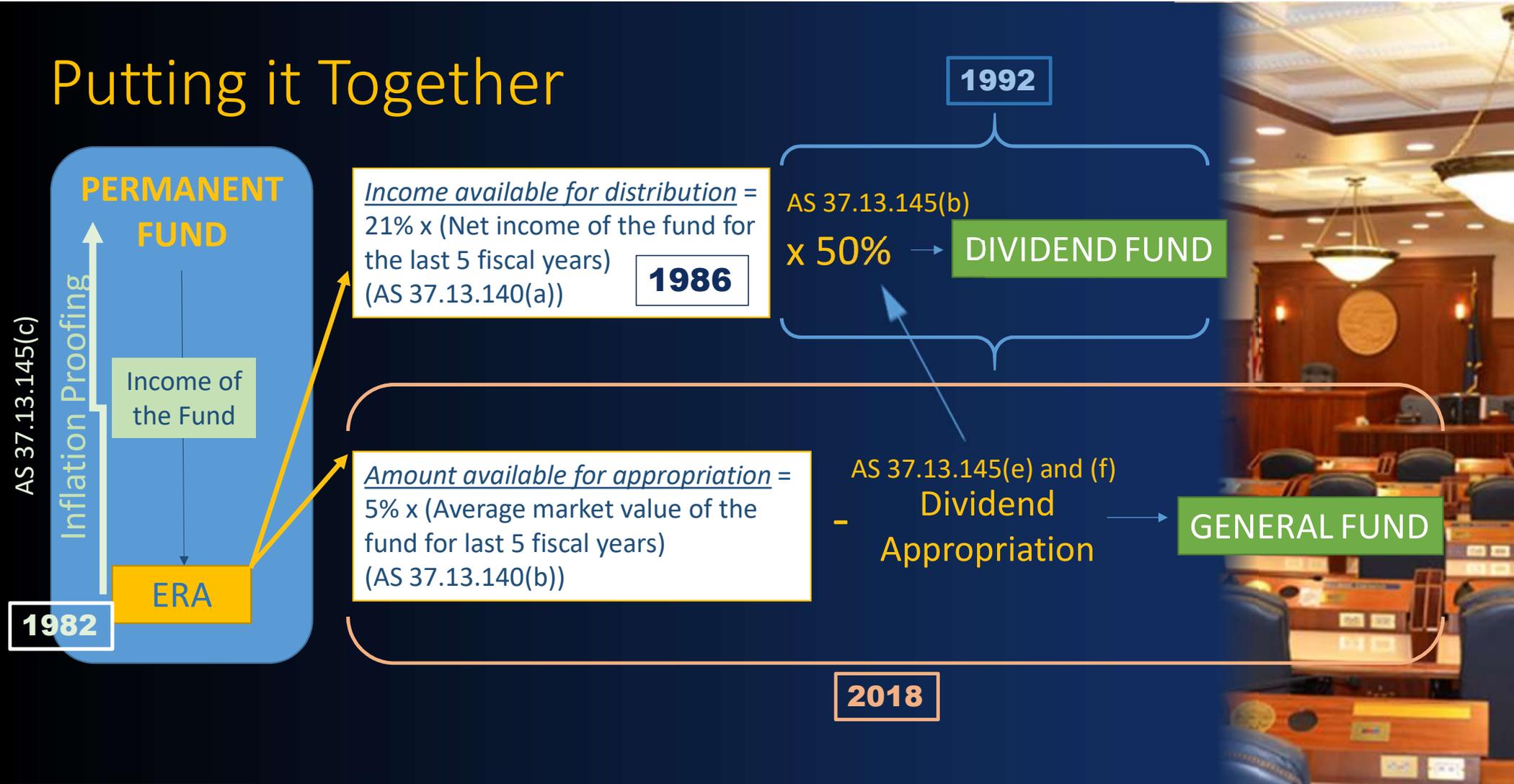
**Sec. 37.13.300.** Authorization for APFC to manage other state assets.

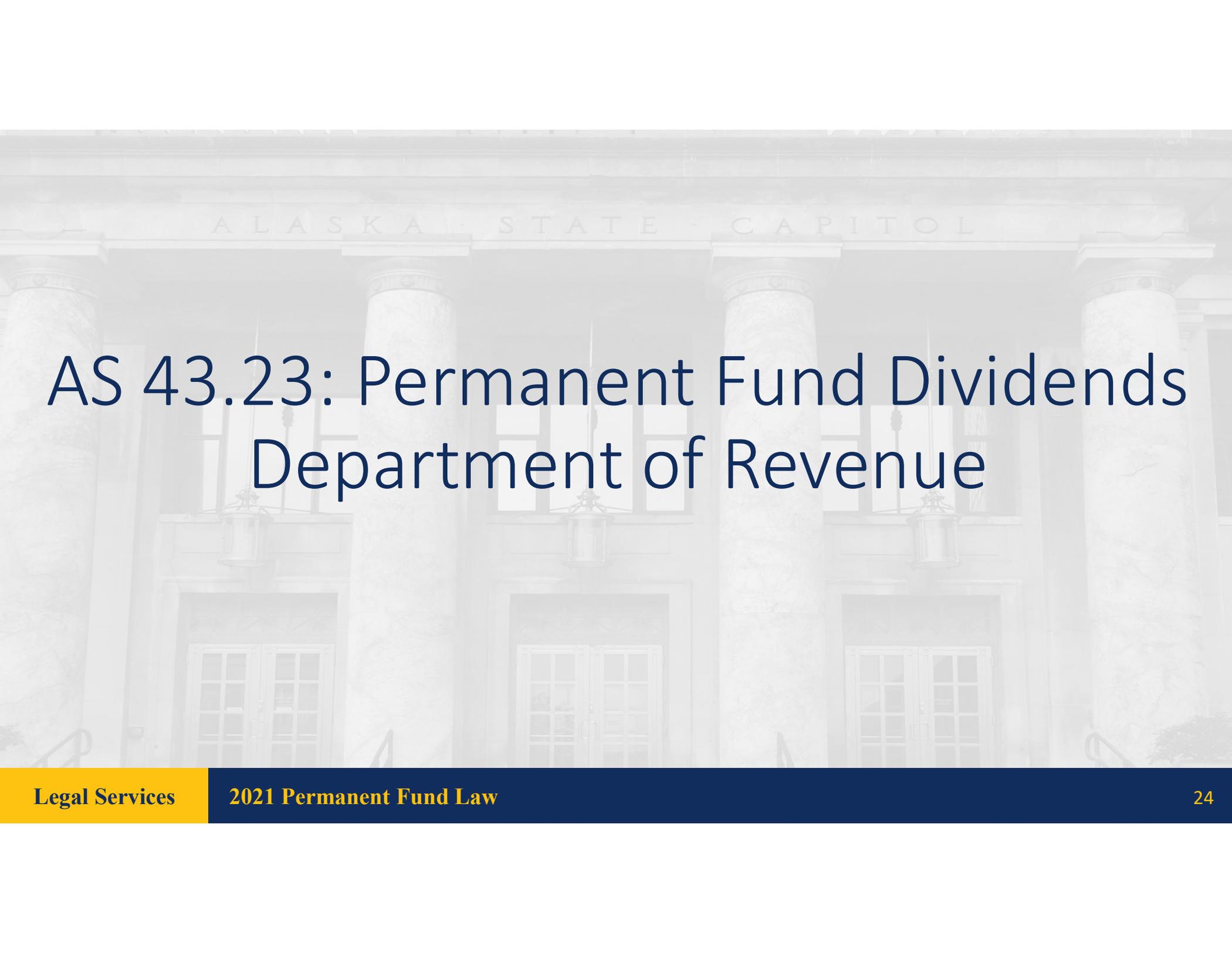
**Sec. 37.13.900.** AS 37.13 definitions.

# Putting it Together



# Putting it Together



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ALASKA STATE CAPITOL

# AS 43.23: Permanent Fund Dividends Department of Revenue

# AS 43.23: Alaska Permanent Fund

**Sec. 43.23.005.** Eligibility.

**Sec. 43.23.008.** Allowable absences.

**Sec. 43.23.011.** Application period.

**Sec. 43.23.015.** Application and proof of eligibility.

**Sec. 43.23.021.** Delayed payment of certain dividends.

# AS 43.23: Permanent Fund Dividends

## **Sec. 43.23.025. Amount of dividend: Principle Concepts:**

By October 1 of each year, the commissioner shall determine the value of each permanent fund dividend for that year by

- (1) determining the total amount available for dividend payments, which equals
  - (A) the amount transferred to the dividend fund during the current year;
  - (B) plus the balances of prior fiscal year appropriations that lapse into the dividend fund;
  - (C) & (D) less the amount necessary to pay prior year dividends;
  - (E) less costs of administering the dividend program and the hold harmless provisions;
- (2) determining the number of individuals eligible to receive a dividend payment for the current year;
- (3) dividing the amount under paragraph (1) by the amount under paragraph (2).

(§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987; am § 2 ch 54 SLA 1988; am § 4 ch 68 SLA 1990; am § 1 ch 198 SLA 1990; am § 5 ch 68 SLA 1991; am § 27 ch 134 SLA 1992; am § 2 ch 91 SLA 1998; am § 33 ch 75 SLA 2008)

# AS 43.23: Permanent Fund Dividends

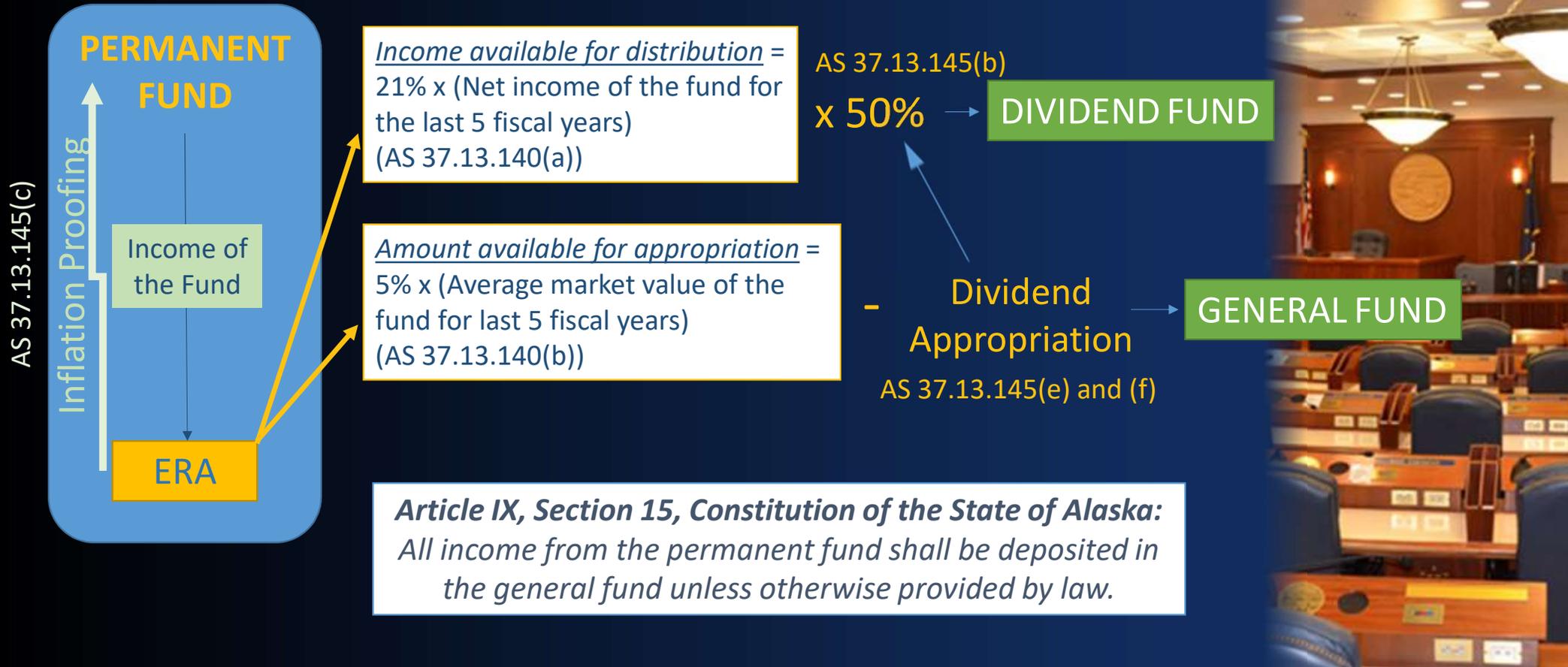
**Sec. 43.23.028. Public notice: Principle Concepts:** By October 1 of each year, the commissioner shall give public notice of the value of each permanent fund dividend and notice certain other information.

(§ 2 ch 198 SLA 1990; am § 3 ch 68 SLA 1991; am § 1 ch 82 SLA 1993; am § 4 ch 46 SLA 1996; am § 6 ch 44 SLA 1998; am § 26 ch 92 SLA 2001; am § 22 ch 175 SLA 2004; am § 34 ch 75 SLA 2008; am § 1 ch 79 SLA 2008; am § 5 ch 21 SLA 2018)

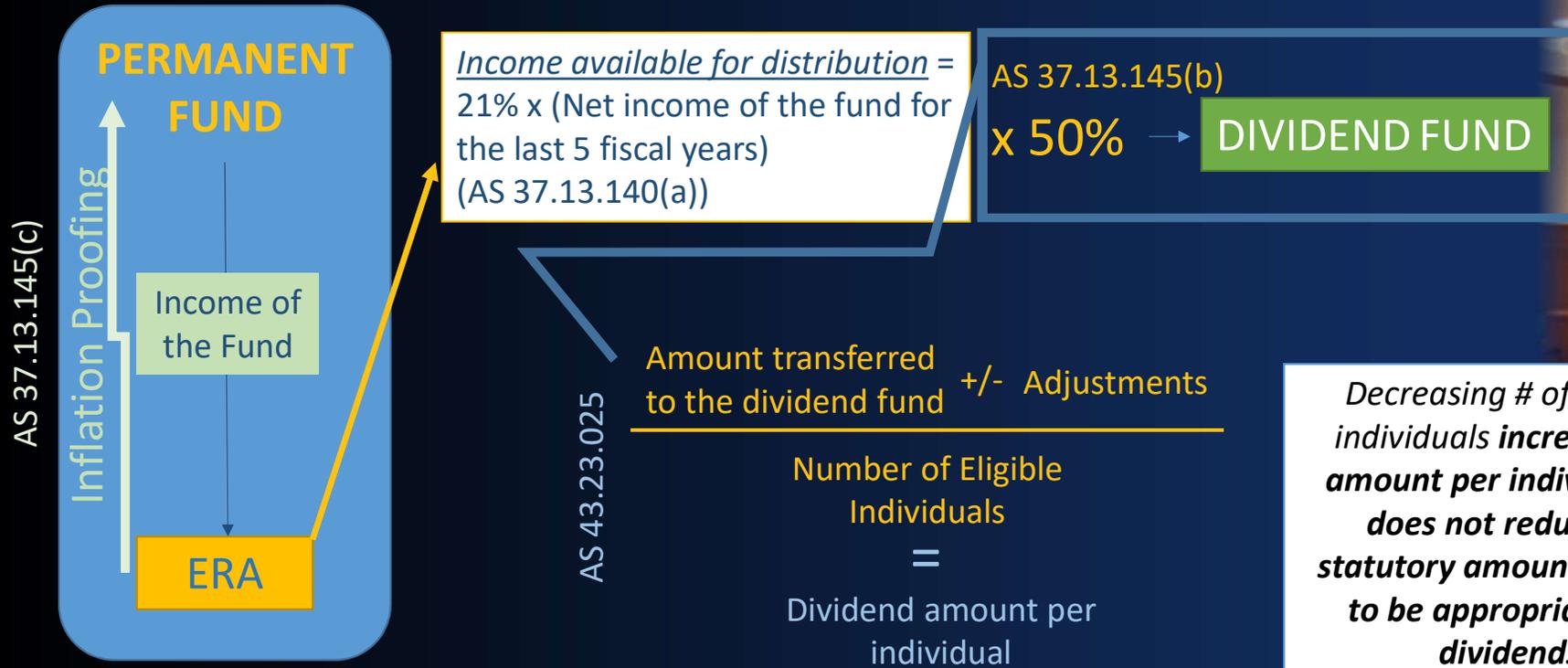
**Sec. 43.23.045. Dividend fund: Principle Concepts.** The dividend fund is established as a separate fund, administered by the commissioner and shall be invested in the same manner as provided in AS 37.10.070.

(§ 1 ch 102 SLA 1982; am § 24 ch 99 SLA 1985; am § 3 ch 57 SLA 1987; am § 1 ch 38 SLA 1989; am §§ 2, 3 ch 18 SLA 1991; am § 29 ch 134 SLA 1992)

# Putting it Together



# Putting it Together



*Decreasing # of eligible individuals increases the amount per individual. It does not reduce the statutory amount directed to be appropriated for dividends.*



# AS 43.23: Alaska Permanent Fund

**Sec. 43.23.048.** Restorative justice account.

**Sec. 43.23.055.** Duties of the department.

**Sec. 43.23.101.** Voter registration.

**Sec. 43.23.110.** Applicant information confidential.

**Sec. 43.23.130.** Contributions from dividends.

**Sec. 43.23.140.** Exemptions of and levy on permanent fund dividends.

**Sec. 43.23.150 - .210.** Claims on and assignment of dividends.

**Sec. 43.23.220 - .230.** Dividend raffle.

**Sec. 43.23.240 - .250.** Public assistance eligibility.

**Sec. 43.23.260 - .270.** Enforcement; penalties.

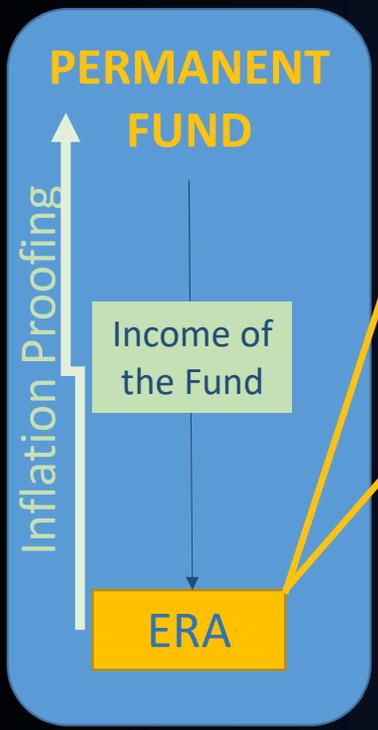
# Wielechowski v. State

“The plain language of the 1976 constitutional amendment creating the Permanent Fund does not exempt Permanent Fund income from the constraints of the anti-dedication clause. ... [T]he conclusion that a revenue transfer from the earnings reserve to the dividend fund requires an appropriation and must survive a gubernatorial veto flows naturally from our decision. Absent another constitutional amendment, the Permanent Fund dividend program must compete for annual legislative funding just as other state programs.”

*Wielechowski v. State*, 403 P.3d 1141, 1152 (Alaska 2017).

# Putting it Together

AS 37.13.145(c)



Income available for distribution =  
 21% x (Net income of the fund for  
 the last 5 fiscal years)  
 (AS 37.13.140(a))

AS 37.13.145(b)  
 x 50% →

**DIVIDEND FUND**

Amount available for appropriation =  
 5% x (Average market value of the  
 fund for last 5 fiscal years)  
 (AS 37.13.140(b))

- Dividend  
 Appropriation  
 AS 37.13.145(e) and (f)

**GENERAL FUND**

**Article IX, Section 15, Constitution of the State of Alaska:**  
*All income from the permanent fund shall be deposited in  
 the general fund unless otherwise provided by law.*



Questions?

# Thank you.

Emily Nauman  
Deputy Director  
Legislative Legal Services