

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 28, 2007

1:35 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 18

"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."

HEARD AND HELD

SENATE BILL NO. 132

"An Act relating to an appeal to the superior court from a determination by the State Assessment Review Board; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 18

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS

SPONSOR(s): SENATOR(s) BUNDE

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	L&C, JUD, FIN
03/13/07	(S)	L&C AT 1:30 PM BELTZ 211
03/13/07	(S)	Heard & Held
03/13/07	(S)	MINUTE(L&C)
03/15/07	(S)	L&C AT 1:30 PM BELTZ 211
03/15/07	(S)	Scheduled But Not Heard
03/20/07	(S)	L&C AT 1:30 PM BELTZ 211
03/20/07	(S)	Moved CSSB 18(L&C) Out of Committee
03/20/07	(S)	MINUTE(L&C)

03/21/07 (S) L&C RPT CS 3DP 2NR NEW TITLE
03/21/07 (S) DP: ELLIS, BUNDE, DAVIS
03/21/07 (S) NR: STEVENS, HOFFMAN
03/28/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 132

SHORT TITLE: ASSESSMENT REVIEW BOARD APPEALS

SPONSOR(S): SENATOR(S) WIELECHOWSKI

03/21/07 (S) READ THE FIRST TIME - REFERRALS
03/21/07 (S) JUD
03/23/07 (S) FIN REFERRAL ADDED
03/28/07 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

Senator Con Bunde
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of SB 18

Stephen Routh, Attorney
Routh Crabtree, APC
Anchorage, AK

POSITION STATEMENT: Presented sectional analysis for SB 18

Steve Van Sant, Chair
State Assessment Review Board (SARB)
Anchorage, AK

POSITION STATEMENT: Supported SB 132

Ken Diemer, Assistant Attorney General
Civil Division
Oil, Gas, & Mining Section
Department of Law
Anchorage, AK

POSITION STATEMENT: Provided information on SB 132

Bernard Hajny, Manager
Production Taxes and Royalties Alaska
BP Exploration (Alaska) Inc.
P.O. Box 196612
900 East Benson Boulevard
Anchorage AK

POSITION STATEMENT: Opposed SB 132

Michael Frailey, Tax Counsel,

ConocoPhillips Alaska, Inc.
700 G Street
P.O. Box 100360
Anchorage, AK

POSITION STATEMENT: Opposed SB 132

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:35:24 PM](#). Present at the call to order were Senator Wielechowski, Senator McGuire, and Chair French. Senator Therriault and Senator Huggins arrived soon thereafter.

SB 18-PROPERTY FORECLOSURES AND EXECUTIONS

[1:35:49 PM](#)

CHAIR FRENCH announced the consideration of SB 18 and solicited a motion to adopt the committee substitute (CS).

SENATOR MCGUIRE motioned to adopt Version \V CS for SB 18 labeled, 25-LS0153\V. There being no objection it was so ordered.

SENATOR BUNDE, Sponsor of SB 18, described the bill as simple in principle. He read from the sponsor statement as follows:

Alaska's statutes on the real property, non judicial foreclosure process are antiquated, sometimes ambiguous and unclear, and therefore, prone to litigation. Senate Bill 18 proposes to clarify the present statutory language, simplify and modernize the foreclosure process. The suggested changes benefit lenders, borrowers and title insurers by bringing clarity, certainty and modernity to the process.

SB 18 would improve many aspects of Title 34 that govern the foreclosure process.

SENATOR BUNDE continued to say that the intent of the bill is to encourage higher bids and greater participation in the process. In his view the court house step auction encourages speculators and he hopes this will encourage those who might actually want to buy a home at a reasonable price. Passing SB 18 would streamline the foreclosure language in statute and provide a more open and fair auction process that would benefit borrowers,

lenders, title insurers, individuals, and neighborhoods, he stated. It would also reduce unnecessary litigation.

[1:39:42 PM](#)

Senator Huggins joined the meeting.

STEPHEN ROUTH, Attorney, Routh Crabtree, APC, Anchorage, said he practices in the area of real estate law, specifically with respect to mortgage issues.

MR. ROUTH summarized the bill sections as follows:

Section 1 is a new section that eliminates the public posting requirement at the post office. Title 34 referred to Title 9 on the process of getting property qualified to sell at foreclosure auction. Title 9 requires posting at public places one of which is the post office closest to the place of sale. For decades that's worked well, but the problem now is that some postmasters in Alaska are refusing to let notices get posted. The proposed fix is to delete that posting requirement.

Sections 2 and 3 deal with wider publication of sales by Internet publication. It's intended to ensure that foreclosure auctions come to the attention of potential bidders. The greater exposure an auction receives, the more bidders there will be. That increases the likelihood that the price will be higher and that the property will be sold to a third party rather than reverting to the bank. This makes it more likely that the borrower will realize funds from the sale as well. Overall the process is more efficient and everyone stands to benefit.

CHAIR FRENCH asked if there are services currently operating in Alaska that would qualify under the provision in Section 2. Also, is there a requirement that the system have an office in the state with staff including a senior management person.

MR. ROUTH explained that the intent is to track the requirements for being "of general circulation" for newspapers and bring in the Internet Age with safeguards. If there's a mistake in an ad in the Anchorage Daily News you know were to get it corrected. The same should apply for an Internet publication. That's why there's a management person to effect change in a local office, he stated.

CHAIR FRENCH said he likes the idea of having a human being to speak to. He was simply wondering if there is a current service

that could meet that requirement. He asked if a service like Craigslist would qualify.

MR. ROUTH said it would clearly qualify under some of the requirements and he isn't sure on others.

CHAIR FRENCH asked that he or the sponsor find out if an entity in the state would satisfy the requirements. If so that's great and if not then more thought would need to go into the requirements.

MR. ROUTH stated that in one of the bill drafts there's an escape clause so that if there isn't a qualified Internet site then publication in just the newspaper is allowed. In reality the regulators will be the title insurance companies, he said.

CHAIR FRENCH asked about the bolded language in Section 3 on page 3, lines 10-13 and asked if the action would be brought in superior court and who the defendant would be.

MR. ROUTH said the existing language talks about how to establish a newspaper as a legal publication. The court looks at that and then would have requirements for serving folks who might be interested, but it's freeform at that point and the discretion of the superior court, he stated.

[1:50:03 PM](#)

Senator Therriault joined the meeting.

MR. ROUTH continued the sectional analysis.

Section 4 deals with time limits for reinstatement. The 3-month reference was revised to 90 days because it is easier to calculate. The other change rolls the clock back for reinstatement of the loan to five days before the sale. If someone intends to reinstate their loan this provides more time and it might avert litigation.

CHAIR FRENCH asked if there's a convention in state law with respect to counting weekends in the five-day count.

MR. ROUTH said he believes the five days could end up being seven or eight days under the civil rules, but he'd research that point and get back to the committee.

CHAIR FRENCH said he flagged it.

MR. ROUTH continued the sectional analysis.

Section 5 clarifies mailing requirements. The term "grantor" is deleted and "trustor" is inserted, which conforms to the foreclosure statutes. It also states that notice must be sent to a person who is in actual physical possession of the property. This clarifies who gets notice of the foreclosure action.

Section 6 clarifies who gets notice of the foreclosure; the posting requirements; what happens if the borrower is deceased; and who can restrain a foreclosure sale. The changes are technical, he said. For example, subsection (e) talks about how to get notice if the possessory interest can only be inferred from an inspection of the property. Subsection (f) deals with posting of the property and allows for posting at a reasonable distance if it's not possible to post right on the property itself.

CHAIR FRENCH asked if the section is based on a model act.

MR. ROUTH said no; his office picked best practices among seven different states.

SENATOR McGUIRE asked why "or occupying" is removed from Section 5 on page 4, line 9.

MR. ROUTH explained that physical possession is broader.

SENATOR McGUIRE said she wants to make sure that all affected parties are notified. If one spouse is still living in the house and is operating under the assumption that the other is paying, both should be notified of the foreclosure.

MR. ROUTH said as long as the person is listed on the deed of trust there is a great deal of effort to get the person noticed.

SENATOR McGUIRE clarified that she wants to make sure that the person who is occupying the property is notified even if she/he isn't on the deed. At what point does a wife who is occupying the property with her kids learn that her estranged husband is no longer paying the mortgage?

MR. ROUTH said there are a couple of ways. The bank's agent will conduct drive-bys which will result in a visit to find out who has an interest in the party. Also, when the property is posted notice of occupancy will be noted and that will trigger the requirement to give notice. If we can learn somebody is there,

they're going to get notice, he stated. On the other hand, if there's no evidence of somebody being there they're not going to get notice.

1:58:30 PM

SENATOR WIELECHOWSKI asked for examples of liens or nonpossessory interest that could be inferred from inspection of the real property in Section 6(e).

MR. ROUTH said you could infer that something is going on if nobody's home and the house is empty, but a bunch of construction lumber is sitting in the front yard.

SENATOR WIELECHOWSKI asked if Alaska still has adverse possession.

MR. ROUTH said yes.

SENATOR WIELECHOWSKI asked if this section would apply to someone who mistakenly believes they have rights to the property because of an incorrect survey.

MR. ROUTH said yes. Under Section 5(c), a person who is in actual physical possession would get a notice mailed or personally delivered. If they are in possession then Section 5 covers them. Problems arise if they aren't there and there is no evidence that they are occupying the property or if there's some inference of possession or occupancy, but it's not possible to figure out who it is.

SENATOR McGUIRE asked if furniture in a house and a bad housekeeper fit the definition.

MR. ROUTH said that person wouldn't be entitled to notice under Section 6(e) unless there's some way to ascertain who the person is so he/she can be given notice. Furniture and tracks in the snow evidence would trigger Section 5(c), which means extra steps to get notice to the occupant.

SENATOR McGUIRE said she gets the point of the bill and agrees with it but she doesn't want people to get their home taken away through some set of random circumstances. By virtue of not meeting Section 6(e), they don't get notified under Section 5(c). I want to be as careful as I can, she said.

MR. ROUTH said generally when a person has an interest in a property there will be a record so before any foreclosure is

undertaken there would be a title report. Most folks will show up on that search. If you haven't gone through the normal process of putting your name on the public record, this is the safety net, he said.

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SENATOR WIELECHOWSKI said he shares some of the same concerns as Senator McGuire. Hundreds and hundreds of years of common law—easement by prescription and adverse possession—is being wiped that out by this section so we need to think about the implications very carefully, he stated.

MR. ROUTH responded that one of the requirements for adverse possession is open, notorious, and hostile possession so someone who qualifies under that would also qualify for notice under one of the sections in the bill because of the open notice.

SENATOR MCGUIRE pointed out that there are all sorts of property arrangements that Alaskans have come up with their cabins and houses and a lot of these folks haven't recorded their property ownership in the usual and customary way. She encouraged him to think about the odd circumstances not leading to somebody losing their home. "I flagged it and I want to really hone in on that and try and think about all the circumstances that we may not be thinking about," she stated.

MR. ROUTH agreed that losing your home is "the worst thing on earth" and it should never be undertaken lightly.

MR. ROUTH recapped that Section 6(f) relates to difficulty posting the property.

CHAIR FRENCH asked if there's any minimum distance for posting the property. Could you post a property a mile away or at the nearest airport if it's a remote parcel?

MR. ROUTH explained that the subsection requires that notice is placed on the property or as close as practicable. The burden is high to post on the property so clear documentation of any impediment is necessary. If the poster does it wrong there is going to be litigation, he said.

MR. ROUTH continued with Section 6(g). It establishes that the poster signs an affidavit, which is prima facie evidence that he/she did in fact post the property. It's presumed to apply for one year and that is designed to reduce dispute and litigation.

SENATOR McGUIRE asked how it is treated now because she would presume that an affidavit is treated the same as in any other proceeding. That is it's not prima facie evidence, but just one of the many things a court considers as evidence before making a decision. This seems to bump the affidavit higher, she said.

MR. ROUTH agreed it is one of the changes, but he isn't sure whether or not the affidavit is discussed in the prior statute. "I don't have that in front of me, but I'm not sure there was a process for an affidavit beforehand."

SENATOR McGUIRE said she wants to think about that a little more; she would feel more comfortable with the affidavit being just one of the pieces of evidence rather than prima facie evidence.

MR. ROUTH asked if the language "conclusively presumed" causes her discomfort.

SENATOR McGUIRE said yes.

MR. ROUTH explained that it was included in the hope of reducing litigation in this area. "It would be fine with us if it said "presumed" as opposed to "conclusively presumed" to leave the door open for someone to attack the presumption, he stated.

MR. ROUTH continued the sectional analysis.

Sections 6(h) and (i) relate to the deceased borrower. Currently if a borrower is deceased and the property goes into foreclosure, the practice for getting notice to the heirs is to go to court to open a limited purpose probate. Generally a special master is appointed to track down the heirs and provide notice. In practice this delays things for up to a year and costs up to \$8 thousand and the added time and expense makes it less likely that the loan will be reinstated. The proposed change sets up a mechanism to publish the notice and provide a time limit for the heirs to declare an interest in the property and begin reinstatement if they wish.

SENATOR McGUIRE commented that the probate process is designed to be cumbersome and slow to allow all interested parties to come forward and make a plea. She wants to think about this a little more because it is so completely different. For example, page 5, lines 14-16 talk about mailing notice to heirs and devisees that are known. What if they aren't known? You ascertain it though telephone books?

MR. ROUTH explained that best practices now involve looking in telephone books, doing Internet searches and using any other commonly known public resource. "Keep in mind, the financial institution has already gone through its records to see if there is any reference to any children..." This all presupposes there is no probate open.

MR. ROUTH noted that probate is addressed through subsection (j).

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SENATOR BUNDE explained that Section 6(k) describes persons who may bring a court action to enjoin a foreclosure sale, including the attorney general.

SENATOR McGUIRE asked why subsection (j) says 3 months when the committee already agreed to say 90 days to reduce confusion.

CHAIR FRENCH asked Mr. Routh to comment.

MR. ROUTH said it should say 90 days.

CHAIR FRENCH stated that Senator McGuire made Amendment 1. On page 5, line 27, delete "three months" and insert "90 days".

CHAIR FRENCH announced that without objection, Amendment 1 is adopted.

[2:18:10 PM](#)

MR. ROUTH continued the sectional analysis.

Section 6(k) names the list of potential plaintiffs to enjoin a foreclosure. At the state's request, the attorney general was added to the list. Section 6(l) states that if you're bringing an action to stop because of lack of payments, the court may impose conditions to protect the beneficiary. Section 6(m) defines "devisee," "heir," and "personal representative" as given in other sections in statute.

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Section 7 talks about placing the funds from a sale in escrow to protect all parties. The second part confirms that the trustee can accept bids in ways other than at court house steps including: telephone, Internet, and electronic mail. The bidding must result in cleared funds. This goes along with the Internet

publication, which makes it a more efficient market and will enhance the chance for higher bids and more bidders.

CHAIR FRENCH asked if the court house sales are done by custom or by rule and statute.

MR. ROUTH replied they're done by statute.

SENATOR McGUIRE asked how a telephone bid would be documented.

MR. ROUTH said the auctioneer would have a cell phone at the courthouse steps to accept bids from anyone who had made appropriate accommodation to transfer the money after the sale.

SENATOR McGUIRE commented this will literally change an entire market place.

MR. ROUTH agreed adding that it will make it more efficient and accessible to more folks. "Somebody who wants to buy a nice piece of land in Homer can be sitting in New York," he stated.

SENATOR McGUIRE commented that she didn't particularly care for that example.

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MR. ROUTH continued the sectional analysis.

Section 8 establishes who can sell the property. This confirms what is happening now, which is that an agent sells the property as an auctioneer.

Section 9 clarifies how long an auction can be postponed and establishes that if it's longer than 12 months then new notices are required.

CHAIR FRENCH announced that he would hold SB 18 in committee and that that the committee would hear the remainder of the analysis at a future meeting.

SB 132-ASSESSMENT REVIEW BOARD APPEALS

[2:26:26 PM](#)

CHAIR FRENCH announced the consideration of SB 132.

SENATOR WIELECHOWSKI, Sponsor of SB 132, stated that the Department of Law and the Palin Administration are seeking this legislation, which would change the rules regarding appeals of

decisions made by the State Assessment Review Board (SARB). This board consists of five expert members who adjudicate property tax disputes between petroleum companies, municipal governments, and the state that could not be settled at the department level.

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SENATOR WIELECHOWSKI explained that if the municipality, borough, city or a producer isn't able to settle the dispute at the department level, the appeal goes before the SARB for a hearing. At that time valuation evidence is presented and the board makes a decision. If there is a dispute after that, current law allows the party a third bite at the apple to go to superior court. This is unlike any other property tax assessment appeal in Alaska and unlike most appeals from other boards and commissions, he stated. The superior court hears the case and then has the ability to completely disregard the SARB decision.

SENATOR WIELECHOWSKI pointed out that these are complex cases that take several months of a judge's time to try. There's a judicial shortage in the state and there's a huge backlog of criminal cases so these property tax assessment appeals add to the problem. To address this, SB 132 establishes the appeal as a review on the record and not as a trial de novo. No one loses the right to appeal, but the judge simply reviews the SARB decision based on the written record. Then the case is decided in a relatively short time saving everyone time and money. This is the process that is available to every other taxpayer in the state, he said. The fiscal note is zero.

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CHAIR FRENCH opened public testimony.

STEVE VAN SANT, Chair, State Assessment Review Board, said this bill is sorely needed. He explained that the five member board was initially set up to have a panel of experts listen to these appeals and make these decisions. To circumvent the SARB and go to trial de novo makes him feel that the board's services aren't appreciated or that the appellants want to sandbag the evidence and present it to the court rather than the board. Every hearing we bend over backwards to help both sides of the issue present evidence over the objections of the opposing party because we want to hear all the evidence before making a decision, he stated. If the de novo language stays and the SARB can be circumvented it doesn't do the appellants any good and it certainly doesn't do the residents of the state any good.

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SENATOR WIELECHOWSKI asked what kind of hearing the parties get before the SARB.

MR. VAN SANT replied the board hears all appeals for any oil and gas property across the state. The evidence that's presented varies, but the board bends over backwards to get everything it can to make a complete decision. Some cases are drilling rig appeals, sometimes it's a TAPS appeal, and once the seawater treatment plant was appealed. "I can't think of a time that we've excluded information that would help us make a decision," he said.

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KEN DIEMER, Assistant Attorney General, Civil Division, Oil, Gas, & Mining Section, Department of Law, Anchorage, pointed out that in accordance with Alaska law, SB 132 would establish consistency with the state court's recognition that the norm of judicial review of agency action will be on the record that was developed for the agency. Therefore SB 132 reflects the established rule in Alaska that when a question of law involves agency expertise, the court will review the SARB decision under a reasonable basis test and defer to the board when the interpretation is reasonable.

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CHAIR FRENCH asked if he had participated in the SARB review hearing process.

MR. DIEMER said he participated in the SARB hearing relating to the 2005 assessment of TAPS.

CHAIR FRENCH asked if the proceedings are conducted according to rules of evidence or more informally.

MR. DIEMER replied they're conducted very much like most administrative agency proceedings. There's a pre-hearing conference where the parties meet with Mr. Van Sant and discuss pre-hearing deadlines for filing briefs or opening statements as well as all documentary evidence. The hearing is convened and can last up to nine hours a day for three days. During that time there's opening statement, presentation of witnesses along with the ability for cross examination. Documentary evidence is presented and on occasion parties will object to the introduction of certain evidence on various evidentiary grounds. But because it is an administrative agency hearing, the rules of evidence, by law and by regulation, are somewhat relaxed. Therefore the board has the authority to admit lots of evidence

over objections from the parties. At the end there are closing statements so it's similar to a courtroom proceeding.

CHAIR FRENCH asked if the appeals are conducted before a superior court jury or before a bench trial.

MR. DIEMER replied it's strictly a bench trial.

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SENATOR WIELECHOWSKI asked if there's potential for the parties to present entirely new argument and evidence before the judge that wasn't brought before the SARB.

MR. DIEMER said DOL understands that new facts and evidence can be presented, which may not have been presented to the SARB. Current statute provides that a municipal property owner "may appeal to the superior court for and is entitled to trial de novo of the board's action."

SENATOR WIELECHOWSKI asked how much time a superior court judge spends on these trials.

MR. DIEMER said it depends. A SARB decision is currently on appeal and pending in superior court, but the trial isn't scheduled until February 2008. Pretrial hearings and procedures began in August or September of 2006. These matters will presumably continue right up until the trial date.

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SENATOR WIELECHOWSKI asked how long the actual trial would take.

MR. DIEMER replied it depends on the amount of evidence that's presented, but some of the parties have indicated the trial could last upwards of 6 to 7 weeks.

CHAIR FRENCH asked how many SARB decisions are appealed to superior court, and how much of the 6 to 7 weeks would not take place if the standard were to change to a hearing on the record.

MR. DIEMER said a minimal number of appeals come out of the SARB to the court. He didn't want to speculate about the timing.

[2:48:51 PM](#)

BERNARD HAJNY, Manager, Production Tax and Royalty, BP Exploration (Alaska) Inc., said the point he wants to make is that the administrative hearing before the SARB is inadequate. It simply provides an expedited administrative proceeding that's

geared for a quick review and provides the opportunity to correct obvious errors. A real trial is provided following the SARB presentation to fully address issues if it's necessary.

MR. HAJNY said that in a recent case the taxpayer and the municipality estimated that a fair trial would take 40 days. In another case both parties said that the SARB procedures are inadequate and each asked to augment the record. A second issue relates to the short time limitations that are imposed by law. Sometimes the SARB has just a week to consider the evidence and write and issue a decision. The SARB proceeding is summary and not intended to provide a full and thorough hearing. The task is too big and the time is too short, but it's acceptable because the parties are able to augment the record in superior court. The proposed change unbalances the process. "Trial de novo is the cornerstone of a fair tax appeal system and is a way of ensuring...a fair and adequate hearing, which protects...due process rights," he stated.

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SENATOR WIELECHOWSKI questioned if any other taxpayers in the state are entitled to a trial de novo.

MR. HAJNY replied he isn't familiar with the property tax appeal process other than for AS 43.56 [oil and gas] property.

SENATOR WIELECHOWSKI asked if he's familiar with the Board of Equalization process.

MR. HAJNY said he's familiar with its process in other states.

SENATOR WIELECHOWSKI asked if he's ever requested a change to the SARB statute to provide a more adequate means to present evidence or obtain a decision.

MR. HAJNY said he isn't aware that BP has brought any such legislation forward.

CHAIR FRENCH asked if there's an explicit statute that limits the time that SARB can consider a case to just three days. Is that how it works?

MR. HAJNY said he doesn't know if there's a specific statute, but his experience is that these cases involve large complex properties and the proceeding is limited to three days. Generally three parties are involved—the oil and gas company, the state, and the municipality where the property sits. He

noted that the property that Mr. Diemer mentioned has multiple owners and each one is entitled to file an appeal and present evidence, but there simply isn't time.

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SENATOR HUGGINS asked how this system compares to other states.

MR. HAJNY said he knows for certain that California and Texas allow trial de novo after the administrative hearing process has been completed. He believes most other states do as well.

SENATOR HUGGINS commented that this system is consistent with at least some other states.

MR. HAJNY said yes.

[2:56:05 PM](#)

MICHAEL FRAILEY, Tax Attorney, ConocoPhillips, stated opposition to SB 132. He said that ConocoPhillips believes the SARB process is expedited and that it doesn't provide enough time for any appellant to build a sufficient record. Thus a trial de novo is necessary to supplement the record. ConocoPhillips further believes that AS 43.56 properly provides a trial de novo to deal with the extremely complex and expensive oil and gas property tax valuations.

SENATOR McGUIRE questioned how often ConocoPhillips has appealed a SARB decision.

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MR. FRAILEY said a few times. He explained that the assessor comes out with the valuation and the company or the municipality has opportunity to appeal the decision. An informal conference follows and the state assessor is allowed to make adjustments based on that conference. If the parties still don't agree with the state then they are allowed to appeal to the SARB. At that level there is a somewhat truncated process. Appeal after the SARB is rare and in his experience that hasn't been done many times. ConocoPhillips did appeal the TAPS 2006 assessment but it didn't appeal the 2005 assessment even though it didn't get the desired result at the SARB.

SENATOR McGUIRE asked if the bill eliminates the lower-level municipal board and bumps it to SARB immediately.

SENATOR WIELECHOWSKI said the parties still have the right to appeal, but it's not a trial de novo.

SENATOR McGUIRE added "you can't do the full record."

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CHAIR FRENCH clarified that you'd do a full record of what happened at the SARB, but you can't supplement the record with new evidence.

SENATOR HUGGINS said he'd like information from the producers about how often the SARB decisions are appealed.

CHAIR FRENCH asked Mr. Frailey to look at the number of appeals ConocoPhillips and BP filed in the last ten years.

MR. FRAILEY agreed to get the information.

SENATOR HUGGINS commented that if more information makes for a better decision he'd support it, but he doesn't support stringing the process out a long time.

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CHAIR FRENCH asked what sets the length of the SARB hearings.

MR. DIEMER replied it isn't set statutorily. Generally the parties meet at a pre-hearing conference and the SARB chair dictates the length of time for the hearing. At that point the parties can make their objections known. Noting that that hasn't been done in quite some time, he said that the timeframe is circumscribed by the overall statutory scheme concerning assessments of oil and gas property. He added:

The legislature provided three months from March 1 to the date that the department has to issue assessments on all oil and gas properties in the state. That's hundreds of thousands of assets owned by numerous taxpayers. This is the time period in which the department has to provide the opportunity for informal conference appeals and decisions, formal hearings before the board, and the certification of these assessments...Once the assessments go out on March 1, taxpayers have until April 20 of the tax year to appeal to the board for a formal hearing. The board has to convene hearing in order to allow time to hear the appeal and render a reasoned decision in time for the assessment rolls to be certified on June 1.

CHAIR FRENCH said the committee may consider adjusting that timeframe because there should be adequate time for all parties to a complex dispute to marshal their arguments and evidence and do it in one place.

SENATOR McGUIRE stated that oil and gas property tax appeals are more analogous to an RCA appeal than a homeowner's property tax appeal so she'd like to know more about the RCA appeal process. With regard to the decade long look-back on appeals she said she'd like to know what kind of information wouldn't have been allowed without de novo.

CHAIR FRENCH advised that Senator McGuire is asking for a bit of commentary on each case he finds.

MR. FRAILEY said he'd try to do that but unless the evidence that was brought in was specifically a part of the ruling it may be difficult to tell what tipped the balance.

[3:06:18 PM](#)

CHAIR FRENCH added that it may be a story that you pick up from a colleague more than something that's in the record. He announced he would hold SB 132 in committee.

There being nothing further to come before the committee, Chair French adjourned the meeting at [3:06:26 PM](#).