FISCAL NOTE

Bill #: SB 224

Title: Real estate transfer tax to fund local planning efforts.

Primary Sponsor: Ken Toole

Status: Introduced

____
Sponsor signature Date

____
Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Revenue:		
(Affordable housing revolving loan provided in 90-6-1)	$2,685,238	$2,816,661
(Agricultural heritage provided for in 2-15-3322)	$2,685,238	$2,816,661
Net Impact on General Fund Balance:	**0**	**0**

Yes	No		Yes	No	
x		Significant Local Gov. Impact	x		Technical Concerns
	x	Included in the Executive Budget	x		Significant Long-Term Impacts
	x	Dedicated Revenue Form Attached		x	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Revenue

1. For this analysis, it is assumed that the base for the realty transfer tax is composed of the transfer of commercial land and improvements, residential land and improvements, non-exempt forestland and utility real property when the value declared on the transfer certificate is in excess of $100,000. The tax is placed on the value of the property in excess of $100,000.
2. It is estimated that in 1999 there were 360,000 residential dwellings in Montana (DOR). Estimated number of existing single-family home sales in 1999 is 19,100 (National Association of Realtors). Using the aforementioned assumptions, the anticipated rate of sale is 5.31% (19,100 / 360,000).
3. Estimates of full actual consideration for residential dwellings is calculated by applying a growth index to the known 1997 reappraisal value. The house price index from 1997 to 2000 is 13.82% and 2.75% from 1999 to 2000; it is assumed that growth in subsequent years will be 2.75% (Office of Federal Housing Enterprise Oversight).
4. It is projected that 129,109 residential land and improvement properties will have a FY 2002 consideration value over $100,000, with a total estimated FY 2002 value of $21,554,300,931. It is

projected that the number of residential land and improvement properties with a value over $100,000 will increase to 135,080, and have a total estimated FY 2003 value of $22,752,479,581 (DOR).

5. To find the tax base, $100,000 is subtracted from the real property value declared on the reality transfer certificate. The total combined amount in excess of $100,000 on the estimated 129,109 residential land and improvement properties is approximately $8,643,400,931 for FY 2002 (DOR). The total combined amount in excess of $100,000 in FY 2003 for the estimated 135,080 residential land and improvement properties is approximately $9,244,479,581 (DOR).
6. Assuming the anticipated rate of sale to be 5.31% for both years provides a tax base of $458,964,589 ($8,643,400,931 x 5.31%) for FY 2002 and $490,881,866 ($9,244,479,581 x 5.31%) for FY 2003.
7. It is projected that a 1% realty transfer tax on real property of residential land and improvements in excess of $100,000 will generate $4,589,646 and $4,908,819 in fiscal years 2002 and 2003 respectively.
8. For purposes of this fiscal note, the same estimated growth index applied to residential properties was also used to estimate true market value of commercial properties for FY 02 and FY 03. The house price index from 1999 to 2000 is 2.75%; it is assumed that growth in subsequent years will be 2.75% (Office of Federal Housing Enterprise Oversight).
9. In FY 02 there is an estimated 829 commercial property sales in excess of $100,000, with an estimated total combined sales value in excess of $100,000 of $189,615,289 (DOR). In FY 03, there is an estimated 848 commercial property sales in excess of $100,000, with an estimated total combined sales amount in excess of $100,000 of $197,125,007 (DOR).
10. It is projected that the amount of tax generated from the realty transfer tax on commercial real property will be $1,896,153 ($189,615,289 x 1%) in FY 02 and $1,971,250 ($197,125,007 x 1%) for FY 03.
11. For fiscal year 2001, there were 4,126 non-exempt forestland properties with a 1997 reappraisal value over $100,000, having a total estimated value in excess of $100,000 of $1,172,360,277 (DOR).
12. For the purposes of this fiscal note the estimated transfer rate of 5.31% for residential property is also used for non-exempt forestland property. Applying the anticipated transfer rate of 5.31% to the estimated base of $1,172,360,277 for non-exempt forestland yields a tax base of $62,252,331.
13. It is projected that a 1% realty transfer tax on non-exempt forestland in excess of $100,000 will generate $622,523 in revenue ($62,252,331 x 1%).
14. The estimated market value of other real property is $1,784,166,070, which includes railroad and airline real property, telecommunication and electric generation real property, and other utility real property (DOR).
15. For the purposes of this fiscal note, the entire $1,784,166,077 is set against the transfer rate when calculating the tax base.
16. For the purposes of this analysis the anticipated transfer rate of 5.31% for residential property is also used for the other real property category.
17. Based on the aforementioned assumptions, the estimated base for other real property is $94,739,219 ($1,784,166,077 x 5.31%).
18. The estimated revenue generated from a 1% realty transfer tax on other real property in excess of $100,000 is $947,392 ($94,739,219 x 1%).
19. It is estimated that the total amount of revenue generated from the 1% realty transfer tax on residential land and improvements, commercial land and improvements, non-exempt forestland, and other real property in excess of $100,000 in FY 02 is estimated to be $8,055,714 ($4,589,646 + $1,896,153 + $622,523 + $947,392) and $8,449,984 ($4,908,819 + $1,971,250 + $622,523 + $947,392) in FY03.

Distribution

20. The split of revenue from the 1% realty transfer tax on real property in excess of $100,000 for FY 2002 is $2,685,238 to the affordable housing revolving loan state special revenue fund account provided in 90-6-

(continued)

133, $2,685,238 to the agricultural heritage state special revenue fund account provided for in 2-15-3322, and $2,685,238 to local governments for planning activities. The split of revenue from the 1% realty transfer tax on real property in excess of $100,000 for FY 2003 is $2,816,661 to the affordable housing revolving loan state special revenue fund account provided in 90-6-133, $2,816,661 to the agricultural heritage state special revenue fund account provided for in 2-15-3322, and $2,816,661 to local governments for planning activities.

21. If the bill is passed in April of this year, there will be estimated revenues of $1,342,619 ($8,055,714/(2/12)) generated in the two months for FY 2001. The split of revenue from the 1% realty transfer tax on real property in excess of $100,000 for FY 2001 is $447,540 to the affordable housing revolving loan state special revenue fund account provided in 90-6-133, $447,540 to the agricultural heritage state special revenue fund account provided for in 2-15-3322, and $447,540 to local governments for planning activities.

Administrative costs

22. The department would bear administrative costs relative to the extent of the department's role in determining the value of the real property being transferred. If the responsibility of determining the value of the real property belongs to the county treasurer then administrative costs to the department would be low. Administrative costs to the department would be high if the department is required to allocate sales price between exempt and non-exempt property and between taxing jurisdictions.
23. The department would bear other administrative costs relative to the extent of the department's role in the dispute resolution process. To ensure fair and equitable resolutions to realty transfer tax disputes the department would bear administrative costs to the extent of the number and complexity of the disputes. Taxpayers wanting to escape the tax can manipulate their transaction to avoid the tax (see technical note 1). If the department is responsible for defending the value used by the treasurer in calculating a tax on a transfer considered a non-arms-length transaction or a transaction where the value of real property is not clearly expressed on the realty transfer certificate, then the administrative costs could be significant.

FISCAL IMPACT:

If the bill is passed in April of this year, there will be estimated revenues of $1,342,619 ($8,055,714 / (2 / 12)) generated in the two months for FY 2001. The split of revenue from the 1% realty transfer tax on real property in excess of $100,000 for FY 2001 is $447,540 to the affordable housing revolving loan state special revenue fund account provided in 90-6-133, $447,540 to the agricultural heritage state special revenue fund account provided for in 2-15-3322.

	FY2002 Difference	FY2003 Difference
Funding:		
State Special Revenue (02)		
(Affordable housing revolving loan provided in 90-6-133)	$2,685,238	$2,816,661
(Agricultural heritage provided for in 2-15-3322)	$2,685,238	$2,816,661
Revenues:		
State Special Revenue (02)		
(Affordable housing revolving loan provided in 90-6-133)	$2,685,238	$2,816,661
(Agricultural heritage provided for in 2-15-3322)	$2,685,238	$2,816,661

Net Impact to Fund Balance (Revenue minus Expenditure):

State Special Revenue (02)

(Affordable housing revolving loan provided in 90-6-133)	$2,685,238	$2,816,661
(Agricultural heritage provided for in 2-15-3322)	$2,685,238	$2,816,661

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

It is estimated that the proposal will result in an increase in revenue to local governments for planning activities of $447,540 in FY 01, $2,685,238 in FY 02, and $2,816,661 in FY 03.

TECHNICAL NOTES:

1. This bill as written has technical flaws, which make it very difficult to administer in a fair and equitable manner. Taxpayers wanting to escape the tax can manipulate their transaction to avoid the tax. These flaws need to be addressed so that the tax can be applied uniformly to similarly situated taxpayers. As an example, the tax is directly tied to the amount listed on the realty transfer certificate. There is no provision for determining a tax that is based on any other than the amount on the realty transfer certificate. There is a definition of “value” but this term is not used in the body of the bill to provide for an assessment different from one based on the amount on the realty transfer certificate. Taxpayers can apparently put any amount they want on the realty transfer certificate without penalty. In addition, the taxpayer could split their transfers among two or more realty transfer certificates to stay below the $100,000 limit. On the flip side of the coin, the treasurer can assess additional taxes but there is no provision for the taxpayer to receive a refund if they over pay the tax. Finally, the treasurer makes the assessment but the Department of Revenue handles appeals. If the Department and the treasurer disagree, who defends the appeal? Further analysis will undoubtedly lead to further issues that need to be addressed in order to administer this tax.
2. The proposal requires that the realty transfer tax be imposed on the value declared on the realty transfer certificate that is in excess of $100,000. The value listed on the certificate could include consideration for the transfer of property not subject to the tax (business equipment, agricultural land, liquor licenses and other intangible property, etc.). The proposal does not provide a mechanism for allocating the sales price listed on the realty transfer certificate to the exempt and non-exempt property being transferred.
3. Generally, the sale of utility properties will involve property located in more than one county. The single sale value would have to be allocated to the affected counties, and reflect only consideration paid for real property. The proposal does not provide a mechanism for allocating sale value to affected counties.
4. The proposal specifies an allocation of one-third to the local government where the property is located, but does not define which local government would receive the allocation. For instance, if the property is located in a city, does the city receive the revenue, or would the revenues be split between the two jurisdictions. If the term local government is extended to school districts in this proposal, then the tax should be distributed to the school district treasurer.
5. The realty transfer certificate does not require transfers of forestland to specify the value of the transfer.
6. If non-qualified agricultural land is transferred at non-arms-length, the department could not provide an accurate market value because it is classified and valued under agricultural land for taxing purposes only.
7. The bill indicates the treasurer has the authority to determine eligibility for exemption. If the taxpayer disagrees with the assessment or the denial of the exemption, the proposal states the Department of Revenue must handle disputes through the dispute resolution process under 15-1-211 MCA. Although the bill implies the treasurer has the authority to determine exemption, it is still unclear if the treasurer has express authority