FISCAL NOTE

Bill #: SB0301 **Title:** Real estate transfer tax

Primary Sponsor: Toole, K **Status:** Amended

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary	**FY 2004 Difference**	**FY 2005 Difference**
Expenditures:		
General Fund	$108,360	$89,927
Revenue:		
General Fund	$1,722,986	$1,788,503
State Special Revenue	$6,891,945	$7,154,012
Other	$453,417	$470,659
Net Impact on General Fund Balance:	$1,614,626	$1,698,526

- [x] Significant Local Gov. Impact
- [ ] Included in the Executive Budget
- [ ] Dedicated Revenue Form Attached
- [x] Technical Concerns
- [x] Significant Long-Term Impacts
- [ ] Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS

Revenue

1. SB 301, implements a 1% realty transfer tax upon the transfer of certain real property when a transfer of title is filed after June 30th 2003.
2. For this analysis, it is assumed that the base for the realty transfer tax is composed of the transfer of commercial land and improvements, non-primary residence residential land and improvements, non-exempt forestland, and utility real property upon transfer of title.
3. The following analysis assumes that all transfers subject to the realty transfer tax pay the tax based on the (tax year 2003) full reappraisal value of the property at the time of the sale, and that each transaction is recorded on a realty transfer certificate (see technical notes 1, 2, 4, 5).
4. For purposes of this fiscal note, fiscal 2004 reappraisal values for residential land and improvements are based on preliminary 2003 full reappraisal values. The fiscal 2005 residential land and improvements tax base is estimated by applying an estimated annual growth rate of 4% to the preliminary 2003 full reappraisal value.
5. The preliminary 2003 (fiscal 2004) full reappraisal value statewide of all residential land and improvements is approximately $37,000,000,000. The estimated statewide total of all residential land and improvements for fiscal 2005 is $38,480,000,000 ($37,000,000,000 x 104%).

6. It is estimated that there are approximately 317,000 single-family residential dwellings in Montana. The estimated number of existing single-family home sales in 2001 was 22,600 (National Association of Realtors). Using the aforementioned assumptions, the anticipated rate of sale is 7.1% (22,600 / 317,000).
7. According to the U.S. Census Bureau, there are 248,000 owner occupied housing units in Montana. Using the Census number of 248,000, as an indication of the number of resident owned homes, would equate to approximately 69,000 (317,000 – 248,000) non-primary residence properties, or 21.8% (69,000 ÷ 317,000).
8. Assuming non-primary residence property comprises 21.8% of the value of all residential land and improvement; using an anticipated rate of sale of 7.1% for both fiscal 2004 and 2005 provides a tax base of $572,686,000 ($37,000,000,000 x 21.8% x 7.1%) in fiscal 2004, and $595,593,440 ($38,480,000,000 x 21.8% x 7.1%) in fiscal 2005.
9. It is projected that a 1% realty transfer tax on non-primary residence residential land and improvements would generate $5,726,860 ($572,686,000 x 1%), and $5,955,934 ($595,593,440 x 1%) in fiscal years 2004 and 2005 respectively.
10. In fiscal year 2003 there were approximately 1,330 commercial property sales, with an estimated total combined sales value of $304,800,000 (DOR).
11. The proposal exempts multiunit dwellings, which accounts for approximately 10% of all commercial property. Anticipated sales subject to the 1% transfer tax on commercial property are reduced by 10% for multiunit dwellings. This reduces the combined sales value of commercial property to be taxed under the proposal to $274,320,000 ($304,800,000 x 90%).
12. Using an annual growth rate of 4% for commercial property, commercial sales are estimated at $285,292,800 ($274,320,000 x 104%) for fiscal 2004, and $296,704,512 ($285,292,800 x 104%) for fiscal 2005.
13. It is projected that the amount of tax generated from the 1% realty transfer tax on commercial real property will be $2,852,928 ($285,292,800 x 1%) in FY 04, and $2,967,045 ($296,704,512 x 1%) in FY 05.
14. Forest land values typically remain constant; they are held at their preliminary 2003 value for forecasting fiscal 2004 and 2005 revenues. The preliminary 2003 (fiscal 2004) full reappraisal values statewide of forest land property is approximately $2,034,000,000.
15. For purposes of this fiscal note, the anticipated rate of sale for forest land is 2% per year.
16. The estimated realty transfer tax base for forest land property for both fiscal 2004 and 2005 is $40,680,000 ($2,034,000,000 x 2%).
17. The estimated tax from a 1% realty transfer tax on forest land property is $406,800 ($40,680,000 x 1%) each year.
18. There is an estimated tax year 2002 (fiscal 2003) reappraisal value of $1,603,155,000 in other real property, which includes railroad and airline real property, telecommunication and electric generation real property, and other utility real property (DOR).
19. Railroad and airline property, telecommunication and electric generation property, and other utility property are estimated to grow by 2% each year.
20. The fiscal 2004 value of this other property is estimated at $1,635,218,100 ($1,603,155,000 x 102%). The fiscal 2005 value is estimated at $1,667,922,462 ($1,635,218,100 x 102%).
21. The transfer rate of telecommunication, industrial, and utility property can fluctuate significantly from year to year. For instance, large utility and industrial property in general do not change ownership often, but when they do, large amounts of property are transferred. For purposes of this fiscal note, it is assumed that 0.5% of property will have a transfer in ownership each year.
22. Based on the above assumptions, it is estimated that the real property of railroad and airline property, telecommunication and electric generation property, and other utility property subject to the tax is $8,176,091 ($1,635,218,100 x 0.5%) in fiscal 2004, and $8,339,612 ($1,667,922,462 x 0.5%) in fiscal 2005.

23. The estimated revenue generated from a 1% realty transfer tax on other real property of railroad and airline property, telecommunication and electric generation property, and other utility property subject to the tax is $81,761 ($8,176,091 x 1%) for fiscal 2004, and $83,396 ($8,339,612 x 1%) for fiscal 2005.
24. 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 fiscal year 2004 is estimated to be $9,068,349 ($5,726,860 + $2,852,928 + $406,800 + $81,761), and $9,413,175 ($5,955,934 + $2,967,045 + $406,800 + $83,396) in fiscal year 2005.

Distribution

25. 5% of the total tax each year is deposited in the county general fund to defray county costs associated with the bill. County general funds will receive an estimated $453,417 ($9,068,349 x 5%) in fiscal 2004, and $470,659 ($9,413,175 x 5%) in fiscal 2005.
26. The remaining 95% of estimated revenue from the 1% realty transfer tax on real property is $8,614,932 for fiscal year 2004 and must be distributed as follows: $5,168,959 to the affordable housing revolving loan state special revenue fund account provided in 90-6-133, $1,722,986 to the agricultural heritage state special revenue fund account provided for in 2-15-3322, and $1,722,986 to the state general fund.
27. The remaining 95% of estimated revenue from the 1% realty transfer tax on real property is $8,942,516 for fiscal year 2005 and must be distributed as follows: $5,365,509 to the affordable housing revolving loan state special revenue fund account provided in 90-6-133, $1,788,503 to the agricultural heritage state special revenue fund account provided for in 2-15-3322, and $1,788,503 to the state general fund.
28. If the agricultural heritage state special revenue fund account provided for in 2-15-3322 is not made permanent, then 20% of revenue is to go to the counties for land use under Title 76, chapters 1, 2, and 6.

Administrative Costs

29. Administrative costs are based on the assumption that the department will use the most current reappraisal value as the "value" of transferred property to calculate the tax for non-arm's length transactions, and when a declared market value on the realty transfer certificate (RTC) does not match the sales price (see technical note 2). It is also assumed that the county treasurer will determine primary residence status (see technical note 8).
30. It is estimated that 31,500 properties would be reviewed each year to determine the value of non-arm's length transactions, and a value when a declared market value on the realty transfer certificate (RTC) does not match the sales price (see technical notes 1,2,4,5).
31. Assume 10 minutes per review on the 31,500 properties is 5,200 hours (31,500 x 10 minutes ÷ 60 minutes).
32. Three additional FTE will be required under the proposal to review the 31,500 properties (5,200 hours ÷ 1,760 work time hours per employee per year), at a cost of $76,686 in fiscal 2004, and $76,195 in fiscal 2005.
33. Equipment and operating expenses, which include contract services, supplies, rent, computer equipment, and a one time exemption affidavit set up cost is estimated at $31,674 in fiscal 2004, and $13,782 in fiscal 2005.
34. Total estimated administrative costs are $108,360 ($76,686 + $31,674) in FY 2004, and $89,977 ($76,195 + $13,782) in FY 2005.
35. 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 (see technical note 9).

Fiscal Note Request SB0301, Amended
(continued)

FISCAL IMPACT:	FY 2004 Difference	FY 2005 Difference
FTE	3.00	3.00
Expenditures:		
Personal Services	$76,686	$76,195
Operating Expenses	$14,274	$13,782
Equipment	$17,400	$0
TOTAL	$108,360	$89,977
Funding of Expenditures:		
General Fund (01)	$108,360	$89,977
Revenues:		
General Fund (01)	$1,722,986	$1,788,503
State Special Revenue (02)		
Affordable Housing 90-6-133, MCA	$5,168,959	$5,365,509
Agricultural Heritage 2-15-3322, MCA	$5,168,959	$5,365,509
Other (County General Funds)	$453,417	$470,659
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	$1,614,626	$1,698,526
State Special Revenue (02)		
Affordable Housing 90-6-133, MCA	$5,168,959	$5,365,509
Agricultural Heritage 2-15-3322, MCA	$5,168,959	$5,365,509
Other (County General Funds)	$453,417	$470,659

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. SB301 allocates 5% of the revenue collected to the county general fund. This is estimated to be $453,417 in FY2004 and $470,659 in FY2005.

LONG-RANGE IMPACTS:

1. Revenues estimated under this act will continue to be collected in future years and will grow with the value of properties and increases in transactions.

TECHNICAL NOTES:

1. The proposal requires that the realty transfer tax be imposed on the value declared on the realty transfer certificate. 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.
2. New Section 3(4) allows any person transferring property to declare a value different than the sales price as the actual value. If a person makes a declaration, the transfer tax is calculated and collected by the treasurer on the declared value, then that amount is compared to an actual tax amount based on the most recent full reappraisal value. This would create a tax advantage to those individuals making such a declaration of value. Since the department reappraises property in 6-year cycles, full reappraisal values will almost always be lower than the selling price in a arm's length transaction. The period of time since

the last reappraisal cycle will determine just how much lower the full reappraisal value is from the actual market value or selling price: which could be a significant amount. This tax advantage would become common knowledge, and it is expected that in nearly all cases the realty transfer tax specified under this proposal would be calculated using the full reappraisal value.

3. New Section 3(4)(d)(ii) allows for a refund by the department if the full reappraisal value is lower than the amount declared. Since the county treasurer collects the money and transmits it to the state on the monthly collection report and 100% of the funds are distributed, it is unclear where the DOR get the money to refund the tax?
4. 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.
5. The realty transfer certificate currently does not require transfers of forestland to specify the value of the transfer.
6. In New Section 2, Sub (4)(a)(i), the intent of the part that states "including the amount of any lien or liens on the real property" as declared on the certificate required in 15-7-305, MCA is unclear. There is nothing in 15-7-305 (Realty transfer certificate requirement) that addresses including the amount of liens on the property. The way its worded may require the DOR to conduct title searches to validate this information.
7. New Section 3(5)(a)&(b) state that if property subject to the tax is located in more than one county, the treasurer will collect the total amount of tax due and forward it to the department, etc. Property cannot be transferred without filing a deed in each county along with a corresponding RTC in each county, so this portion of the new section is confusing
8. It is not clear who will determine whether a realty transfer involves a primary residence under Section 4 (1)(b). Section 4 (1)(b) refers to 1-1-215, MCA, which does not specify who would qualify as a resident. Similar issues exist for agricultural property and ensuring a transfer is for agricultural purposes before granting an exemption. Amendments may be needed to clarify this policing of sales.
9. New Section 5(2)(a) refers the appeal provision to 15-1-211, MCA, which is the Office of Dispute Resolution. According to that statute, property taxes are specifically excluded from that process. The appeal should be directed to the county tax appeal process outlined in 15-15-101 through 104, MCA.
10. New Section 12 – Applicability Date. Passage of this legislation would require the department to adopt administrative rule, develop procedures and provide training to DOR staff. It is unlikely the DOR could accomplish this by the applicability date of 6/30/03.
11. Amendment 7, where value is stricken from page 3 line 12, and "full reappraisal value as the data of recording" is inserted. Market value as used, should not be replaced because it refers to Section 3(4)(b), which is the value reported by the person transferring the property.