LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

301 State House
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FISCAL IMPACT STATEMENT

LS 8216 **DATE PREPARED:** Jan 25, 1999
BILL NUMBER: HB 2089 **BILL AMENDED:**

SUBJECT: Budget and personnel management.

FISCAL ANALYST: Susan Preble
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FUNDS AFFECTED: X **GENERAL** **IMPACT:** State
DEDICATED
FEDERAL

Summary of Legislation: This bill has the following provisions:
(1) Expands the number of public employees in the executive department of state government who are merit employees;
(2) Provides for search committees to make hiring and promotion decisions for a state agency;
(3) Provides for oversight of the staffing levels, budgets, and organizational decisions of a state agency by an administrative oversight board;
(4) Makes the state and a state employee or agent who commits a civil rights violation liable for damages, including emotional distress, punitive damages, costs and attorneys fees resulting from a violation of a person's civil rights and;
(5) Makes other changes..

Effective Date: July 1, 1999.

Explanation of State Expenditures: This bill makes all state executive branch employees merit employees. Currently, there are 34 non-merit and 20 merit agencies. The 92 local Offices of Family and Children are not counted as separate state agencies, but are considered part of the Family and Social Services Administration. Similarly, state penal institutions are considered part of the Department of Correction and are not counted separately. Excluding the judicial branch and elected officials, there are 22,641 merit employees and 12,192 non-merit employees.

This bill requires the Director of the State Personnel Department to establish a six-member search committee for each appointing authority consisting of one employee of the appointing authority and five people who are faculty members at public or private universities or colleges. Each search committee will fill vacancies, approve reassignments, and make promotions in the classified service (which includes all civil offices and positions in the state service, and excludes all inmate help in all state penal, charitable, correctional, and benevolent institutions). The search committees will be staffed by the State Personnel Department. Search committee members who are state employees will receive reimbursement of travel expenses. Members who are not state employees are to receive per diem of $50 per day, in addition to travel reimbursement.

It makes the discretionary notification of entrance tests in professional and trade publications, schools and colleges and other areas, by the Director of the State Personnel Department mandatory. It also requires each appointing authority to publish classified service vacancies in several different newspapers, depending upon the geographic location of the vacancy.

The bill requires each appointing authority to establish policies to prevent discrimination by employees of the appointing authority and provide standards to guide employees in taking corrective action to eliminate discrimination. It also requires an appointing authority to terminate the employment of an employee or other agent of the appointing authority, if after a hearing, the authority determines the individual discriminated or failed to take corrective action to eliminate discrimination. An employee terminated under this provision cannot be rehired, promoted or provide services for the appointing authority.

This bill mandates an automatic 6% salary increase each year beginning January 1 within the maximum salary range of the employee's classification, in addition to any cost of living increase fixed by the Governor. Excluding the judicial branch and elected officials, the state currently pays approximately $999,562,000 in salaries every year. This provision will cost an estimated $59,937,720 in FY 2000 and $63,572,143 in FY 2001.

This bill also establishes an administrative oversight board for each state agency (excluding the Offices of the Governor, Lt. Governor, Secretary of State, Auditor of State, and Treasurer of State). Each board will review and either approve, disapprove, or modify and approve as modified, all budgets, organizational changes, requirements for new offices or branches, requirements for new personnel, and promotion needs of the state agency. Each board will fix the salary of a new employee, new positions, and promoted positions in the state agency before the appointment of an employee to the position.

Each seven-member board will consist of two members appointed by the President Pro Tempore of the Senate, two members appointed by the Speaker of the House of Representatives, two members of the state agency who are not managers or supervisors appointed by three of the four legislative members, and one managerial or supervisory employee of the state agency to be appointed by the chief administrative officer of the state agency. The chairman of the Legislative Council appoints the chairperson of each board. The current Legislative Council Resolution allows for legislative members to receive per diem of $112 per day and lay members to receive $50 per day (state employees do not receive per diem). All members are entitled to a travel reimbursement of $.28 per mile.

This bill also establishes a civil cause of action for victims of bias by a state agency and provides a 10- or 15-year statute of limitations for administrative or civil actions brought by a person who suffers a loss (including emotional distress) as a result of a biased act or omission by an employee or other agent of a state agency. Under this cause of action, a plaintiff can seek recovery of actual and consequential damages, punitive damages, the costs of the action, and reasonable attorney's fees. The bill prohibits the application of the liability limitations provided under the existing Tort Claims Against Governmental Entities and Public Employees Act to cases filed under this new cause of action.

Because it expands the statute of limitations from two to ten or fifteen years for actions brought against the state, and provides a new specific cause of action, passage of this bill potentially increases the number of lawsuits filed against the state and its employees. In addition, it may increase state expenditures for damages when the state does not prevail due to the elimination of the liability limitations that are currently applied to actions filed against governmental entities and employees. Also, under current law, a governmental entity is not liable for punitive damages.

The Office of the Attorney General reports the amount of damages paid as a result of tort claims submitted and tort claim lawsuits filed against the State and by plaintiffs in tort and civil rights litigation between CY 1992 and CY 1997 as follows:

CY	Damages Paid
1997	$3,438,230
1996	$5,742,977
1995	$6,362,071
1994	$8,060,838
1993	$4,048,126
1992	$3,456,495

The amount paid includes tort claims paid at the time of claim submission, settlements upon the filing of lawsuits, and as a result of a court order. It also includes cases in both federal and state court.

Because this bill prohibits the Attorney General from defending a state employee or other agent of a state agency in a civil action based on a violation of a person's civil rights under any law, it will decrease litigation-related expenses for the Office of the Attorney General. However, the prohibition may force governmental entities to retain private attorneys to defend actions filed against them and their employees, which would increase governmental expenditures. The provision that prohibits the state from reimbursing a state employee or other agent of a state agency for the amount of any judgment awarded against the employee or agent as a result of a violation of a person's civil rights under any law, will decrease state expenditures to the extent the state currently reimburses it employees for damages awarded against them.

Explanation of State Revenues: This bill may increase filings of civil actions. The filing fee for civil actions is $100. Of this fee, 70% or $70 is deposited in the State General Fund if the case is filed in a trial court. If a civil case is filed in a city or town court (providing the court has jurisdiction), the State General Fund receives 55% of the $100 filing fee.

Explanation of Local Expenditures: Additional filings under this specific cause of action will have a minimal impact on the caseloads of trial or city and town courts. The operating expenses of the trial courts are paid by the County General Fund. The expenses of the city and town courts are paid by the General Fund of the city or town in which the court is located.

Explanation of Local Revenues: If a case is filed in a trial court, the County General Fund receives 27% or $27 of the filing fee. The other 3% or $3 is deposited in the General Fund of the cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county or municipal court located in the county. If the case is filed in a city or town court (providing the court has jurisdiction), the County General Fund receives 20% while the city or town General Fund receives 25%.

State Agencies Affected: All state agencies and appointing authorities; State Personnel Department; Legislative Council; Office of the Attorney General; Indiana General Assembly.

Local Agencies Affected: Governmental entities; trial courts.

Information Sources: Keith Beesley, State Personnel Department, (317) 232-3062; State of Indiana HRM Staffing Report, run date 12-31-98; Barbara Crawford, Office of the Attorney General, (317) 232-6201; 1997 Indiana Judicial Report, Vol. I, p. 83.