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## FISCAL IMPACT REPORT

SPONSOR Chasey/Thomson LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/20/2023  
BILL  
SHORT TITLE Public Employee Retirement Needs Trust NUMBER House Bill 304  
ANALYST Simon

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Educational Retirement Board (ERB)  
Public Employee Retirement Association (PERA)  
Human Services Department (HSD)  
Office of the Attorney General (NMAG)

#### No Response Received

Department of Finance and Administration (DFA)  
Taxation and Revenue Department (TRD)

## SUMMARY

### Synopsis of House Bill 304

House Bill 304 would allow a supplemental needs trust to be named as a beneficiary of a public pension plan.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

No fiscal impact has been noted; however, analysis from the Human Services Department (HSD) suggests these trusts would be unsuccessful in allowing an individual to maintain Medicaid eligibility due to the requirements of federal law (see below). It is unclear whether revisions to

align the bill with the department’s interpretation of federal law would lead to a fiscal impact.

## SIGNIFICANT ISSUES

HB304 would allow a public employee who is a member covered by the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, or the Educational Retirement Act to name as their beneficiary a supplemental needs trust. Current law requires a “person” be named as beneficiary. Supplemental needs trusts are tools used to allow disabled individuals to receive funds without jeopardizing their access to public assistance benefits, such as Medicaid.

Under PERA and ERB, beneficiaries of another person’s retirement can receive payments in several ways. If the PERA or ERB member dies prior to retirement, the beneficiary is eligible for a lump sum payment of the member’s contributions, plus interest. Beneficiaries may also receive payments, based on the retirement option selected by a member upon retirement:

**Form of Payment A (“Straight Life”):** Under this option, a retired member receives payments for life and no payment is made to a beneficiary, unless the total amount received by the retired member before his or her death is less than the amount of the member’s contributions, plus interest. In that case, the beneficiary receives a lump sum payout of the remainder.

**Form of Payment B (“Joint Survivor 100%”):** Under this option, a retired member names a beneficiary who will continue to receive the monthly benefit after the member’s death. This option tends to provide the lowest monthly payment, versus Form A or Form C.

**Form of Payment C (“Joint Survivor 50%”):** Under this option, a retired member names a beneficiary who will continue to receive 50 percent of the monthly benefit after the member’s death. This option tends to prove a higher monthly payment than under Form C, but a lower amount than Form A.

HB304 appears to address an issue where beneficiary payments from PERA or ERB would make a disabled individual ineligible for public assistance programs due to income limitations of those programs.

### Reversionary Trust Requirements

HSD points to a provision of the federal Social Security Act (42 U.S.C. 1369p(d)(4)(A)), which it states would disallow trusts receiving a payment under this bill from qualifying for continued Medicaid eligibility. The department states continued Medicaid eligibility for those with supplemental needs trusts is based upon the trusts reverting to the state Medicaid agency upon the death of the beneficiary, up to the amount paid by Medicaid for the beneficiary’s care. HSD is the state’s Medicaid agency and would be the agency receiving any such reversion from a supplemental needs trust. HSD suggests the bill should include an additional stipulation that trusts revert to HSD upon the beneficiary’s death.

However, it is unclear from HSD’s analysis which provision of HB304 would prevent a trust receiving a payment from ERB or PERA being set up to revert to the state Medicaid agency upon the death of the beneficiary. The definition of “supplemental needs trust” would seem to require that the trust be set up to revert to HSD, as that is required under federal law and HB304

requires a trust to be “authorized by the federal Social Security Act” to be considered a beneficiary. While trusts that are not properly set up to revert to HSD may not be successful in maintaining an individual’s Medicaid eligibility, they would presumably not be eligible to be named a beneficiary.

JWS/al/ne