

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0359.01 Nicole Myers x4326

SENATE BILL 15-097

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

Landgraf,

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIGIBILITY OF A SUPPLEMENTAL NEEDS TRUST TO**
102 **RECEIVE CERTAIN PUBLIC EMPLOYEES' RETIREMENT**
103 **ASSOCIATION BENEFITS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Currently, retirees of the public employees' retirement association (PERA) seeking to provide for the well-being of their dependents who are disabled by naming such dependents as cobeneficiaries risk that the dependents will lose the right to needs-based government benefits as a result of such designation. Additionally, eligible survivors who are

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

entitled to survivor benefits under the law currently risk losing the right to needs-based government benefits as a result of such entitlement.

The bill allows a PERA retiree to designate a supplemental needs trust as a cobeneficiary eligible to receive a continuing benefit upon the PERA retiree's death. The bill also states that a supplemental needs trust is an eligible survivor under PERA law and able to receive PERA survivor benefits as provided under the PERA law and rules.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** The general assembly
3 hereby finds and declares that it is in the best interests of the people of the
4 state of Colorado to ensure that disabled dependents of PERA members
5 and retirees are not penalized by provisions of the law governing the
6 designation of cobeneficiaries and the provision of survivor benefits.
7 Currently, PERA retirees seeking to provide for the well-being of their
8 dependents who are disabled by naming such dependents as
9 cobeneficiaries risk that the dependents will lose the right to needs-based
10 government benefits as a result of such designation. Additionally, eligible
11 survivors who are entitled to survivor benefits under the law currently
12 risk losing the right to needs-based government benefits as a result of
13 such entitlement. Allowing the designation of a supplemental needs trust
14 as a cobeneficiary and providing that a supplemental needs trust is an
15 eligible survivor for the purpose of receiving survivor benefits
16 corresponds with the state's interests in ensuring that persons with
17 disabilities receive the care and assistance necessary and is consistent
18 with the state's vested public policy interest in ensuring financial stability
19 for surviving dependents of PERA members and retirees.

20 **SECTION 2.** In Colorado Revised Statutes, 24-51-101, **amend**
21 (10); and **add** (46.5) as follows:

22 **24-51-101. Definitions.** As used in this article, unless the context

1 otherwise requires and except as otherwise defined in part 17 of this
2 article:

3 (10) "Cobeneficiary" means:

4 (a) The person OR SUPPLEMENTAL NEEDS TRUST selected by the
5 member or ordered by court decree prior to retirement to be the person
6 selected under option 2 or 3 pursuant to the provisions of section
7 24-51-801 to receive a continuing benefit upon the retiree's death; or

8 (b) The person OR SUPPLEMENTAL NEEDS TRUST designated by a
9 member eligible for service retirement or ordered by a court decree prior
10 to retirement to be the person selected to receive option 3 upon the
11 member's death pursuant to the provisions of section 24-51-906.

12 (46.5) "SUPPLEMENTAL NEEDS TRUST" MEANS A SPECIAL NEEDS
13 TRUST ESTABLISHED UNDER THE CURRENT FEDERAL OR STATE LAW BY A
14 MEMBER OR RETIREE FOR THE SOLE BENEFIT OF THE MEMBER'S OR
15 RETIREE'S SPOUSE, CHILD, OR DEPENDENT PARENT WHO MEETS THE
16 DEFINITION OF AN INDIVIDUAL WITH A DISABILITY UNDER THE FEDERAL
17 "SOCIAL SECURITY ACT", AND WHICH TRUST OPERATES IN A MANNER
18 THAT:

19 (a) PERMITS THE INDIVIDUAL WITH A DISABILITY TO QUALIFY FOR
20 PUBLIC BENEFITS INCLUDING, BUT NOT LIMITED TO, THOSE UNDER THE
21 FEDERAL "SOCIAL SECURITY ACT" SUCH AS SUPPLEMENTAL SECURITY
22 INCOME AND MEDICAL ASSISTANCE; AND

23 (b) BY ITS TERMS:

24 (I) IS AN INTER-VIVOS OR TESTAMENTARY TRUST;

25 (II) BENEFITS SUCH SINGLE BENEFICIARY;

26 (III) IS COTERMINOUS WITH THE LIFETIME OF SUCH BENEFICIARY;

27 AND

1 (IV) IS NOT A SELF-SETTLED OR FIRST PARTY TRUST.

2 **SECTION 3.** In Colorado Revised Statutes, 24-51-801, **add** (5)
3 as follows:

4 **24-51-801. Benefit options.** (5) (a) UPON THE TERMINATION OF
5 A SUPPLEMENTAL NEEDS TRUST DUE TO THE DEATH OF THE BENEFICIARY
6 OF SUCH TRUST PRIOR TO THE DEATH OF THE RETIREE, AN OPTION 1
7 BENEFIT BECOMES PAYABLE TO THE RETIREE.

8 (b) IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO BE
9 INVALID OR IS TERMINATED DURING THE LIFE OF THE RETIREE, THE
10 BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE COBENEFICIARY.

11 (c) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE
12 OR WITHIN NINETY DAYS AFTER THE DEATH OF THE RETIREE, IS
13 DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH
14 OF THE RETIREE, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE
15 COBENEFICIARY.

16 **SECTION 4.** In Colorado Revised Statutes, 24-51-802, **amend**
17 (3) and (3.8); and **add** (5) as follows:

18 **24-51-802. Change in option or cobeneficiary.** (3) A retiree
19 who was not married on the effective date of retirement may elect option
20 2 or 3 upon marriage and designate the spouse OR A SUPPLEMENTAL
21 NEEDS TRUST ESTABLISHED FOR THE BENEFIT OF THE SPOUSE as
22 cobeneficiary. If a retiree is married on the effective date of retirement
23 and the spouse on said date subsequently dies, the retiree may elect option
24 2 or 3 upon remarriage and designate the spouse OR A SUPPLEMENTAL
25 NEEDS TRUST ESTABLISHED FOR THE BENEFIT OF THE SPOUSE as
26 cobeneficiary.

27 (3.8) In any dissolution of marriage action in any district court of

1 the state that becomes final on or after July 1, 2003, in which the retiree
2 retired on or after July 1, 1988, and elected to receive an option 2 or 3
3 benefit and designated his or her spouse as cobeneficiary OR DESIGNATED
4 A SUPPLEMENTAL NEEDS TRUST ESTABLISHED FOR THE BENEFIT OF HIS OR
5 HER SPOUSE, the court shall have the jurisdiction to order or allow a
6 retiree who is a petitioner or respondent in such action to remove the
7 spouse OR THE SUPPLEMENTAL NEEDS TRUST that was named
8 cobeneficiary by the retiree at retirement, in which case an option 1
9 benefit shall become payable. The retiree may elect option 2 or 3 upon
10 remarriage and designate the spouse as cobeneficiary OR DESIGNATE A
11 SUPPLEMENTAL NEEDS TRUST ESTABLISHED FOR THE BENEFIT OF THE
12 SPOUSE AS COBENEFICIARY.

13 (5) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, A
14 RETIREE MAY CHANGE THE COBENEFICIARY THAT WAS NAMED BY SUCH
15 RETIREE AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A
16 COBENEFICIARY IN PLACE OF THE PREVIOUSLY NAMED COBENEFICIARY IF:

17 (a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE
18 SAME PERSON AS THE PREVIOUSLY NAMED COBENEFICIARY; AND

19 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED
20 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

21 **SECTION 5.** In Colorado Revised Statutes, 24-51-907, **amend**
22 (3) as follows:

23 **24-51-907. Form of survivor benefits and single payments.**

24 (3) Surviving spouses or dependent parents specified in section
25 24-51-905 (1) (b), (1) (d), and (2) (a) and in section 24-51-906 (1) (b) and
26 (1) (d) shall be paid survivor benefits unless they also qualify as a named
27 beneficiary specified in section 24-51-905 (1) (e) or (2) (b) or 24-51-906

1 (1) (e), in which case they may elect to receive a single payment or
2 survivor benefits. IF A SURVIVOR BENEFIT IS PAYABLE TO A
3 SUPPLEMENTAL NEEDS TRUST PURSUANT TO SECTION 24-51-911 (8), NO
4 SUCH ELECTION IS ALLOWED UNLESS THE SAME SUPPLEMENTAL NEEDS
5 TRUST IS THE NAMED BENEFICIARY SPECIFIED IN SECTION 24-51-905 (1) (e)
6 OR (2) (b) OR 24-51-906 (1) (e).

7 **SECTION 6.** In Colorado Revised Statutes, 24-51-911, **add** (8)
8 as follows:

9 **24-51-911. Commencement of survivor benefits or single**
10 **payment.** (8) IF AT THE TIME OF THE DEATH OF THE MEMBER THERE IS A
11 SUPPLEMENTAL NEEDS TRUST ESTABLISHED BEFORE OR WITHIN NINETY
12 DAYS AFTER THE DEATH OF THE MEMBER FOR THE BENEFIT OF THE
13 QUALIFIED CHILD, SURVIVING SPOUSE, OR DEPENDENT PARENT ELIGIBLE
14 FOR SURVIVOR BENEFITS, SURVIVOR BENEFITS PAYABLE PURSUANT TO THIS
15 PART 9 TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST ARE
16 PAYABLE TO THE TRUST.

17 **SECTION 7.** In Colorado Revised Statutes, 24-51-912, **add** (6)
18 as follows:

19 **24-51-912. Termination of survivor benefits.** (6) IF THE
20 ASSOCIATION IS PAYING A SUPPLEMENTAL NEEDS TRUST PURSUANT TO
21 SECTION 24-51-911 (8), SUCH PAYMENT TERMINATES AND THE PROVISIONS
22 OF THIS SECTION AND SECTION 24-51-913 APPLY WHEN THE BENEFICIARY
23 OF SUCH SUPPLEMENTAL NEEDS TRUST IS NO LONGER ELIGIBLE TO RECEIVE
24 SURVIVOR BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO
25 BE INVALID OR TERMINATES AFTER THE ASSOCIATION COMMENCES
26 PAYMENT TO THE SUPPLEMENTAL NEEDS TRUST, THE SURVIVOR BENEFIT,
27 FROM THEN ON, IS PAID TO THE BENEFICIARY OF THE SUPPLEMENTAL

1 NEEDS TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR
2 BENEFITS.

3 **SECTION 8.** In Colorado Revised Statutes, 24-51-1204, **add** (2)
4 as follows:

5 **24-51-1204. Health care program - eligibility.** (2) IF A
6 SUPPLEMENTAL NEEDS TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT
7 TO THIS ARTICLE, THE SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE TO
8 ENROLL IN THE HEALTH CARE PROGRAM; HOWEVER, THE BENEFICIARY OF
9 SUCH TRUST IS ELIGIBLE TO ENROLL IN THE HEALTH CARE PROGRAM IN THE
10 SAME MANNER THAT THE BENEFICIARY WOULD BE ALLOWED TO ENROLL
11 IF THE BENEFICIARY WAS THE DIRECT BENEFIT RECIPIENT.

12 **SECTION 9.** In Colorado Revised Statutes, 24-51-1206, **add** (7)
13 as follows:

14 **24-51-1206. Premium subsidy.** (7) IF A SUPPLEMENTAL NEEDS
15 TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT TO THIS ARTICLE, THE
16 SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE FOR A PREMIUM SUBSIDY;
17 HOWEVER, THE BENEFICIARY OF SUCH TRUST IS ELIGIBLE FOR A PREMIUM
18 SUBSIDY IN THE SAME MANNER THAT THE BENEFICIARY WOULD RECEIVE
19 A PREMIUM SUBSIDY IF THE BENEFICIARY WAS THE DIRECT BENEFIT
20 RECIPIENT. IF THE ELIGIBILITY OF THE PREMIUM SUBSIDY CAUSES THE
21 BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST TO BE DISQUALIFIED
22 FROM RECEIVING PUBLIC BENEFITS, THE BENEFICIARY IS NOT ELIGIBLE FOR
23 SUCH PREMIUM SUBSIDY SO LONG AS SUCH CONDITION EXISTS.

24 **SECTION 10.** In Colorado Revised Statutes, 24-51-1702, **amend**
25 (19) (c); and **add** (19) (f) as follows:

26 **24-51-1702. Definitions.** As used in this part 17, unless the
27 context otherwise requires:

1 (19) "Membership" means the relationship a regular or casual
2 employee has in the DPS plan and shall consist of the following:

3 (c) "Beneficiary" means a person OR SUPPLEMENTAL NEEDS TRUST
4 who has received, receives, or is designated to receive benefits accruing
5 as a result of an employee's membership.

6 (f) "SUPPLEMENTAL NEEDS TRUST" MEANS A SPECIAL NEEDS TRUST
7 ESTABLISHED UNDER THE CURRENT FEDERAL OR STATE LAW BY A MEMBER
8 OR ANNUITANT FOR THE SOLE BENEFIT OF THE MEMBER'S OR ANNUITANT'S
9 SPOUSE, CHILD, OR DEPENDENT PARENT WHO MEETS THE DEFINITION OF AN
10 INDIVIDUAL WITH A DISABILITY UNDER THE FEDERAL "SOCIAL SECURITY
11 ACT", AND WHICH TRUST OPERATES IN A MANNER THAT:

12 (I) PERMITS THE INDIVIDUAL WITH A DISABILITY TO QUALIFY FOR
13 PUBLIC BENEFITS INCLUDING, BUT NOT LIMITED TO, THOSE UNDER THE
14 FEDERAL "SOCIAL SECURITY ACT" SUCH AS SUPPLEMENTAL SECURITY
15 INCOME AND MEDICAL ASSISTANCE; AND

16 (II) BY ITS TERMS:

17 (A) IS AN INTER-VIVOS OR TESTAMENTARY TRUST;

18 (B) BENEFITS SUCH SINGLE BENEFICIARY;

19 (C) IS COTERMINOUS WITH THE LIFETIME OF SUCH BENEFICIARY;

20 AND

21 (D) IS NOT A SELF-SETTLED OR FIRST PARTY TRUST.

22 **SECTION 11.** In Colorado Revised Statutes, **amend 24-51-1719**
23 as follows:

24 **24-51-1719. Option C.** (1) Any contributing member or affiliate
25 member choosing or having chosen option C through December 31, 2009,
26 will be governed by the DPS plan document. As of January 1, 2010,
27 option C will no longer be a permissible payment choice.

1 (2) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN
2 ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH
3 ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A
4 CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

5 (a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE
6 SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

7 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED
8 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

9 (3) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE
10 OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS
11 DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH
12 OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS
13 THE CO-ANNUITANT.

14 **SECTION 12.** In Colorado Revised Statutes, **amend 24-51-1721**
15 as follows:

16 **24-51-1721. Option E.** (1) Any contributing member or affiliate
17 member choosing or having chosen option E through December 31, 2009,
18 will be governed by the DPS plan document. As of January 1, 2010,
19 option E will no longer be a permissible payment choice.

20 (2) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN
21 ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH
22 ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A
23 CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

24 (a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE
25 SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

26 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED
27 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

1 (3) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE
2 OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS
3 DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH
4 OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS
5 THE CO-ANNUITANT.

6 **SECTION 13.** In Colorado Revised Statutes, 24-51-1723, **add** (3)
7 and (4) as follows:

8 **24-51-1723. Option P2.** (3) NOTWITHSTANDING ANY PROVISION
9 TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT
10 THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL
11 NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED
12 CO-ANNUITANT IF:

13 (a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE
14 SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

15 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED
16 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

17 (4) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE
18 OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS
19 DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH
20 OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS
21 THE CO-ANNUITANT.

22 **SECTION 14.** In Colorado Revised Statutes, 24-51-1724, **add** (5)
23 and (6) as follows:

24 **24-51-1724. Option P3.** (5) NOTWITHSTANDING ANY PROVISION
25 TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT
26 THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL
27 NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED

1 CO-ANNUITANT IF:

2 (a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE
3 SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

4 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED
5 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

6 (6) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE
7 OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS
8 DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH
9 OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS
10 THE CO-ANNUITANT.

11 **SECTION 15.** In Colorado Revised Statutes, 24-51-1737, **add** (3)
12 as follows:

13 **24-51-1737. Eligible beneficiaries.** (3) IF AT THE TIME OF THE
14 DEATH OF THE MEMBER THERE IS A SUPPLEMENTAL NEEDS TRUST
15 ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE
16 MEMBER FOR THE BENEFIT OF THE CHILD, SURVIVING WIDOW OR WIDOWER,
17 OR DEPENDENT PARENT ELIGIBLE FOR SURVIVOR BENEFITS, SURVIVOR
18 BENEFITS PAYABLE PURSUANT TO SECTIONS 24-51-1736 TO 24-51-1746 TO
19 THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST ARE PAYABLE TO
20 THE TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR
21 BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO BE
22 INVALID OR TERMINATES AFTER THE ASSOCIATION COMMENCES PAYMENT
23 TO THE SUPPLEMENTAL NEEDS TRUST, THE SURVIVOR BENEFIT, FROM THEN
24 ON, IS PAID TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST SO
25 LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR BENEFITS.

26 **SECTION 16. No appropriation.** The general assembly has
27 determined that this act can be implemented within existing

1 appropriations, and therefore no separate appropriation of state moneys
2 is necessary to carry out the purposes of this act.

3 **SECTION 17. Applicability.** This act applies to members and
4 retirees of the public employees' retirement association who are living on
5 or after the effective date of this act.

6 **SECTION 18. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.