

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 15-0359.01 Nicole Myers x4326

SENATE BILL 15-097

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

Landgraf,

Senate Committees

Finance
Appropriations

House Committees

Finance

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/billsummaries>.)

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.

HOUSE
3rd Reading Unamended
March 17, 2015

HOUSE
2nd Reading Unamended
March 16, 2015

SENATE
3rd Reading Unamended
February 20, 2015

SENATE
Amended 2nd Reading
February 19, 2015

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

13 (46.5) "SUPPLEMENTAL NEEDS TRUST" MEANS A VALID
14 THIRD-PARTY SPECIAL NEEDS TRUST ESTABLISHED FOR A MEMBER'S OR
15 RETIREE'S CHILD AS THE BENEFICIARY OF THE TRUST THAT COMPLIES WITH
16 THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE
17 25.5, C.R.S., AND THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.
18 THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL REVIEW
19 ANY TRUST ESTABLISHED DURING THE DETERMINATION OR
20 REDETERMINATION OF AN INDIVIDUAL'S ELIGIBILITY FOR MEDICAL
21 ASSISTANCE AND SPECIFICALLY AS TO THE EFFECT OF ANY TRUST ON SUCH
22 ELIGIBILITY FOR MEDICAL ASSISTANCE. THE TRUST MUST BE FOR THE
23 BENEFIT OF A SINGLE BENEFICIARY AND MUST BE COTERMINOUS WITH THE
24 LIFETIME OF SUCH BENEFICIARY.

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

27 **24-51-801. Benefit options.** (5) (a) UPON THE TERMINATION OF

1 A SUPPLEMENTAL NEEDS TRUST DUE TO THE DEATH OF THE BENEFICIARY
2 OF SUCH TRUST PRIOR TO THE DEATH OF THE RETIREE, AN OPTION 1
3 BENEFIT BECOMES PAYABLE TO THE RETIREE.

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

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

12 **SECTION 4.** In Colorado Revised Statutes, 24-51-802,
13 **add** (5) as follows:

14

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

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

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

23

24 **SECTION 5.** In Colorado Revised Statutes, 24-51-911, **add** (8)
25 as follows:

26 **24-51-911. Commencement of survivor benefits or single**
27 **payment.** (8) IF AT THE TIME OF THE DEATH OF THE MEMBER THERE IS A

1 SUPPLEMENTAL NEEDS TRUST ESTABLISHED BEFORE OR WITHIN NINETY
2 DAYS AFTER THE DEATH OF THE MEMBER FOR THE BENEFIT OF THE
3 QUALIFIED CHILD ELIGIBLE FOR SURVIVOR BENEFITS, SURVIVOR BENEFITS
4 PAYABLE PURSUANT TO THIS PART 9 TO THE BENEFICIARY OF THE
5 SUPPLEMENTAL NEEDS TRUST ARE PAYABLE TO THE TRUST.

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

8 **24-51-912. Termination of survivor benefits.** (6) IF THE
9 ASSOCIATION IS PAYING A SUPPLEMENTAL NEEDS TRUST PURSUANT TO
10 SECTION 24-51-911 (8), SUCH PAYMENT TERMINATES AND THE PROVISIONS
11 OF THIS SECTION AND SECTION 24-51-913 APPLY WHEN THE BENEFICIARY
12 OF SUCH SUPPLEMENTAL NEEDS TRUST IS NO LONGER ELIGIBLE TO RECEIVE
13 SURVIVOR BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO
14 BE INVALID OR TERMINATES AFTER THE ASSOCIATION COMMENCES
15 PAYMENT TO THE SUPPLEMENTAL NEEDS TRUST, THE SURVIVOR BENEFIT,
16 FROM THEN ON, IS PAID TO THE BENEFICIARY OF THE SUPPLEMENTAL
17 NEEDS TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR
18 BENEFITS.

19 **SECTION 7.** In Colorado Revised Statutes, 24-51-1204, **add** (2)
20 as follows:

21 **24-51-1204. Health care program - eligibility.** (2) IF A
22 SUPPLEMENTAL NEEDS TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT
23 TO THIS ARTICLE, THE SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE TO
24 ENROLL IN THE HEALTH CARE PROGRAM; HOWEVER, THE BENEFICIARY OF
25 SUCH TRUST IS ELIGIBLE TO ENROLL IN THE HEALTH CARE PROGRAM IN THE
26 SAME MANNER THAT THE BENEFICIARY WOULD BE ALLOWED TO ENROLL
27 IF THE BENEFICIARY WAS THE DIRECT BENEFIT RECIPIENT.

1 **SECTION 8.** In Colorado Revised Statutes, 24-51-1206, **add** (7)
2 as follows:

3 **24-51-1206. Premium subsidy.** (7) IF A SUPPLEMENTAL NEEDS
4 TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT TO THIS ARTICLE, THE
5 SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE FOR A PREMIUM SUBSIDY;
6 HOWEVER, THE BENEFICIARY OF SUCH TRUST IS ELIGIBLE FOR A PREMIUM
7 SUBSIDY IN THE SAME MANNER THAT THE BENEFICIARY WOULD RECEIVE
8 A PREMIUM SUBSIDY IF THE BENEFICIARY WAS THE DIRECT BENEFIT
9 RECIPIENT. IF THE ELIGIBILITY OF THE PREMIUM SUBSIDY CAUSES THE
10 BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST TO BE DISQUALIFIED
11 FROM RECEIVING PUBLIC BENEFITS, THE BENEFICIARY IS NOT ELIGIBLE FOR
12 SUCH PREMIUM SUBSIDY SO LONG AS SUCH CONDITION EXISTS.

13 **SECTION 9.** In Colorado Revised Statutes, 24-51-1702, **amend**
14 (19) (c); and **add** (19) (f) as follows:

15 **24-51-1702. Definitions.** As used in this part 17, unless the
16 context otherwise requires:

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

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

22 (f) "SUPPLEMENTAL NEEDS TRUST" MEANS A VALID THIRD-PARTY
23 SPECIAL NEEDS TRUST ESTABLISHED FOR A MEMBER'S OR RETIREE'S CHILD
24 AS THE BENEFICIARY OF THE TRUST THAT COMPLIES WITH THE "COLORADO
25 MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., AND
26 THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED. THE DEPARTMENT
27 OF HEALTH CARE POLICY AND FINANCING SHALL REVIEW ANY TRUST

1 ESTABLISHED DURING DETERMINATION OR REDETERMINATION OF AN
2 INDIVIDUAL'S ELIGIBILITY FOR MEDICAL ASSISTANCE AND SPECIFICALLY AS
3 TO THE EFFECT OF ANY TRUST ON SUCH ELIGIBILITY FOR MEDICAL
4 ASSISTANCE. THE TRUST MUST BE FOR THE BENEFIT OF A SINGLE
5 BENEFICIARY AND MUST BE COTERMINOUS WITH THE LIFETIME OF SUCH
6 BENEFICIARY.

7 **SECTION 10.** In Colorado Revised Statutes, **amend 24-51-1719**
8 as follows:

9 **24-51-1719. Option C.** (1) Any contributing member or affiliate
10 member choosing or having chosen option C through December 31, 2009,
11 will be governed by the DPS plan document. As of January 1, 2010,
12 option C will no longer be a permissible payment choice.

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

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

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

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

26 **SECTION 11.** In Colorado Revised Statutes, **amend 24-51-1721**
27 as follows:

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

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

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

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

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

18 **SECTION 12.** In Colorado Revised Statutes, 24-51-1723, **add** (3)
19 and (4) as follows:

20 **24-51-1723. Option P2.** (3) NOTWITHSTANDING ANY PROVISION
21 TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT
22 THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL
23 NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED
24 CO-ANNUITANT IF:

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

27 (b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED

1 DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

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

7 **SECTION 13.** In Colorado Revised Statutes, 24-51-1724, **add** (5)
8 and (6) as follows:

9 **24-51-1724. Option P3.** (5) NOTWITHSTANDING ANY PROVISION
10 TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT
11 THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL
12 NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED
13 CO-ANNUITANT IF:

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

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

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

23 **SECTION 14.** In Colorado Revised Statutes, 24-51-1737, **add** (3)
24 as follows:

25 **24-51-1737. Eligible beneficiaries.** (3) IF AT THE TIME OF THE
26 DEATH OF THE MEMBER THERE IS A SUPPLEMENTAL NEEDS TRUST
27 ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE

1 MEMBER FOR THE BENEFIT OF THE CHILD ELIGIBLE FOR SURVIVOR
2 BENEFITS, SURVIVOR BENEFITS PAYABLE PURSUANT TO SECTIONS
3 24-51-1736 TO 24-51-1746 TO THE BENEFICIARY OF THE SUPPLEMENTAL
4 NEEDS TRUST ARE PAYABLE TO THE TRUST SO LONG AS THAT BENEFICIARY
5 IS ELIGIBLE FOR SURVIVOR BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS
6 DETERMINED TO BE INVALID OR TERMINATES AFTER THE ASSOCIATION
7 COMMENCES PAYMENT TO THE SUPPLEMENTAL NEEDS TRUST, THE
8 SURVIVOR BENEFIT, FROM THEN ON, IS PAID TO THE BENEFICIARY OF THE
9 SUPPLEMENTAL NEEDS TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE
10 FOR SURVIVOR BENEFITS.

11 **SECTION 15. No appropriation.** The general assembly has
12 determined that this act can be implemented within existing
13 appropriations, and therefore no separate appropriation of state moneys
14 is necessary to carry out the purposes of this act.

15 **SECTION 16. Applicability.** This act applies to members and
16 retirees of the public employees' retirement association who are living on
17 or after the effective date of this act.

18 **SECTION 17. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.