SENATE . . . . . No. 9

Senate, February 2, 2015, – Report of the State Retirement Benefits Board of Trustees (pursuant to Section 24A of Chapter 32A of the General Laws) submitting proposed amendments to the declaration of trust. Public Service.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

January 29, 2015

Stephen James
Office of the Clerk of the House of Representatives
State House, Room 145
Boston, MA 02133

William Welch
Office of the Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. James and Mr. Welch:

Please find enclosed proposed amendments to the declaration of trust adopted by the State Retiree Benefits Trust Board pursuant to Chapter 29D, Section 4(a) of the Massachusetts General Laws. This amendment will be deemed to be approved if the general court takes no final action relative thereto within 60 days of the date of this letter.

Sincerely,

Martin Benison
Chairman
State Retiree Benefits Trust Board of Trustees

Enc: Operating Trust Agreement

Operating Trust Agreement

THE COMMONWEALTH OF MASSACHUSETTS
STATE RETIREE BENEFITS TRUST FUND TRUST

Boston, Massachusetts

Trust Agreement made July 1, 2002, as amended and restated February 14, 2012 February 13, 2014, and December 9, 2014.
THIS DECLARATION OF TRUST made this date by the duly authorized and acting members of State Retiree Benefits Trust Fund Board of Trustees ("SRBT Fund Board"), formerly known as the Board of Trustees of the Heath Care Security Trust (further defined below in Section 2.1) ("HCST Board"), being hereinafter sometimes referred to as the "Trustees" (further defined below in Section 2.9);

WITNESSETH:

WHEREAS, the HCST Board was charged by its enabling legislation, M.G.L. c.29D, §4, with general supervision of investment and reinvestment of all monies generated by any claim or action undertaken by the Attorney General of the Commonwealth of Massachusetts (hereinafter referred to as the "Attorney General") against a manufacturer of cigarettes to recover the amount of medical assistance provided pursuant to M.G.L. c.118E or any other claim or action undertaken by the Attorney General against a manufacturer of cigarettes including, but not limited to, the action known as Commonwealth of Massachusetts v. Philip Morris, Inc., et al, Middlesex Superior Court, No. 95-7378, hereinafter referred to as the "Tobacco Action" (any and all such monies are hereinafter referred to herein as the "HCST Fund Revenues");

WHEREAS, the HCST Board was authorized and required by M.G.L. c.29D, §4(a) to act as Trustee with respect to the Health Care Security Trust Fund ("HCST Fund") created thereby;

WHEREAS, the HCST Board was made the Trustee and charged by M.G.L. c.32A, §24, with the administration of the State Retiree Benefits Trust Fund ("SRBT Fund") established under the provisions of said M.G.L. c.32A, §24(a), such administration to be in accordance with the HCST Board's enabling legislation and to be for the purpose of depositing, investing and disbursing amounts set aside solely to meet liabilities of the state employees' retirement system for health care and other non-pension benefits;

WHEREAS, M.G.L. c.32A, §24(d) provided that the HCST Board authorize the participation by any political subdivision, municipality, county or agency or authority of the Commonwealth in the SRBT Fund, and M.G.L. c.32B, §20(a) and (b) authorized the HCST Board to accept designation as custodian for such municipalities, districts, counties and

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cipal lighting plants as choose to designate the HCST Board as custodian of their Other Post-Employment Benefits Liability Trust Funds and to approve the investment of such Trust Funds in the SRBT Fund (such political subdivisions, municipalities, counties, agencies, authorities, districts and municipal lighting plants which invest in the SRBT Fund, together with the state employees' retirement system, are hereinafter referred to as "Participants"), using procedures and criteria adopted by the HCST Board;

WHEREAS, the HCST Fund and the HCST Fund Revenues have been transferred to the SRBT Fund pursuant to Chapter 61, Section 54, of the Acts of 2007, and all future HCST Fund Revenues are to be deposited in the SRBT Fund or the general fund in such percentages as provided in Section 152 of Chapter 68 of the Acts of 2011, as it may be amended;

WHEREAS, M.G.L. c.32A, §24 has been amended to direct the HCST Board to employ the Pension Reserves Investment Management Board ("PRIM") to invest the SRBT Fund assets in the Pension Reserves Investment Trust Fund ("PRIT Fund"); and

WHEREAS, M.G.L. c.29D has been repealed by Section 60 of Chapter 165 of the Acts of 2014 (the 2014 Act); and

WHEREAS, M.G.L. c.32A has been amended in the 2014 Act by adding Section 24A; and

WHEREAS, M.G.L. c.32A, §24 has been amended in the 2014 Act by changing the name of the HCST Board to the SRBT Fund Board of Trustees established in Section 24A of the 2014 Act; and by adding certain provisions governing the SRBT Fund and the SRBT Fund Board of Trustees; and

WHEREAS, M.G.L. c.32B §20 has been amended in the 2014 Act by changing the name of the HCST Board to the SRBT Fund Board established in Section 24A of Chapter 32A. and by deleting reference to the HCST and inserting in its place the SRBT Fund.

WHEREAS, the SRBT Fund Board is further authorized and required by M.G.L. c.32A, §24A(a) to adopt a declaration of trust setting forth the duties and obligations of the SRBT Fund Board;

NOW, THEREFORE, the Trustees establish this trust and agree and declare that they will hold, administer and manage the SRBT Fund, and all money and property received or purchased by them as Trustees or custodian hereunder upon the following terms, conditions and trusts:

ARTICLE 1
NAME; PURPOSE; EFFECT; APPLICABLE LAW

Section 1.1 Name. This Declaration of Trust is hereby designated as the "State Retiree Benefits Trust Fund Trust".

Section 1.2 Purpose. This Declaration of Trust is established, operated and maintained for the purpose of managing and investing the SRBT Fund, and for the management, investment and reinvestment in one trust portfolio of the SRBT Fund and moneys contributed thereto by various Participants and otherwise.

Section 1.3 Effect. With respect to any moneys transferred to the SRBT Fund by any Participant, such Participant and all persons interested therein shall be bound by the provisions of this Declaration of Trust (as the same may be amended from time to time).

Section 1.4 Applicable Law and Regulations. The Trustees shall administer the SRBT Fund hereunder at all times in conformity with the provisions of M.G.L. c.32A, §24 and 24A and c.32B, §20 (as the same may be supplemented or amended from time to time, the "Acts") specifically, and with the laws and regulations of the Commonwealth of Massachusetts, generally. The provisions of this Declaration of Trust shall be governed by and construed and administered according to the laws of the Commonwealth of Massachusetts (the "Commonwealth").

ARTICLE 2
DEFINITIONS

Whenever used in this instrument, unless the context otherwise requires or specifically provides, the following terms shall be defined as follows:

Section 2.1 "Board" and "SRBT Fund Board" means the individuals described in the Act serving from time to time as members of the State Retiree Benefits Trust Board.

Section 2.2 "Business Day" means any day which is not a Saturday, a Sunday, a legal holiday or a day upon which by applicable law a national banking association is authorized to be closed to the public for regular banking business during ordinary business hours and is, in fact, so closed.

Section 2.3 "Expenses" mean the reasonable and necessary expenses incurred by the Trustees in managing the funds hereunder, including, without limitation, custody fees, investment consulting fees, investment management fees, trading commissions, attorneys' fees, accountants' fees, staff salaries, office rents and all expenses incident thereto.

Section 2.4 "Fiscal Year" means the twelve months beginning July 1 and ending June 30.

Section 2.5 "Participant" means the state employees' retirement system and, upon authorization or approval by the SRBT Fund Board, any political subdivision, municipality, county, district,

municipal lighting plant and other agency or authority of the Commonwealth that chooses to participate in the SRBT Fund and transfer monies to the SRBT Fund in accordance with the provisions of M.G.L. c.32A, §24(a) and (d) or c.32B, §20 (b) as the same may be amended.

Section 2.6 "SRBT Fund" and "State Retiree Benefits Trust Fund" mean the State Retiree Benefits Trust Fund established under M.G.L. c.32A, §24 and 24A, and all funds, monies, and property received, held, and managed by the Trustees for said SRBT Fund.

Section 2.7 "Trustees" mean the SRBT Fund Board members in their capacity as Trustees under this Declaration of Trust. All SRBT Fund Board members serving from time to time shall be Trustees under this Declaration of Trust.

ARTICLE 3
RECEIPTS AND INVESTMENTS

The Trustees shall have the responsibility to employ the Pension Reserves Investment Management Board (the "PRIM Board") to invest the SRBT Fund in the Pension Reserves Investment Trust Fund (the "PRIT Fund") for the purpose of depositing, investing and disbursing amounts set aside solely to meet liabilities of the Participants for health care and other non-pension benefits, and there shall be credited to the SRBT Fund any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the SRBT Fund, and any gifts, grants, private contributions, investment income earned on the SRBT Fund's assets and all other sources.

ARTICLE 4
RIGHTS, POWERS AND DUTIES OF TRUSTEES

Section 4.1 Management and Ownership of Assets. The Trustees shall have exclusive control of the funds hereunder. Title to all assets of the funds shall at all times be considered vested in the Trustees in a fiduciary capacity.

Section 4.2 Rights and Powers. In exercising its right to control the funds, the SRBT Fund Board shall have the following rights and powers, in each case to be exercised or exercisable from time to time, in its discretion.

Subject to the provisions of Section 4.3 and Section 5, the Board shall invest and reinvest amounts received for investment in the SRBT Fund. The Executive Director, or the Chair of the Board in the event no Executive Director has been appointed, or the designee of the Chair approved by the Board, shall invest and reinvest such funds held by the SRBT Fund Board in the SRBT Fund, and shall (1) employ the PRIT Fund, to make any or all of such investments and to manage the funds and (2) if appropriate under the circumstances, utilize existing resources and staff of the State Treasurer of the Commonwealth or the PRIM Board to carry out its mission.

Section 4.3 Expenses. The Trustees shall pay Expenses of the SRBT Fund from the assets held by the SRBT Fund.

Section 4.4 Trustees' Compensation. Except as otherwise provided by law, the Trustees shall be entitled to no additional compensation for management and supervision of the funds or for fulfilling their responsibilities as Trustees hereunder, although they shall be reimbursed for their actual and necessary expenses.

Section 4.5 Executive Director, Staff and Employees. In accordance with the provisions of the Act, the Trustees may employ an Executive Director who shall serve at their pleasure. In accordance with the provision of the Acts, the provisions of M.G.L. c.30, §§9A, 45, 46, and 46C, and the provisions of c.31 and c.150E shall not apply to the Executive Director or any other employee of the Board. In the event the Board does not employ an Executive Director, the Chair of the Board shall, at the direction of the SRBT Fund Board, perform the duties and functions of the Executive Director, or may delegate such duties and functions as the SRBT Fund Board may approve. The Executive Director shall, with the Trustees' approval:

(a) plan, direct, coordinate and execute administrative and investment functions in conformity with policies and directives of the Trustees;

(b) employ professional and clerical staff as necessary;

(c) report to the Trustees on all operations under the Executive Director's control and supervision;

(d) prepare an annual budget and manage the administrative expenses of the Trust; and

(e) undertake any other activities necessary to implement the power and duties hereunder and under the Act.

Section 4.6 Activities of the Board. The Board may approve or ratify decisions of the Executive Director or the Chair, formulate policies and procedures deemed necessary and appropriate to carry out the purposes of the Board and the funds, maintain a record of its proceedings and undertake any other activities necessary to implement the duties and powers set forth herein and in the Act.

Section 4.7 Account Books.

(a) The funds shall be managed by the PRIM Board under agreement with the Board as further provided in Section 10.1 herein. All transactions affecting the SRBT Fund including, but not limited to, all amounts credited to and all expenditures, transfers or allocations made from the SRBT Fund, shall be recorded by subsidiary on the Massachusetts management accounting and reporting system.

Section 4.8 Budget. The Board shall adopt annual budgets and supplemental budgets as the Board deems necessary subject to the approval of the General Court. If the General Court takes no final action to disapprove any such budget within 60 days of its filing with the Clerk of the House of Representatives and the Clerk of the Senate, such budget shall be deemed to be approved. If the General Court disapproves any such budget within such 60 days, the Board

shall operate under the annualized budgetary level most recently approved pending the filing and subsequent approval of any other such annual or supplemental request.

Section 4.9. Actuaries. The Board shall engage actuaries experienced in retiree health care costs to perform annual actuarial calculations in accordance with Government Accounting Standards Board Statements 43 and 45, using data as needed from the group insurance commission, the public employee retirement administration commission, the state treasurer and the comptroller and prepare funding schedules to be filed in accordance with Section 25 of M.G.L. c.32A.

Section 4.10. Audit. The Board shall provide an annual audit of the SRBT Fund's assets, liabilities, net assets, investments and operations on an annual basis in accordance with government auditing standards and policies established by the comptroller. The annual audit report shall be made available to all Participants. The SRBT Fund shall be audited annually pursuant to by M.G.L. c.7A, §12 (c) and included in the Comptroller's financial statements.

Section 4.11 Action by Board. Except as otherwise provided in the Acts, and subject to the provisions of Section 4.2, the Trustees may act upon an affirmative vote of a majority of a quorum of the Trustees.

Section 4.12 Conduct of Trustees. In any civil action brought against a Trustee or employee of the SRBT Fund Board, acting within the scope of such Trustee's or employee's official duties, the defense or settlement of which is made by the Attorney General or by an attorney employed by said Board, such Trustee or employee shall be indemnified for all expenses incurred in the defense thereof and shall be indemnified for damages to the same extent as provided for public employees in Chapter 258. No Trustee or employee shall be indemnified for expenses in an action or damages awarded in such action in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by such Trustee or employee.

Section 4.13 Required Disclosure. To the extent that any Trustee shall have any interest or involvement in any matter that is before the Board:

(a) such Trustee shall disclose the interest or involvement in advance to the other Trustees;

(b) such disclosure shall be contemporaneously recorded in the minutes of the Trustees; and

(c) such Trustee shall abstain from participating in any particular matter relating to such interest or involvement.

ARTICLE 5
INVESTMENT OF THE SRBT FUND

Investments. The Board shall employ the PRIM Board to invest the SRBT Fund in the PRIT Fund.

ARTICLE 6
PARTICIPATION IN THE SRBT FUND

Acceptance of Deposits. The participation of any Participant in the SRBT Fund shall be subject to the provisions of this Declaration of Trust and policies and procedures to be adopted by the SRBT Fund Board from time to time. All deposits accepted from any such Participant or otherwise, together with the income therefrom, shall be held, managed and administered pursuant to this Declaration of Trust, and the Board's policies and procedures for the sole purpose of meeting the liabilities of the Participants for the health care and other non-pension benefits of their retirees. The Board shall not be obligated to disburse any funds from the SRBT Fund in excess of any monies received by the SRBT Fund.

ARTICLE 7
ASSETS IN THE SRBT FUND

Section 7.1 Management and Ownership of Assets. No Participant shall be deemed to have a severable ownership interest in any individual asset of the SRBT Fund, but each Participant shall have an undivided interest in the assets to which its deposits have been allocated and shall share with the others in the income, profits and losses thereof as provided herein and in the policies and procedures of the Board.

ARTICLE 8
THE SRBT FUND'S CAPITAL FUND AND ACCOUNTS; VALUATION OF UNITS

Section 8.1 Valuation of Assets of the Capital Fund. The Trustees shall set forth in the Board's policies and procedures a method for the valuation of the assets of the SRBT Fund's Capital Fund.

ARTICLE 9
THE SRBT FUND'S CASH FUND; VALUATION OF UNITS;

Section 9.1 Valuation of Assets of the Cash Fund. The Trustees shall establish in the Board's policies and procedures a method for the valuation of the assets of the SRBT Fund's Cash Fund and for the disbursement of net income of the Cash Fund.

ARTICLE 10
RIGHTS, POWERS AND DUTIES OF TRUSTEES WITH REGARD TO PARTICIPATION IN THE SRBT FUND

Section 10.1 Rights and Powers. In exercising their exclusive right to manage and control the SRBT Fund, the Trustees shall have the following rights and powers, in each case to be exercised or exercisable from time to time, in their uncontrolled discretion, without notice to any Participant:

(a) To employ PRIM to invest the SRBT Fund in the PRIT Fund;

(b) To lend money to such borrowers as the Trustees may deem desirable;

(c) To buy, exchange, sell, give options and make contracts for such consideration and upon such terms as to credit or otherwise as the Trustees may deem desirable;

(d) INTENTIONALLY OMITTED;

(e) To sue and be sued, to plead and be impleaded and to compromise, submit to arbitration or pay any claim or matter of difference;

(f) To maintain an office in the City of Boston;

(g) To vote directly or to give general or special proxies or powers of attorney for voting or acting with respect to shares or securities, which may be discretionary and with power of substitution; to deposit shares or securities with, or transfer them to, protective committees or similar bodies; to join in, vote upon and act in any manner that the Trustees deem appropriate with respect to any reorganization, merger or consolidation; and to pay assessments or subscriptions called for in connection with shares or securities held by them;

(h) To employ investment counsel (on a discretionary or recommendation basis), custodians, brokers, accountants, auditors, agents and attorneys;

(i) To keep any or all of the trust property in any place or places in the Commonwealth of Massachusetts or elsewhere or with a depository or custodian at any such place or places;

(j) To execute assignments, notes, contracts or other instruments in writing, whether or not under seal, incident to any of the Trustees' powers;

(k) To accept and receive in trust, and combine with the SRBT Fund, funds from any source, public or private, by gift, grant, bequest or otherwise; and

(l) To do all other acts in their judgment necessary or desirable for the proper administration of the SRBT Fund or with respect to the investment, disposition or liquidation of any assets of the SRBT Fund, although the power to do such acts is not specifically set forth herein.

Section 10.2 Statements and Accounts. The Trustees shall cause the PRIM Board to prepare and distribute statements of assets and transactions to each Participant in the SRBT Fund. Annually, within ninety (90) days after the close of the SRBT Fund's fiscal year, the Trustees shall furnish or cause the PRIM Board to furnish a written account of the operation of the SRBT Fund for the preceding fiscal year to each Participant. Any Participant to which an account is furnished may approve such account by an instrument in writing delivered to the Trustees and the PRIM Board. If objections to specific items in such account are filed with the Trustees and the PRIM Board within sixty (60) days after the account has been furnished and the Trustees and

the PRIM Board believe such objections to be valid, the Trustees and the PRIM Board may cause the PRIM Board to adjust the account in such manner as they deem equitable under the circumstances. Each Participant to which the PRIM Board furnishes an account shall be notified by the PRIM Board of any adjustments so made. If

(a) all Participants to which such account of the PRIM Board furnished by the Trustees, approve such account, or

(b) no objections to specific items in such account are filed by any Participant with the Trustees and the PRIM Board within sixty (60) days after the account has been furnished, or

(c) objections to specified items in such account are filed with the Trustees and the PRIM Board within sixty (60) days after the account has been furnished, and the PRIM Board and the Trustees give no notice of any adjustment to the account within one hundred and fifty (150) days after such account has been furnished,

then, and in any of said events, the account of the PRIM Board, with respect to all matters contained therein (as originally furnished if no adjustment was made, or as adjusted if an adjustment was made), shall be deemed to have been approved by all Participants.

ARTICLE 11
AMENDMENT

Amendments. This Declaration of Trust may be amended from time to time by a written instrument signed and approved by at least five of the seven Trustees filed in accordance with the terms of Section 12.5 hereunder. Notice of any such amendment shall be furnished to each Participant in the SRBT Fund as soon as practicable.

ARTICLE 12
MISCELLANEOUS PROVISIONS

Section 12.1 Agent for Process. The Trustees shall be deemed to represent all persons, natural or legal, having an interest in the funds for the purpose of all judicial proceedings affecting the funds or any asset thereof, and only the Trustees need be made a party to any such action. The Trustees shall give notice to the Attorney General of the Commonwealth of any such proceedings.

Section 12.2 Definition of Words. The plural shall be substituted for the singular, or vice versa, in anyplace or places herein where the context may require such substitution or substitutions.

Section 12.3 Headings. Any paragraph or clause headings used throughout this instrument and any amendment to this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument or any amendment to this instrument.

Section 12.4 Records. All records of the Board shall be a public record as defined in M.G.L. c.4, §7(26).

Section 12.5 Effective Date. This Declaration of Trust and any amendments thereto shall be filed with the General Court. If the General Court takes no final action relative thereto within 60 days of the date of the filing hereof with the Clerk of the House of Representatives and the Clerk of the Senate, the declaration or amendments thereto shall be deemed to be approved. That date shall be the effective date of this Declaration.
As amended this 9th day of December 2014, by Martin J. Benison, Chairman, Joseph E. Connarton, Terrence Finn, Michael C. Tow, CFP, Dolores L. Mitchell, Alan F. Gordon, and Catia Sharp the present duly authorized and acting members of the Board of Trustees of the State Retiree Benefits Trust Fund Trust.

APPROVED:

Martin J. Benison, Chairman
Joseph E. Connarton
Terrence Finn
Dolores L. Mitchell

Michael C. Tow
Alan F. Gordon
Catia Sharp