PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA – POLICY AND STAFF BRIEFING

Item No.	6d
Date of Meeting	January 6, 2009

DATE: December 31, 2008

TO: Tay Yoshitani, Chief Executive Officer

FROM: Kurt Beckett, Director External Affairs and
Clare Gallagher Manager State Government Relations

SUBJECT: Federal and State Legislative Update

BACKGROUND

FEDERAL ACTIVITY – EXECUTIVE AND CONGRESSIONAL

Transition

Congress convenes on January 6th with hearings on the financial markets and implementation of the Troubled Asset Relief Program. The following week the Senate will hold confirmation hearings on Dr. Steven Chu for Secretary of Energy and Senator Ken Salazar for Secretary of the Interior. Other Cabinet level hearings are expected to be scheduled that week or shortly thereafter. Former EPA Administrator Carol Browner is already installed as Energy Czar and is not subject to confirmation, allowing the new Administration an early focus on energy issues.

Other key nominees include:
Secretary of Transportation -- former United States Congressman Ray LaHood
United States Trade Representative -- former Dallas Mayor Ron Kirk
Secretary of Commerce – New Mexico Governor Bill Richardson
Secretary of Department of Homeland Security – Arizona Governor Janet Napolitano

Fiscal Year (FY) 2009 Bills & Economic Stimulus Package Update

Expected timeline for Fiscal Year 2009 appropriation bills and economic recovery package:

- While the Fiscal Year 2009 (FY09) appropriations bills are completed, House and Senate action on the FY09 omnibus may occur after the economic recovery legislation is considered and passed out of Congress.

- The new Administration and Congressional leaders continue to want to move the stimulus package as early as possible, with passage in Congress the week of January 12th, to deliver the bill to the new President for signature as close to January 20th as possible. Republican leadership has recently raised concerns on moving this quickly and may try to slow this schedule.

Economic Stimulus Package: The stated goal from the incoming Administration is to save or create three million jobs in the bill and the expected price tag continues to hover in the $800 - $850 billion range. It is not yet known whether the House or Senate will support that amount. The Obama Administration's short-term goal is to create jobs as quickly as possible, but also to invest in areas that will produce long-term benefits to the economy. Principles for the package are the following:

- Five areas of focus:
  - Energy
  - Infrastructure
  - Education
  - Health Care
  - Protecting the Most Vulnerable
- Items that get underway quickly
- Items that constitute sound national policy
- Completion of legislation as close to January 20th as possible
- No federal earmarks (though Members are requesting funding for their regions – some specifically pushing for extra funds for areas hard hit by plant closings and unusually high unemployment).
- Close scrutiny and monitoring of the money provided.

- **State and City Requests:** Governors and mayors are seeking flexible funding provided directly to states and cities. It is still not known how funding will flow to states, cities, and localities or how much discretion they will be granted. The Governors requested $176 billion for the states ($136 billion for infrastructure projects and $40 billion for state Medicaid health programs). The Conference of Mayors requested $96.6 billion for infrastructure projects in 10 sector areas, including:
  - Community Development Block Grants for Infrastructure
  - Energy Block Grant for Infrastructure and Green Jobs
  - Transit Equipment and Infrastructure
  - City Streets/Metro Roads Infrastructure
  - Airport Technology and Infrastructure
  - Amtrak Infrastructure
  - Water and Wastewater Infrastructure
  - School Modernization
  - Public Housing Modernization
  - Public Safety Jobs and Technology

Port of Seattle Economic Recovery Activities to Date

The Port has actively engaged the Washington delegation and key administration officials on three issues within the economic recovery packages currently being implemented or considered. These issues are infrastructure, taxable municipal bonds and alternative minimum tax issues affecting airport and seaport private activity bonds.

Infrastructure: The Port has partnered with Washington State Department of Transportation, the City of Seattle, the City of Kent, and the Ports of Everett, Tacoma and Vancouver in submitting joint letters advocating for funding of critical infrastructure projects that are ready to go, and tie directly into improving our competitiveness of the seaport. Port of Seattle top projects include the Spokane Street Spokane Street Viaduct, the East Marginal Way Grade Separation, the Mercer Corridor Project and the S. 228th Street Grade Separation Phase 3 near Kent.

Taxable Municipal Bonds: The taxable municipal credit markets have been in turmoil since summer of 2008 and, as a result, the Port has not been able to acquire long-term funding to continue the Rental Car Facility (RCF) project to completion. In order to move forward with the RCF for the long-term, there must be a loosening in the credit market and as a part of reaching that larger goal, there is a push to try and facilitate access to credit markets through the stimulus bill.

The government may be able to affect that in several ways including but not limited to:

- A direct loan for 3-5 years, that would be repaid when the credit markets loosened up and the Port could issue long-term revenue bonds; or

- Federal loan guarantee (bond insurance) that would enhance the Port’s ability to enter the long-term revenue bond market in the near-term.

There has also been discussion about moving a fix through the Senate Finance Committee in a pension corrections bill but it remains unclear if that has any traction.

Private Activity Bonds: Most tax-exempt “municipal bonds” are issued for general governmental purposes and are exempt from all federal income tax. However, a subset of municipal bonds is categorized as private activity by the IRS because the proceeds benefit a private entity such as an airline or real estate developer. These include bonds that fund much of airports, docks, housing authorities and industrial development authorities. These bonds differ from governmental purpose bonds in several ways. Most specifically, they are subject to the Alternative Minimum Tax (AMT) if the investor is subject to AMT and there is no allowance for an issuer to refund the debt in advance of its call date. This subset of municipal bonds is relatively small compared to the entire municipal market.

Due to the possible AMT tax penalty to investors and the smaller, less liquid market, issuers of AMT bonds have always paid a higher interest rate than for governmental/non-AMT bonds. While the spread has varied, it has generally been in the range of 15-30 basis points. Earlier this year AMT spreads rose to 120-150 basis points; the reduced volume from the change in status of housing authority bonds means spreads are unlikely to narrow to their historical range. At these spreads, the advantage of tax-exemption is greatly reduced. In addition, since the market collapse that began on September 15, no AMT bonds have been sold and AMT issuers have continued to delay their sales.

Due to the nature of the airport and seaport business enterprises, much of the Port's debt is in the form of private activity (AMT) bonds. Based on the Port's 2008 budget, we forecast the need to issue $1.5 billion in new debt over the next five years, much of it in the form of AMT bonds. If access to AMT issuance is limited or the rates are significantly higher, that will affect the Port's ability to invest in infrastructure projects that are critical to the transportation system and regional economy. The airport operates on a cost recovery basis with the airlines; already suffering from higher costs and reduced demand, they will be further strained by higher cost airport debt. The alternative is to cancel or postpone projects, resulting in job reductions and less efficient airport operations.

The Port of Seattle, along with national airport and port associations, is advocating that airport and seaport private activity bonds should be treated as housing bonds are under current law-- the interest is not subject to the AMT, but there is no advance refunding granted as in pure governmental bonds.

Other Major Legislation in 2009 Affecting the Port of Seattle

Reauthorization of the Federal Surface Transportation Program: The 2005 "Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users" (SAFETEA-LU), approved by Congress and signed by the President in August 2005, authorized $286.5 billion in federal investment for the highway, public transportation and highway safety programs from fiscal years (FY) 2004-09. The law expires on September 30, 2009.

The House will likely move first and it is unclear what effect the economic recovery package will have on the size of the reauthorization, but Congress will move forward. The stimulus will have no earmarks so the surface reauthorization bill will give Congress the ability to earmark for specific projects. The Senate will take longer and likely work with the Administration to come up with a package. There will be some tension within Congress and in the Administration regarding earmarks and still unclear how it will get resolved. Conventional wisdom will likely see this bill's actual passage slide into 2010.

The Port will make a significant effort on infrastructure investments that positively impact the competitiveness of our container business; this effort will build on the existing US Department of

Transportation Borders and Corridors Program and is commonly referred to as a "Freight Title," in the upcoming reauthorization. The specific project priorities are reflected in both our economic recovery infrastructure requests and the ongoing joint transportation agenda with the Port of Tacoma. Alternative funding mechanisms will likely pose an additional series of policy questions for the Commission and staff as this legislation moves forward.

Federal Aviation Administration (FAA) Reauthorization: It's likely the House will move legislation shortly after Congress convenes, updating the existing bill. The Senate is likely to take more time and coordinate with the new Administration. Existing FAA authority expires March 31, 2009, which is likely to be extended three to six months to work out issues and accommodate Senate action.

In partnership with the City of Burien, Sea-Tac Airport will continue to push for the inclusion of a pilot program in the FAA reauthorization bill to enable the redevelopment of land surrounding the Airport. The pilot program encourages airports to integrate the redevelopment of land acquired through the Part 150 program with that of nearby non-airport properties which local jurisdictions have also slated for conversion or redevelopment. The pilot program also allows related airport redevelopment activities to be eligible costs incurred under the Part 150 program.

In addition, we continue to work with other interested airport properties to allow for airports to be able to enact an increase in the passenger facility charge. Finally, Sea-Tac will continue as a leader in the aviation community on issues related to development of the Next Generation Air Transportation System as well as Green House Gas reduction activities.

Water Resources Development Act Re-Authorization (WRDA - US Army Corps of Engineers Re-Authorization): WRDA will also be reauthorized in 2009 with the House again taking the lead. Passage of the FAA bill through the House and surface transportation reauthorization will likely push WRDA consideration back to mid-year 2009 at the earliest. Extending or making permanent Section 214, which allows for outside support of Army Corps' permit processing, will continue to be a Port of Seattle priority. In addition, we are pursuing ways to address the Harbor Maintenance Tax to make its application more equitable return on the Port and its customers' contributions to this fund.

Department of Homeland Security (DHS) – Airport/Seaport Security: There will be significant turnover at DHS with the new Administration which will require additional engagement of these new staff members. The Senate will begin working on the reauthorization of SAFE Port and will likely look at tweaking Joint Operational Centers, Automated Targeting System, Container Security Initiative, CTPAT and likely 100% container screening again. There will also likely be a push to award port security grants based on risk assessments.

Through DHS, and possibly within the SAFE Port reauthorization, the Port of Seattle will promote the use of port security grants for Operations & Maintenance of equipment, which is authorized but has not been funded in recent grant rounds. Also, given the economic downturn there is concern that local matches will not be feasible and we will explore an ability to have that match reduced or waived. Lastly, upcoming implementation deadlines for Transportation Worker Identification Cards (TWIC) may require additional agency engagement with both DHS and the US Coast Guard.

Energy Policy Legislation: The first of several comprehensive energy policy packages will be introduced in the first quarter of 2009 with the goal of passing final legislation out of Congress before year's end. Challenging topics to be addressed in one or more bills will be renewable portfolio (electricity) standard, grid efficiency, carbon capture and storage, renewable fuel standard and energy efficiency. The last two topics are ones we will be particularly monitoring to look for incentives the Port and its tenants could use. Cap and trade will also be a part of energy discussions in 2009 but conventional wisdom is that the issue is too controversial to come to resolution before 2010, especially in light of the economic downturn.

STATE LEGISLATIVE SESSION

The state legislative session will convene on Monday, January 12, 2009. There are 17 new House members and three new Senators. New King County legislators include Representatives Tina Orwell (33rd), Reuven Carlyle (36th), Marcie Maxwell (41st), Scott White (46th) and Senator Fred Jarrett (41st).

State Budget

The overwhelming focus of the 2009 session will be the biennial budget and the need to bridge a $5.7 billion gap between existing commitments and forecasted revenue. The governor avoided any tax increases in her budget and instead is proposing across-the-board spending cuts, funding shifts, a transfer from the state's rainy-day fund and an assumption of $1 billion in new federal stimulus money. A more accurate revenue forecast, predicted to show even lower state revenues, is expected mid-March and may force legislators to seek even further program cuts, elimination of tax breaks or perhaps increased taxation. Lay-offs of state workers are fully expected, as many as 2,500 over the biennium, and the heavy reliance on new federal stimulus money is of concern to legislative leaders. The budget proposal relies on $1 billion in stimulus funds from the federal government for programs to assist the unemployed, assistance in social service areas that have been hardest hit by the recession, as well as infrastructure projects that are ready to go.

Transportation Funding and Stimulus Spending

Transportation funding, which last year had $3.4 billion approved for highway improvements for the 2009-2011 biennium, lost $800 million in the current proposal. Revenues are already declining due to lower gas tax revenues but this is a separate issue from the shortfall in general fund forecasts. The completion timeline for most transportation construction projects is pushed further into the future, meaning less short-term funding and greater possibility that some projects will be dropped from the funding list altogether. Hardest hit is the state's ferry system, where service cuts provide the most savings.

The Governor's goal for stimulus infrastructure spending is to get new construction jobs created within 90 days. As noted above, the Port has already communicated to both state and federal officeholders a targeted list of transportation projects which are ready to receive stimulus funds and begin construction. Partnering with both other cities and other ports in those communications allows the Port to highlight for federal and state leaders our role in strategic national infrastructure by virtue of our trade activity as a gateway airport and seaport. Our goal for stimulus spending is to emphasize that investment in the Port of Seattle benefits areas across the state of Washington and serves markets across the United States.

At this point, it is unclear at the federal level how stimulus spending will be distributed, but it will certainly flow to the state governments, with perhaps use of current funding formulas split between state and local governments for some of the program areas. Regardless, a key initiative for our state government relations activity will be continued emphasis on the jobs creation and economic recovery – both short term and long term – of Port infrastructure and freight mobility projects. We will be working with state and congressional leaders to use our position in national infrastructure investment to maximize the economic stimulus appropriation to the state.

Unfortunately, the issue of instituting a container box tax may arise again this session, since the overall budget available to fund transportation projects is so constrained. The freight investment study commissioned by the Legislature showed very clearly last year that significant diversion would occur if a fee were levied – and that major 'freight corridor' projects like State Route 509 and State Route 167 actually provide greater mobility benefits to passenger vehicles than commercial vehicles. A national box tax continues to be mentioned as a possible freight funding mechanism, and will likely be considered during the federal transportation reauthorization bill. We will be monitoring it and other options, especially as it relates to competitiveness at gateway ports and for dedicated use to freight mobility projects of significance.

The ports and our maritime partners remain strongly opposed to a state box tax, but as the Commission's joint study sessions with the Port of Tacoma show, the major container ports are aware of the state's funding constraints and understand the need to discuss and evaluate other possible funding options for transportation infrastructure. As mentioned earlier, the Ports of Seattle and Tacoma have co-signed on recent stimulus spending requests for targeted freight mobility projects to support the movement of domestic and international trade and the jobs generation that all trade and construction activity drives.

With the recent announcement by the three agencies regarding more study on Alaskan Way viaduct replacement and to defer the end-of-year decision timeframe to January, we will continue to provide updates on this important issue.

Other Legislative Activity

Despite the budget challenge facing the Legislature, there are still areas of great interest we will be managing during the session. Some bright areas are the Governor's continued focus on container ports, with new language and funding proposed to insert a new planning element into comprehensive planning in Seattle and Tacoma to accommodate freight corridors in those cities. Another is work on Washington State's small business size standard, likely legislation that the Port's Office of Social Responsibility is assisting with. We are also following possible legislation regarding local regulation of town cars, renewable energy credit programs and the Governor's proposed climate change policies, including the role of regulating truck emissions as part of the Clean Ports Plan. At this time, the number of pre-filed bills is fairly small. More specific updates on legislation before the House and Senate will be provided in future communications.

With regard to areas affecting ports, two areas of concern are 1) the shift of $75 million from the local Model Toxics Control Act (MTCA) account to the state general fund; and 2) transportation funding, including continued discussion of a container box tax. The MTCA revenues are keyed to the barrel price of oil, and the account has seen a surge in collections in the past year or so due to the high per-barrel costs. However, the fund is used by local governments, including ports, for toxic cleanup efforts, and a recent survey done by the state confirms that many areas across the state are relying on MTCA funds for ongoing or planned projects, including millions of dollars for many Port of Seattle cleanup sites. The Governor's proposed budget, while providing a lower level of funds for the Puget Sound Partnership initiatives, does include significant allocations for Puget Sound cleanup, including for work with storm water run-off, toxics prevention and climate change strategies. As funding moves between cleanup efforts and broader Partnership programs, we will continue to monitor the effects on Port programs and activities, and our opportunities to support these environmental initiatives.