

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA – STAFF BRIEFING**

**Item No.** 7f  
**Date of Meeting** January 5, 2010

**DATE:** December 29, 2009

**TO:** Tay Yoshitani, Chief Executive Officer

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

**SUBJECT:** Federal and State Legislative Update

**BACKGROUND**

**FEDERAL ACTIVITY – EXECUTIVE AND CONGRESSIONAL**

**DECEMBER OVERVIEW**

The Congress wrapped up a busy month of December, completing action of the Fiscal Year 2010 Appropriations process and focused on moving healthcare reform legislation through the Senate on Christmas Eve. The 2010 session will begin on January 12<sup>th</sup> for the U.S. House and January 19<sup>th</sup> for the U.S. Senate.

On substance the Congress tackled three significant pieces of legislation as they wrapped up the first session of the 111th Congress.

First, they passed the Transportation Appropriations bill that included a Consolidated Appropriations piece funding six remaining appropriations bills -- Transportation, Housing and Urban Development, and Related Agencies Appropriations conference report and the Commerce, Justice, Science, and Related Agencies; Financial Services and General Government; Labor, Health and Human Services, Education, and Related Agencies; Military Construction, Veterans Affairs, and Related Agencies; and State, Foreign Operations, and Related Programs.

Next the Senate and House were able to complete the Department of Defense Appropriations legislation that beyond funding all activities related to the military included a number of key policy extensions, detailed below.

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- *Medicare Physician Payments Extension:* Delayed until February 28, 2010, the scheduled 21.2% cut in Medicare physician payments.
- *Surface Transportation Authorization Extension:* Extends the authorization for the highway, transit, highway safety and motor carrier safety programs of the Department of Transportation until February 28, 2010 – discussed in detail in a later section.
- *Unemployment Insurance:* Extended expanded unemployment benefits, including increased payouts and longer duration of benefits, through February 28, 2010.
- *(COBRA health insurance coverage for unemployed workers:* This provision extended from nine to 15 months the 65% COBRA health insurance subsidy for individuals who became unemployed. The job lost eligibility date is extended in the provision out until February 28, 2010.

Finally, the Senate completed consideration of its version of healthcare reform that will now need to be reconciled with the legislation passed by the House of Representatives. Democrats have set an aggressive goal on completing the conference and enactment prior to the President's State of the Union address in late January. We will continue to monitor development of the final compromise and related impacts to the Port.

### **REAUTHORIZATION OF FEDERAL SURFACE TRANSPORTATION PROGRAMS**

The Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (or SAFETEA-LU) provides the funding and policy framework for the nation's surface transportation programs. Technically, both the law and the \$286 billion in funding it provides for highway and transit programs expired at the end of September. Despite a concerted attempt by the chairman of the House Transportation and Infrastructure Committee to pass a six-year, \$500 billion reauthorization measure, Congress opted instead to pass a short-term extension of SAFETEA-LU that keeps programs operating and funding flowing through the end of February 2010. This delay gives congressional leaders and the Administration more time to consider how to overcome several significant obstacles to passing a long-term authorization bill or whether to simply extend the existing law beyond the 2010 midterm elections, which the Administration has previously requested.

The anticipated delay in congressional consideration of a six-year bill provides an opportunity to continue our efforts to ensure the final bill includes a new federal freight program with an overall focus on improving goods movement and capable of making strategic investments in freight infrastructure. The Port has been working collaboratively with the ports of Tacoma, Portland, Oakland, Los Angeles, and Long Beach to review the proposed reauthorization bill in the House, develop specific legislative recommendations, and educate key stakeholders in Congress and the Administration about the need for a more defined federal policy and dedicated funding.

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Although the timing of congressional consideration of a six-year bill and how policymakers intend to pay for it remain elusive, the various committees with jurisdiction over the bill and the U.S. Department of Transportation are working to develop their own reauthorization principles and proposals. In June 2009, the House Transportation and Infrastructure Committee released its draft SAFETEA-LU reauthorization bill. That proposal includes several new or consolidated programs that would benefit goods movement and provide a foundation from which to engage congressional stakeholders to refine the proposed legislation going forward. A few highlights of the House proposal follow:

- (1) \$25 billion to establish a new Freight Improvement Program to support interstate commerce and goods movement. This dedicated Federal funding stream would be allocated to the states for freight projects. In turn, states would be required to consider freight transportation in a “strategic, statewide context.” In addition, states would be required to create new performance measures to focus and track state efforts on improving the speed and reliability of freight movement on both primary and secondary freight routes.
- (2) The creation of a new Under Secretary for Intermodalism at U.S. DOT responsible for overseeing a rejuvenated Office of Intermodalism and Council of Intermodalism, and spearheading efforts to create a national transportation strategic plan. An Under Secretary would be a significant change at DOT and underscores the desire by lawmakers for the Federal government to be a stronger partner in improving freight mobility.
- (3) \$25 billion for a new “Projects of National Significance Program” intended to provide Federal funding to those multi-modal projects – including highway, transit, freight rail, and intermodal – that serve a broad national purpose. This new program replaces the Projects of National and Regional Significance, National Corridor Infrastructure Improvement, and Coordinated Border Infrastructure programs that were created in SAFETEA-LU. This would be a competitive program administered by the new Under Secretary for Intermodalism.
- (4) \$50 billion for a new Metropolitan Mobility and Access program to provide direct Federal assistance to major metropolitan areas. Funding would be distributed based on population and travel time delay through multi-year financing agreements to implement metropolitan mobility plans. These plans would need to include strategies for relieving congestion.
- (5) Reform of Metropolitan Planning Organizations (MPOs), including increasing the population threshold to 100,000 (but grandfathers in already established MPOs) and requires proportional voting. Also includes new planning requirements for MPOs serving more than one million people and expands the scope of the planning process to include projects that reduce greenhouse gas emissions and improve connectivity and livability.

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- (6) Creation of a National Infrastructure Bank designed to attract private capital investment in surface transportation projects. The bank would provide credit assistance, including secured loans, loan guarantees, and standby lines of credit as well as full-faith-and-credit guarantees by the Federal government to institutional investors.

Given the short-term extension of SAFETEA-LU, Congress is expected to decide in the next several weeks whether to provide another short-term extension, a longer (i.e. 12-18 months) extension, or to proceed with a comprehensive reauthorization. Regardless, we will continue to engage the Washington State congressional delegation, key congressional stakeholders, the Administration, and third-party stakeholders to ensure that the underlying policy – and funding – supports the long-term competitiveness of strategic gateways and makes necessary improvements to freight mobility.

### **AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) UPDATE**

As a reminder, Congress provided \$1.5 billion in ARRA to create the Transportation Investment Generating Economic Recovery Discretionary Grant program (or TIGER grants). Unlike other funding provided in the bill that is tied to existing programs and distribution formulas, TIGER grants are to be targeted at those highway, transit, rail or *port* projects that will have a significant impact in creating jobs and long-term economic growth. The federal investment in these projects will range from \$20 to \$300 million. USDOT received several billion dollars worth of applications in September and has until February 17, 2010, to announce funding awards. Although the Port did not submit its own TIGER application, it supported the City of Seattle's request for \$50 million to complete phase one of the Mercer Corridor project. The inclusion of "ports" as eligible recipients of federal funds is a significant development, and underscores a growing recognition among key stakeholders in Congress that ports are critical regional and national economic drivers and deserving of expanded federal investment in port-related projects.

### **FISCAL YEAR 2010 TRANSPORTATION APPROPRIATIONS BILL**

Prior to adjourning for the year Congress finally passed the Transportation Appropriations bill, which provides funding across USDOT's various programs through September 2010. Congress included an additional \$600 million to continue the TIGER grant program and included language urging the Transportation Secretary LaHood to consider those "innovative projects" that support investments in ports and freight rail.

### **JOBS BILL**

Unfortunately, efforts between the House and Senate to pass a targeted infrastructure investment package prior to adjourning in December failed as leaders on both sides could not agree on the overall size of the package or how to pay for it – including the potential

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use of TARP money as a pay for. Instead, the House passed its own \$75 billion “jobs” package, which included money for infrastructure investments as well as a number of other programs. The Senate does not come back into session until January 20<sup>th</sup>, but it is not expected to take up the House-passed bill. Instead, discussions are already underway among the various committees in the House and Senate to begin drafting a new version of the bill, details of which are not yet available.

### **FAA REAUTHORIZATION**

Like the surface transportation legislation, the Federal Aviation Administration (FAA) programs, current extension has been extended once again until February 2010 and prospects for enactment of a reauthorization bill prior to then is unlikely given the outstanding issues awaiting Congress’ return in late January. Even though the path to passage is no clearer now than it was in September, we remain focused on ensuring that airport funding flexibility, next generation air traffic control (“*NextGen*”), including the “Greener Skies over Seattle” initiative, and land use issues, including joint planning and use of Port property that will strengthen the Port’s ability to partner with Sea-Tac’s neighboring communities, are being addressed favorably in the legislation.

*Greener Skies over Seattle* - This first in the nation project proposes to use satellite-based flight guidance technology to improve flight procedures so aircraft can descend to the airport runway along a shorter and more direct flight path. Team members, including the Port of Seattle, Alaska Airlines and the Boeing Company, will utilize Required Navigation Performance (RNP) and Optimized Profile Descent (OPD) technology to reduce aircraft fuel consumption, emissions and noise in the Puget Sound region. The proposal has the potential to save more than 2 million gallons of fuel per year.

Ultimately, another extension will be necessary come the end of February, to ensure continued funding while compromise legislation is worked out.

### **WATER RESOURCES DEVELOPMENT ACT**

Congress has once again begun the effort to reauthorize WRDA 2007 in the coming legislative year. WRDA authorizes flood control, navigation, and environmental projects and studies by the Army Corps of Engineers. Funding for each project is funded through the annual appropriations process. Members of Congress are required to provide comprehensive information on each WRDA authorization request. The Port of Seattle has four initiatives thus far in the legislation.

First, the Port is requesting authorization to complete a reconnaissance-level study of deepening the federally-managed navigation channel in Elliott Bay serving Port of Seattle cargo terminals. The study will determine the federal interest in pursuing deepening the

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navigation channel to facility next-generation containerships with capacities in excess of 10,000 TEUs.

Second, the Port is supporting the request by the City of Seattle related to replacement of the Elliot Bay Seawall.

Third and fourth, the Port continues to support the efforts of the Pacific Northwest Waterways Association to both ensure that all funds collected for the Harbor Maintenance Tax are spent annually and to permanently extend Section 214, which allows the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of environmental permits. The Section 214 provision has allowed local governments to move forward efficiently with vital infrastructure and ecosystem restoration projects while still ensuring appropriate permit reviews are completed first.

Finally, the Port continues to press for relief from the Harbor Maintenance Tax and its unique impact on the Pacific Northwest due to our proximity to the Canadian border, as well as the additional impact of the Canadian government's national investment strategy into the ports of Vancouver, B.C. and Prince Rupert, B.C. These legislative efforts are likely to occur in the WRDA reauthorization, although not exclusively so.

### **PORT SECURITY**

Looking ahead to 2010, the SAFE Ports Act is scheduled to be reauthorized by Congress. We will continue to work with the many committees of jurisdiction regarding specific Port priorities during the reauthorization and port security issues broadly. Our ongoing priorities include:

- Utilization of Port Security Grant Program funds for security operation and maintenance (O&M) costs and a waiver of the 25% matching funds requirement. We are pleased to report that the Round 10 port security grants will not require this match and will also allow funding for O&M costs.

- Concerns about the realistic implementation of the 100% scanning requirement, which originated in the original Safe Port Act and became a July 1, 2010 mandate in the 9/11 Recommendations Act. Customs and Border Protection (CBP) performance reports on the overseas 100% Scanning Pilots have indicated that the scanning technology is not yet mature and, more importantly, is not scalable to larger, high volume port operations.

- Review of security measures for cargo crossing land borders and whether or not those measures are comparable to the security regime for cargo entering through US seaports or airports. At a December 2009 US Senate Commerce Committee hearing on the SAFE Port reauthorization, Senator Cantwell raised this issue directly with Department of Homeland Security Secretary Napolitano.

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### **ENERGY AND CLIMATE OUTLOOK**

Even with healthcare reform preoccupying the Capitol and stealing the vast majority of headlines during the dwindling days of 2009, there can be no mistaking the tremendous volatility that marked the year's debate on all matters of energy and climate policy. Whether it was February's passage of the Recovery Act (ARRA, or the stimulus) and its unprecedented allocation of energy-related funding, the House's vote in June on legislation to cap carbon emissions, or the Senate's semi-predictable game of "hurry up and wait"—how you view the year's events depends on a number of factors.

But there's little doubt that the past year's debate will color the trends of 2010. For example, 2009 was a watershed year for certain lucky winners of the race for Department of Energy (DOE) stimulus cash. But even as congressional champions and industry alike press for additional investment in an upcoming jobs bill, cutting through the reams of red-tape associated with Federal capital remains a work in progress—and DOE's decades-old baggage and tendency toward bureaucratic drift could boomerang back on the agency.

This year Speaker Pelosi (D-CA) helped cement the message to the international community that "change had come to Washington," when she pushed the Waxman-Markey (HR. 2454) climate bill through the House by sheer force of will. What remains to be seen is how many vulnerable House Democrats will be opposed when the campaign machinery ratchets into high gear.

Meanwhile in the Senate, the year saw multiple sets of "unlikely allies" come together to try to seize momentum and claim the public lead on a climate package worthy of 60 votes—whether the efforts of Senators Kerry (D-MA), Graham (R-SC) and Lieberman (I-CT); or more recently, the long-awaited "cap and dividend" proposal from Senators Cantwell (D-WA) and Collins (R-ME) (S. 2877, or Cantwell-Collins). But with partisan tension at an all time high as a result of healthcare legislation, it's unclear whether a Senate center of gravity can be defined in 2010. One way or the other, coming up with a path forward may fall to the workhorses, rather than show horses, of the Upper Chamber—where quiet diplomacy (especially in an election year) is a vanishing art.

### **CLEAN TRUCKS & GREEN PORT INITIATIVES**

Port staff has briefed Washington congressional delegation staff on the Port's Clean Truck program. We have ensured that the delegation understands the program and its enforceable milestones to ensure a move to more environmentally friendly drayage trucks utilized by terminal operators at POS terminals. Looking forward to 2010, we will continue to monitor legislation that may impact the Port's program or that could benefit it through grants or loans.

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To support both the clean truck program and other green port initiatives, such as seaport and airport electrification projects, we will be promoting a variety of federal programs and requesting assistance from them. These include the US Environmental Protection Agency (EPA) Diesel Emission Reduction Act (DERA) program, the US Department of Energy (DoE) Transportation Electrification Program and Clean Cities Program, and the US Department of Transportation (DoT) Congestion Mitigation and Air Quality (CMAQ) Improvement Program. We are also reviewing the potential of federal assistance for various Duwamish River clean up and restoration activities.

### **STATE LEGISLATIVE SESSION**

The state legislative session will convene on Monday, January 11, 2010. This is a short-session year, with just 60 official days in the session, as compared to 105 in the even years. It will be complete by mid-March and is the second year in the state's budget and legislative biennium. Legislation introduced in 2009 but not passed is still 'live' in the 2010 session. The state's official operating and capital budgets were adopted in 2009, but are often amended through supplemental budgets to accommodate changing conditions while maintaining a constitutionally-mandated balanced budget. There are a few member seats in play due to off-session changes, including special elections in Eastern WA, but no shift in majority/minority party representation.

#### **State Budget**

The focus of the 2009 session was the biennial budget and the need to bridge about a \$9 billion gap between existing commitments and forecasted revenue. This represents nearly a quarter of the state's operating budget and ended up requiring significant cuts in state services. The adopted budget avoided tax increases and used a combination of federal stimulus dollars (\$3B) and spending cuts (\$4B), funding shifts (\$2B) and a transfer from the state's rainy-day fund to balance the budget. Tuition increases at state college and universities were as high as 14 percent and many health and human service program areas were deeply cut.

Unfortunately, the continued decline in state revenues, creating another \$2.5B budget deficit, requires further cuts. The Governor released the statutorily-required balanced budget on December 8 with a proposed \$1.7B in cuts—but declared the level of additional cuts 'unacceptable'. The Governor and Democratic majorities in the House and Senate have expressed support for a revenue package for the 2010 supplemental budget, and an updated budget, one with new revenues included, will be introduced in January. The Governor has mentioned \$700 million as a target for new revenue; a tax revenue coalition, including labor, teachers and health and human services representatives, has mentioned creating as much as \$2 billion in new revenue.

Governor Gregoire has focused initially on eliminating loopholes and increasing government efficiency rather than propose specific new taxes, but more information will



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come early in January and there may be proposals that target business, trade or freight. Some of the options she or the tax coalition has floated include an increase in sales tax, or adding sales tax to professional services, and closing other tax exemptions in multiple areas. Estimates are that a half-cent increase in the state's 6.5-cent share of the sales tax would raise \$518 million in a single fiscal year or as much as \$650 million if the tax could be collected sooner. Revenue proposals affecting core Port businesses, such as freight handling or trade services, as well as proposals that raise costs overall, will be monitored so that the potential impact is clear, but at this time no specific proposals are available.

### **Transportation Funding and Stimulus Spending**

Ongoing activity in this area includes both near-term spending and long-range planning. At the start of 2009, funding was reduced for the biennium, although new money from federal stimulus dollars helped projects across the state. The funding reduction reflected both the decrease in the general fund and the overall revenue decline in revenue from the gas tax. At the time, the completion timeline for most transportation construction projects was pushed further into the future, while also showing difficulty in funding projects after the 2013 biennium. Hardest hit is the state's ferry system, where service cuts provide the most savings.

However, due to the very competitive bid process during 2009, many projects came in under budget during bidding. The state DOT was able to fund more projects than originally programmed in 2009 and as of the November 2009 forecast, transportation revenue in this biennium is up nearly 3% over the prior 2007-09 biennium. While this is good news in 2009, and creating slightly more construction job growth in 2010 as well, overall transportation revenue is down in the current biennium (\$28 million) with the major revenues sources (gasoline and diesel tax and licenses, permits and fees) causing the majority of the decline. Over the entire 16-year forecast horizon, transportation revenues are down \$173 million, so the work in long-range planning is very important to identify ways to stabilize the funding sources for transportation.

The recent OFM forecast shows gas taxes as 50% of all transportation revenue in the 2009-11 biennium. Including diesel fuel taxes, motor vehicle fuel taxes comprise 62% of all transportation revenues. Licenses, permits and fee revenues comprise the second largest share at 21% of all transportation revenues in the 2009-11 biennium. The largest three revenue sources (gasoline and diesel fuel taxes and licenses, permits and fees) are projected to provide 83% of state transportation revenues in the 2009-11 biennium. The remaining 17% includes ferry fares, toll revenue, driver-related revenue and other transportation-related revenue.

As mentioned in an earlier update regarding the Legislature's Joint Transportation Committee's ongoing study for alternative funding sources, the state's current dependency on fuel taxes—the value of which continues to decline due to a number of

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factors—will drive a number of solutions in state legislation, but not in the 2010 session. Legislators likely will contemplate a range of policy options to update and increase transportation infrastructure funding, but action will occur in the 2011 or 2013 biennium. State lawmakers are tracking federal initiatives in this area as well, and we will continue the coordination between federal reauthorization and state policy activity.

### **Other Legislative Activity**

In addition to the budget challenge and likely revenue package facing the Legislature, there are other areas of great interest we will be managing during the session. We are collaborating with other ports and the Ports Association to keep funding for the Model Toxics Control Act (MTCA) account before the members, since this funding directly impacts our environmental clean-up projects. There is an interest in legislation to support better redevelopment around Sea-Tac Airport, and a proposal for local cities to collect a street utility tax will be introduced. 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.

As a reminder with regard to the history with MTCA, the Legislature swept most of the funds from the account as part of last year's budget issues—around \$75 million. Normally, this money would be available for 50% grant matches to clean up contaminated sites. 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. Several million more dollars have entered the fund since it was swept last year, and these new monies will likely be re-programmed also. 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. If MTCA funding is not continued, the Port will lose a significant source of funds for future clean-ups, despite having entered into Agreed Orders with Ecology to assure eligibility for the grant funds.

Another issue is the Governor's proposal to streamline and consolidate a number of state agencies, including moving the Freight Mobility Strategic Investment Board (FMSIB) into Washington State Department of Transportation. FMSIB has been integral in articulating freight mobility needs and represents many affected parties, so a change that would diminish the voice of freight would be concerning.

More specifics on all these topics will become available as the state legislative session begins.