PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No.: 7a

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DATE: December 28, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Patricia Akiyama, Director of External Affairs
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SUBJECT: Federal and State Government Relations Briefing for 2011

BACKGROUND:

FEDERAL GOVERNMENT RELATIONS

DECEMBER 2010 OVERVIEW

After November's historic election, the lame duck Congress struggled to complete the legislative session and reach agreement on two outstanding issues: appropriations for Fiscal Year (FY) 2011 and agreement on expiring tax provisions.

In 2010, Congress did not enact any of the 12 bills to set the annual level of funding for government programs in FY 2011. Instead Congress passed four Continuing Resolutions to fund the government. The most recent one, which passed December 21st, funds the government predominately at FY 2010 levels until March 4, 2011. While the majority of government operations were funded at the FY10 level, a number of anomalies were included, such as activities related to Homeland Security and an extension of surface transportation programs until March 4th. Specific anomalies of interest to the Port are noted below.

- Allows the Federal Air Marshals to maintain the existing FY 2010 4th quarter coverage level for international and domestic flights.

- Allows the Commissioner of U.S. Customs and Border Protection to maintain the level of Customs and Border Protection personnel in place in the final quarter of FY 2010.

- Extends for the duration of the CR the existing authority for the Department of Homeland Security (DHS) to retain its authority to regulate chemical facilities that present high levels of risk.

- Extends for the duration of the CR the existing Federal Emergency Management Agency (FEMA) authority to provide technical and financial assistance to States and localities for pre-disaster hazard mitigation activities.

Resolution of the FY2011 spending bills will be one of the first legislative battles between the new House Republican Majority and the Senate and Administration.

Regarding tax cut extension, on December 17th, two weeks before the laws that established the Bush-era tax cuts – the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and the Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) respectively – were set to expire, President Obama signed into a law the $858 billion Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The final bill was the result of tense negotiations between the President and Congressional leaders. The major provisions of the law include the following:

- Bush-era tax rates. A two year, temporary extension of all tax rates – income, capital gains, and dividends – for middle-income earners (defined as individuals who earn less than $200K and households which earn less than $250K) and upper-income earners (individuals and households who earn more than $200K/$250K, respectively).
- Alternative Minimum Tax (AMT). A two year, temporary adjustment of the AMT for inflation to maintain lower taxation of middle-income individuals and households.
- Estate tax. A two year, temporary 35% estate tax rate with an exemption level of $5 million.
- Payroll tax. A one year, temporary cut in the Social Security tax paid by employees on their wages to 4.2%.
- Research and Development (R&D) tax credit. A two year, temporary reinstatement of the R&D tax credit, which expired in 2009.
- Bonus Depreciation. A two year, temporary tax incentive for businesses allowing them to write off the full cost of capital investments through 2011, and to write off 50% of capital investments in 2012.
- Unemployment insurance. A thirteen month, temporary extension of unemployment insurance benefits.
- Tax credits established in the 2009 economic stimulus measure. A two year, temporary extension of the Child Tax Credit and Earned Income Tax Credit (refundable tax credits which, together, are meant to provide relief to low-income families), and the American Opportunity Tax Credit (a partially refundable tax credit to assist in college tuition payments).

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 passed the Senate on a bipartisan 81-19 vote. The House voted to approve the measure by a 277-148 bipartisan margin.

As a result of the lack of resolution on spending, many of the nation's infrastructure priorities have been shelved until the new Congress convenes on January 5, 2011. This lack of action, coupled with a new Republican majority in the House and narrower majority for Democrats in the Senate, may alter the path and timing of many of the Port's top priorities. While the Port's core priorities remain, identifying ways to effectively communicate these issues to a new crop of members and leaders will be critical.

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 September 30, 2009. The attempt by the House Transportation and Infrastructure Committee to move forward with a six-year, $500 billion reauthorization measure was unsuccessful. The reauthorization legislation has been repeatedly extended, with the current extension expiring on March 4, 2011.

On Labor Day, the President proposed a measure for $50 billion in immediate funding to transportation as a way to create jobs and begin to meet critical infrastructure priorities. This proposal resulted in no action by Congress. However the $50 billion proposal, while unsuccessful, has provided insight into the Administration's priorities going forward. Highlights include:

- The establishment of an Infrastructure Bank to leverage federal dollars and focus on investments of national and regional significance that often fall through the cracks in the currently siloed transportation programs;

- The integration of high-speed rail on an equal footing into the surface transportation program to ensure a sustained and effective commitment to a national high speed rail system over the next generation;

- Streamlining, modernizing, and prioritizing surface transportation investments, consolidating more than 100 different programs and focusing on using performance measurement and "race-to-the-top" style competitive pressures to drive investment toward better policy outcomes.

- Expanding investments in areas like safety, environmental sustainability, economic competitiveness, and livability – helping to build communities where people have choices about how to travel, including options that reduce oil consumption, lower greenhouse gas emissions, and expand access to job opportunities and affordable housing.

During the first quarter of 2011, a number of developments will influence the reauthorization debate. Incoming Transportation and Infrastructure Chairman John Mica (R-FL) expressed his commitment to move legislation in 2011, but stated that the bill must live within the current funding stream - effectively taking new revenue sources off the table. Rep. Mica indicated that all existing infrastructure funding sources, including the Railroad Rehabilitation and Improvement Financing Program (RRIF) and the balance in the Harbor Maintenance Trust Fund (HMTF), will be evaluated. Additionally he has expressed support for new innovative financing proposals to include a national infrastructure bank, expanded tolling, and a focus on public-private partnerships to provide additional funding options in the legislation. Also expected to be on the table is the traditional formula split between highways and transit (typically 80/20), with the Administration and the Republican House arguing for new allocations based on differing priorities.

It is expected that the 2011 debate will center on two developments: First, the President's budget submission to Congress for the 2012 Fiscal Year with a proposed spending and revenue level for all discretionary programs, including transportation; and second, the Administration promise to provide to Congress -- for the first time -- a formal reauthorization proposal. The Administration may build on the Labor Day framework outlined above, and provide greater detail around the core priorities.

The changing political landscape and repeated delays in Congressional consideration of the comprehensive reauthorization bill will allow continued advocacy of a new federal freight program or expanded eligibility for freight across the programs. The Port's focus is on improving goods movement and providing eligibility for strategic investments in freight infrastructure. We have been working collaboratively with the ports of Tacoma, Portland, Oakland, Los Angeles, and Long Beach to review the proposed reauthorization proposals, 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. As the discussion develops in the new Congress, we will develop an updated set of policy recommendations focused on the new parameters of the legislation.

TRANSPORTATION INVESTMENT GENERATING ECONOMIC RECOVERY DISCRETIONARY GRANT (TIGER) PROGRAM UPDATE

In 2009 Congress provided $1.5 billion in the American Recovery and Reinvestment Act (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 targeted at those highway, transit, rail, or *port* projects that will have a significant impact in creating jobs and long-term economic growth. The competitiveness and popularity of the original TIGER grant program led Congress to provide an additional $600 million for TIGER II grants in its FY2010 Appropriations bill.

Although the Port did not submit its own proposals for TIGER I or II, it supported two important projects initiated locally: the City of Seattle's TIGER I request for $50 million to complete phase one of the Mercer Corridor project to address a major freight and vehicular bottleneck that ultimately received $30 million for the project in February 2010; and King County's TIGER II request to replace the South Park Bridge, a connection for freight-heavy routes between the Port, Union Pacific rail yards, Boeing Field, and Sea-Tac. USDOT awarded $34 million to fund the bridge replacement in October 2010. The Port's active support of both of these projects was influential, and the Puget Sound region has been a major winner in projects approved through two rounds of the program.

The House has appropriated $400 million for a TIGER III program in its FY2011 Transportation Appropriations bill, while the Senate has provided $800 million in its version of the bill. The differences remain to be resolved in conference of the new Congress, but it is likely even a

Continuing Resolution outcome will include a third round of competition for TIGER grants in 2011.

FAA REAUTHORIZATION

Like the surface transportation legislation, the Federal Aviation Administration (FAA) programs have been extended a number of times and are extended through March 31, 2011. However, the shift in House leadership may enable a speedier resolution of outstanding issues. The priorities remain on ensuring funding flexibility for the airport; the right of local governmental entities like the Port Commission to determine the appropriate level of passenger facility charges to authorize at Sea-Tac; the acceleration of next generation air traffic control (*"NextGen"*) including airport-specific priorities around the "Greener Skies over Seattle" initiative; and land use issues, including joint planning and use of Port property to strengthen the Port's ability to partner with Sea-Tac's neighboring communities, being addressed favorably in the legislation.

WATER RESOURCES DEVELOPMENT ACT (WRDA)

Congress continues its effort to reauthorize WRDA in the coming legislative year. Again, the change to a Republican majority in the House points toward a new approach to the development and priorities of the legislation going forward. WRDA authorizes flood control, navigation, and environmental projects and studies by the Army Corps of Engineers. Funding for each project is done through the annual appropriations process. Members of Congress are required to provide comprehensive information on each WRDA authorization request. The Port of Seattle has identified four initiatives thus far in the legislation:

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

2. Supporting a City of Seattle request related to the completion of the study focused on the replacement of the Elliott Bay Seawall.

3. Continuing to support the efforts of the Pacific Northwest Waterways Association (PNWA) to ensure that all funds collected for the Harbor Maintenance Tax are spent annually.

4. Permanently extending Section 214 of WRDA 2000, 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.

Both the House and Senate passed H.R. 6184, extending the authority of Section 214 until 2016 and removing uncertainty around the program because of a series of one year extensions which left the continuation of the program in question. The extension until 2016 will allow the Port and other supporters to work toward a permanent extension in upcoming WRDA reauthorization knowing that, in the near term, the authority of the program is secure.

Finally, we continue to press for relief from the Harbor Maintenance Tax (HM Tax) and the competitive disadvantage it imposes on the Pacific Northwest due to our proximity to the Canadian border, as well as the added 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 and the accompanying funding title. Consideration of WRDA, and the HM Tax specifically, will span four committees of jurisdiction: House Transportation and Infrastructure; House Ways and Means; Senate Environment and Public Works; and Senate Finance. In 2010, the Port has been developing a range of options with its federal supporters to ensure the competitive balance in global shipping.

PORT SECURITY

While Congress was expected to reauthorize the SAFE Ports Act, the legislation was not enacted. As the 112th Congress begins, many committees of jurisdiction will engage on specific Port priorities during the reauthorization and port security issues broadly. Those 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. The Round 10 port security grants will not require this match and will 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 seaport operations. Recent international activities in the air freight supply chain have renewed the debate on the need for this mandate with regard to air cargo, and it will be an issue that will be closely watched in the next Congress.

GREEN INITIATIVES

In 2011 legislation may impact the Port's green initiatives, including energy and environmental legislation related to the seaport and airport. We will continue to support a variety of federal programs and work with the state congressional delegation to gain assistance and support. These programs include the reauthorization of 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 will continue to seek to identify potential federal assistance for various Duwamish River clean-up and restoration activities.

In the arena of energy and climate change, the November election will likely impact the political debate. While the new House Republican majority likely precludes consideration of broad carbon-regulation legislation, efforts to regulate greenhouse gas emissions will continue and perhaps accelerate. The new majority in the House may seek to repeal any remaining stimulus dollars and pursue extensive oversight over the use of the energy and climate-related programs funded by the stimulus. Our focus will remain on the spending proposals for programs authorized prior to stimulus that received additional funding as part of the legislation.

As the Port continues its role as a recognized national leader in the maritime and seaport business we continue to ensure that the Federal delegation and agencies are aware and supportive of the Port's efforts. We have secured federal assistance for green projects at both airport and seaport, and will continue to ensure that our sustainability goals are provided eligibility within all transportation modes and energy-related legislation.

2011 OVERVIEW

The 112th Congress convenes on January 5, 2011. It comprises one of the largest freshmen classes for the House of Representatives with 96 new members (87 Republicans with a net pickup of 63 seats and nine new Democrats). The Senate also faces significant turnover with 16 new Senators (14 Republicans with a net pickup of six seats, and two Democrats).

A number of Port priorities are carried forward into the next Congress. Congressional gridlock was a consistent theme throughout 2010, resulting in few legislative outputs. On several issues critical to the Port -- transportation and energy -- recent statements from the Administration and Congressional leaders indicate that these areas represent the best chance for progress leading up to the 2012 Presidential election cycle. Unlike most issues, transportation and energy (minus carbon) have traditionally served as a bi-partisan bridge in the nation's capital.

STATE GOVERNMENT RELATIONS

STATE LEGISLATIVE SESSION

The state legislative session will convene on Monday, January 10, 2011. This is a long-session year, with 105 official days in the session, and is scheduled to end on April 24. The Legislature must pass a balanced budget for the 2011-13 biennium, as well as an additional supplemental budget to address a shortfall in the existing budget which will end June 30, 2011. There were incumbent losses in the November general election, but no shift in majority/minority party representation. Democrats have a majority of 56-42 in the House and 27-22 in the Senate.

State Budget

The focus of the 2011 session will be the biennial budget, both operating and capital, and the need to bridge about a $4.6 billion gap between program commitments, including increased caseload, and forecasted revenue. This represents over ten percent of the state's approximately $33 billion operating budget and the proposed budget from Governor Gregoire released on December 15 shows significant cuts in state services. The Governor's proposed budget cuts state spending by approximately $3 billion and moves funds in other accounts to balance the budget.

In the face of such service cuts, there is increased focus on proposals to increase government efficiency, address tax incentives, eliminate boards and commissions, and other reform measures. With the passage of citizen initiatives repealing tax increase measures from the 2010 legislative session, as well as reinstituting a two-thirds requirement for any new taxes, the Governor has proposed no new revenue measures. She has released proposals for agency streamlining, pension reform and additional cuts for state employee compensation. The outcome through the legislative process is unknown at this time, but the state's revenue scenario is dire for the upcoming biennium and there is no expected relief from federal funds or new revenue measures, as was used for the current budget gap.

In addition, the Governor has proposed a supplemental budget to address the remaining shortfall in the current biennial budget. The overall gap is $1.1 billion; earlier legislative action and some across-the-board cuts left approximately $400 million to be cut by June 30. She has requested the Legislature act quickly on this proposed supplemental budget when they convene in January, to minimize any further shortfall.

Revenue proposals affecting core Port businesses, such as changes in tax rates for 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 for a new transportation funding package in the state. Regardless of federal stimulus monies received in 2009 and 2010, the funding stream for the state's adopted project list of transportation projects is largely spent by 2013 and completed by 2015. No new revenue exists to fund a new round of projects, since 100 percent of the current stream was bonded to pay for the project lists developed through the earlier packages. Future funds are declining, both in the decrease in the general fund and the overall revenue decline and purchasing power in 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 remain down, so the work in long-range planning is very important to identify ways to stabilize the funding sources for transportation.

The last OFM forecast shows gas taxes as 50% of all transportation revenue in the 2011-13 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. 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 2011-13 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 factors—will drive a number of solutions in state legislation. Legislators likely will contemplate a range of policy options to update and increase transportation infrastructure funding, but it is unclear whether legislative action will occur in the 2011 session. One likely scenario is that a new funding package may require voter approval, allowing policy development to occur in 2011, with package particulars and legislative action taking place in 2012, followed by a public vote in the fall. State lawmakers are tracking federal initiatives in this area as well, and we will continue to coordinate Port participation between federal reauthorization and state policy activity.

Other Legislative Activity

In addition to the budget challenge and development of a platform for transportation infrastructure funding, 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. 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 the state Department of Ecology to assure eligibility for the grant funds. Funds from the local MTCA account are available for 50% grant matches to clean up contaminated sites.

As a reminder with regard to the history with MTCA, the Legislature swept most of the funds from the account as part of the 2009 budget shortfall but the supplemental capital budget in 2010 allocated approximately $30 million in new money to projects, including Lora Lake Apartments and Terminal 117 clean-up. Several million more dollars have entered the fund since it was swept in 2009, and the Governor's proposed operating budget released in mid-December redirects $40 million from the account to the general fund.

There is an interest in legislation to support redevelopment and financing in cities, and cities will again introduce legislation to collect a street utility tax. 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.

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 interested parties, so a change which would diminish the voice of freight would be concerning.

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