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LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required To Complete This Page

1. Registrant Name International Council of Shopping Centers			
2. Address <input type="checkbox"/> Check if different than previously reported 1033 N. Fairfax Street, Ste. 404, Alexandria, VA 22314			
3. Principal Place of Business (if different from line 2) City: _____ State/Zip (or Country) _____			
4. Contact Name Judy E. Laniak	Telephone (703) 549-7404	E-mail (optional) jlaniak@icsc.org	5. Senate ID # 19935-12
7. Client Name <input checked="" type="checkbox"/> Self			6. House ID # 19935

TYPE OF REPORT 8. Year 2002 Midyear (January 1-June 30) OR Year End (July 1-December 31)

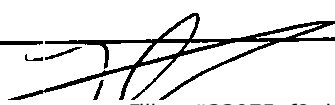
9. Check if this filing amends a previously filed version of this report

10. Check if this is a Termination Report ⇨ Termination Date _____

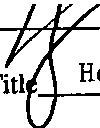
11. No Lobbying Activities

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

<p>12. Lobbying Firms</p> <p>INCOME relating to lobbying activities for this reporting period was:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇨ \$ _____ Income (nearest \$20,000)</p> <p>Provide a good faith estimate, rounded to the nearest \$20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).</p>	<p>13. Organizations</p> <p>EXPENSES relating to lobbying activities for this reporting period were:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇨ \$ <u>295,200</u> Expenses (nearest \$20,000)</p> <p>14. REPORTING METHOD. Check box to indicate reporting accounting method. See instructions for description of each method.</p> <p><input type="checkbox"/> Method A. Reporting amounts using LDA definitions</p> <p><input type="checkbox"/> Method B. Reporting amounts under section 6033(e) Internal Revenue Code</p> <p><input type="checkbox"/> Method C. Reporting amounts under section 162(e) Internal Revenue Code</p>
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Signature



Printed Name and Title

Herb Tyson, Staff V.P. Government Relations

LD-2 (REV. 6/98)

PAI

Registrant Name International Council of Shopping Centers Client Name Self

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the r engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code information as requested. Attach additional page(s) as needed.

15. General issue area code INS (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted

Check if None


U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above

Check if None

Signature  Date 2-12-03

Printed Name and Title Herb Tyson Staff V.P. Government Relations



Registrant Name International Council of Shopping Centers Client Name 00030132597

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code information as requested. Attach additional page(s) as needed.

15. General issue area code BNK (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted

Check if None

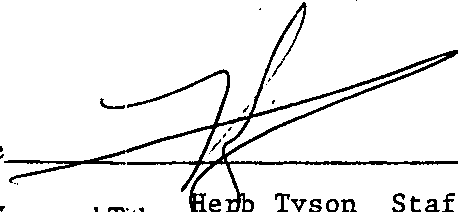
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Registrant Name International Council of Shopping Centers Client Name -----

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15. General issue area code TAX (one per page)

16. Specific lobbying issues

see attached issue briefs


17. House(s) of Congress and Federal agencies contacted Check if None

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U.S. Senate
E.P.A.

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William H. Hoffman III	

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Registrant Name International Council of Shopping Centers Client Name bell

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15. General issue area code CAW (one per page)

16. Specific lobbying issues

see attached issue briefs


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U.S. Senate
E.P.A.

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William H. Hoffman III	

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15. General issue area code TEC (one per page)

16. Specific lobbying issues

see attached issue briefs

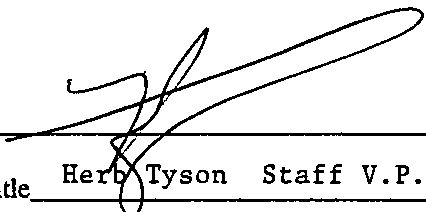
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Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name 00030132601

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code information as requested. Attach additional page(s) as needed.

15. General issue area code ENV (one per page)

16. Specific lobbying issues

see attached issue briefs

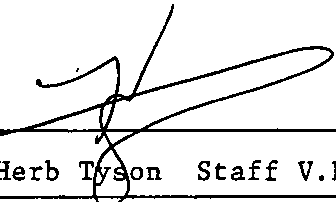
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U.S. Senate
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William H. Hoffman III	

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15. General issue area code CSP (one per page)

16. Specific lobbying issues

see attached issue briefs

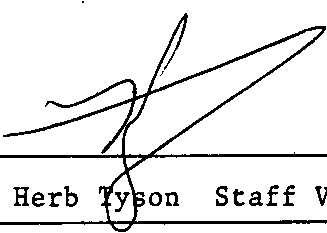
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Printed Name and Title Herb Tyson Staff V.P. Government Relations



ADA NOTIFICATION ACT

Issue Brief

Updated June

ISSUE

The intent and spirit of the Americans with Disabilities Act of 1990 is unfortunate being abused by a growing number of attorneys who are filing, or threatening to file lawsuits against property owners for minor, technical access violations. Fearing the time hassle and expense of lawsuits, these property owners are forced into settling these claims with these attorneys.

BACKGROUND

Some attorneys have created a cottage industry of inspecting various shopping center retail stores and restaurants and then identifying minor violations of the ADA, including those in parking lots, walkways or bathrooms. Without giving the alleged violators a chance to remedy the problem, these attorneys are filing, or threatening to file, lawsuits that usually lead to cash settlements – part of which goes to the attorney and the rest to the disabled plaintiff. By creating a multitude of cases, these attorneys are generating substantial amounts of income for themselves.

LEGISLATION

To help address this problem, Representative Mark Foley (R-FL) and Senator Daniel Inouye (D-HI) have introduced the *ADA Notification Act* (H.R. 914, S. 782). Both bills would give property owners 90 days to fix an alleged ADA violation after they have been notified before a related lawsuit can be filed. This legislation is needed despite the fact that the Supreme Court ruled last year that a business is not liable for attorneys' fees if it voluntarily corrects an ADA violation before the case gets to court.

OUR POSITION

ICSC supports these bills since they would curtail the abusive practice of certain attorneys filing, or threatening to file, lawsuits for easily correctable ADA violations while preserving the rights of disabled people to bring lawsuits for serious violations of their rights. ICSC is working with these members of Congress and other business groups to get this legislation enacted into law.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.



International Council
of Shopping Centers

BANKRUPTCY REFORM Issue Brief

Updated June .

ISSUE

Over the past few years, an increasing number of financially healthy companies have been filing for bankruptcy protection as a business tool. Because businesses do not have to be insolvent to declare bankruptcy, more and more solvent companies are reorganizing under Chapter 11 of the Bankruptcy Code in order to restructure themselves and shut down unprofitable stores. To make matters worse, many bankrupt retailers fail to assume (continue) or reject their leases in a reasonable amount of time. As a result, many shopping center owners are losing control over their own properties, neighboring tenants are losing business, retail employees are losing their jobs, and local economies are being threatened.

BACKGROUND

Congress has addressed the issue of bankruptcy reform for decades. In 1994, Congress created the National Bankruptcy Review Commission to investigate and study issues relating to the Bankruptcy Code. As part of its review, the Commission analyzed Chapter 11 of the Code, including provisions in Section 365 that affect shopping center leases. In 1997, the Commission submitted a report to Congress that contained a detailed statement of their findings and conclusions, along with recommendations for legislative and/or administrative action.

Bankruptcy reform legislation was almost enacted in the 105th and 106th Congresses. In 1998, legislation passed the House but died in the Senate, while in 2000, a reform package passed both the House and Senate but died by "pocket veto" on former President Bill Clinton's desk (since Congress adjourned within 10 days of sending the bill to him).

LEGISLATION

ICSC supports both the House and Senate versions of *The Bankruptcy Reform Act of 2001* (H.R. 333). Both bills adequately address issues important to our industry, including those relating to: (1) the amount of time a bankrupt tenant has to assume or reject its leases; (2) the administrative priority of rents due under leases that are assumed and later rejected; (3) greater access to creditors' committees; (4) the curing of certain non-monetary defaults before a lease can be assumed and assigned; and (5) the adherence of "use" and other provisions upon assignment.

As of early June, House and Senate conferees had reached agreement on all but one issue – a Senate-passed provision that would prevent the discharge in bankruptcy of debts of those who perpetrate violence at abortion clinics and other public facilities. Hopefully this issue will be resolved soon so a final Conference Report of H.R. 333 can be approved by the full House and Senate and signed into law.



OPPOSING
VIEWPOINTS

Some retailers claim that they need the long extensions of time in order to properly determine which leases should be assumed and rejected. While we agree that the current 60-day period may not be enough time to make such decisions, a fixed, determinate period of time in which to assume or reject needs to be established so shopping center owners can retain some control over their properties. ICSC supports the comprom provisions in both versions that would require bankrupt debtors to assume or reject the leases within 120 days, plus another 90 days "for cause." Any additional extension would require the prior written consent of the owner.

Some of our opponents claim that shopping centers owners are not harmed during the extended period retailers have to assume or reject their leases so long as such retailers are paying their monthly rent on time. The problem is, even if an owner is receiving rent during this period, many bankrupt merchants cease their retail operations and leave their stores "dark." This, in turn, casts a shadow over the entire shopping center and negatively affects neighboring stores' customer traffic and sales revenues. This not only results in owners receiving reduced "percentage" rents, but can also affect the lease agreements they have with these other stores.

OUR POSITION

ICSC believes that solvent companies should not be able to use the bankruptcy system to break valid leases and that decisions on whether to assume or reject leases should be made within a reasonable period of time. Companies faced with financial catastrophe should be able to reorganize under Chapter 11. However, our bankruptcy laws need to be strengthened to protect all creditors and to prevent companies from abusing the system. Bankruptcy should be the final option, not the preferred option of businesses.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.



CAPITAL GAINS REFORM

Issue Brief

Updated February

ISSUE

Lowering the tax rate on individual and corporate capital gains would help sustain a nation's economic growth, improve long-term productivity and make us more internationally competitive. It would also "unlock" billions of dollars in unproductive under-utilized investments for new, innovative, job-creating activities.

BACKGROUND

Before 1987, the capital gains of individuals were taxed at rates below that of ordinary income. The *Tax Reform Act of 1986* not only lowered the tax rates on ordinary income but it also repealed the tax preference for capital assets. Therefore, capital gains were taxed at the same rates as ordinary income. In 1991 and 1993, the top rate for ordinary income was increased to 31 and 39.6%, respectively, while the top rate for capital gains was maintained at 28%.

The *Taxpayer Relief Act of 1997* reduced the maximum long-term capital gains tax rate to 28 to 20% (10% for those in the 15% income tax bracket). Beginning in 2001, capital rates on assets held five years or more will drop from 20 to 18% (10 to 8% for those in the 15% bracket). However, to be eligible for the 18% rate, such assets would have to be acquired after December 31, 2000. The maximum tax rate on depreciation recapture, however, was reduced only to 25%. The capital gains of corporations, on the other hand, are taxed at ordinary corporate income tax rates, with a maximum rate of 35%. The 1997 Act did not provide any corporate capital gain relief. In 1998, former President Clinton signed legislation that included additional capital gains tax relief.

LEGISLATION

A tax-cut bill signed into law last June – the *Economic Growth and Tax Relief Reconciliation Act of 2001* – did not include any capital gains tax relief for individuals or corporations. An economic stimulus package passed by the House in October 2001 contained a provision that would have eliminated the five-year holding period requirement for the 18 and 8% rates referred to above. The bill also would have increased the amount of ordinary income that could be offset by capital losses from \$3,000 to \$5,000. Unfortunately, the House later passed a revised stimulus bill without any capital gains or loss measures. As of January 2002, the Senate has not reached an agreement on their own economic stimulus package.

OUR POSITION

ICSC will continue to work with other real estate groups to promote individual and corporate capital gains relief for inclusion in subsequent tax bills. We believe that capital gains taxes should be further reduced or eliminated, and that related legislation be based on the following principles:



- Capital gains income should be taxed at a lower rate than ordinary income;
- Corporate and individual taxpayers should be treated equally, since the reasons supporting preferential tax treatment for capital gains apply without regard to the legal form of the entity holding the property;
- All types of real estate assets, including new and existing property, should be treated the same; and
- The tax rates applicable to capital gains on the sale of real estate, including appreciation and depreciation recapture, should be taxed at the same rate that applied to other capital assets, such as stocks and bonds.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.



E-COMMERCE TAXATION

Issue Brief

Updated June

ISSUE

The Internet is rapidly becoming America's new marketplace. While tax policy should not discourage consumers from exploring this new purchasing channel, it should not favor Internet purchases over store purchases either. Instead, tax policy should provide a level playing field for traditional retail businesses, mail order companies and Internet-based merchants. All levels of government need to work together to formulate a state and local sales and use tax system that is uniform, equitable and streamlined. This new system should reduce administrative costs and burdens for all businesses and consumers. Adopting an efficient sales tax system would not only preserve the sales tax base of state and local governments, but it would also promote fair trade among all sellers of consumer goods.

BACKGROUND

Through the years, Congress and the courts have addressed the issue of state-imposed sales and use taxes on remote sellers as it applied to mail-order merchants. However, the advent of Internet commerce brings a new focus and sense of urgency to this issue. The Internet marketplace is rapidly expanding, yet it remains mostly free from traditional forms of taxation. The current dilemma facing Congress is whether to grant state authority to collect taxes on remote e-commerce sales (which some claim could slow Internet commerce) or maintain the current tax collection system (which gives most online sellers an unfair advantage over traditional merchants and reduces state and local revenues).

In 1998, Congress enacted a three-year moratorium which expired on October 21, 2000 on Internet access taxes and new, multiple or discriminatory taxes on electronic commerce. In addition, it established an Advisory Commission to examine Internet taxation and interstate sales transactions. Unfortunately, the Commission failed to reach a consensus on the collection of state and local sales taxes on remote sales. However, it did issue a majority report that recommended not only extending the moratorium, but also creating special "nexus" carve-outs and sales tax exemptions for Internet businesses.

A multi-state organization composed of representatives from 27 states and Washington, DC has approved various proposals of the Streamlined Sales Tax Project and/or the National Conference of State Legislatures, including those relating to state and local sales tax rates and sales tax holidays. The group expects to act on all proposals by this summer and incorporate them into a multi-state agreement -- which would then go to the states for ratification.

LEGISLATION

ICSC supports legislation introduced by Senators Byron Dorgan (D-ND) and Mike Eni (R-WY), S. 512, and Representatives Ernest Istook (R-OK) and William Delahunt (R-MA), H.R. 2780.



OPPOSING
VIEWPOINTS

MA), H.R. 1410, that, in addition to extending the moratorium, would give those states that simplify their sales tax systems the authority to collect remote sales tax. Unfortunately, a Senate amendment that would have provided such authority was tabled and the underlying bill, H.R. 1552 – which simply extends the moratorium for two more years – was passed and later signed into law. This two-year extension, however, will give state and local governments additional time to devise a simplified and workable sales tax collection system that will hopefully be part of the next moratorium extension.

Many Internet-based retailers claim that imposing remote sales tax collection requirements on them would be too burdensome, given the thousands of state and local taxing jurisdictions across the country. While we agree that states and localities need to simplify their sales and use tax systems, there is currently software available that can adequately determine, collect and remit a merchant's remote sales taxes.

Our opponents also claim that states are currently flush with cash, and therefore need not be concerned with uncollected sales taxes on electronic commerce. While most, but not all, states are currently enjoying budget surpluses, if the economy continues to soften and more sales gravitate from traditional stores to the Internet, states and localities could find themselves with budget deficits and forced to cut back on essential services or raise other taxes.

OUR POSITION

ICSC believes that tax policy should be consistent and equitable for all forms of consumer purchases – whether they take place in shopping centers, via mail order or over the Internet. Internet retailers should not receive a tax advantage at the expense of traditional retailers and state and local governments. ICSC does not oppose the act or substance of the moratorium, however, we believe that any extension should also give those states that simplify their sales tax systems the authority to require remote sellers to collect sales and use taxes on their behalf. ICSC is working with other real estate organizations and the e-Fairness Coalition to promote a level playing field for merchants.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.



International Council
of Shopping Centers

LEASEHOLD IMPROVEMENTS

Issue E

Updated

ISSUE

One of the most important obligations of shopping center owners is to provide modern, efficient and environmentally sound retail space for their tenants and the public. Owners must periodically refurbish and replace many structural components of their buildings—such as internal walls, ceilings, partitions, plumbing, lighting, floor coverings, electric and communication outlets and computer data ports—in order to meet the specific needs of their tenants and to comply with government regulations. Unfortunately, current law dictates that these modifications—commonly referred to as “leasehold improvements”—be depreciated over 39 years. Most leasehold improvements, however, have a much shorter economic life—usually between 3 and 10 years.

BACKGROUND

Before 1981, building owners could recover the costs of leasehold improvements over the term of the lease to the tenant. The rationale behind this reflected the fact that leasehold improvements for one tenant are rarely suitable for another, and when a tenant leaves, it is usually necessary to destroy or abandon such improvements and rebuild for a new tenant.

In 1981, Congress set aside this principle of matching income from the lease with the costs of leasehold improvements. A single depreciation life of 15 years was established for all buildings and all improvements made within. Since then, the recovery period for nonresidential real property has been gradually increased to 39 years.

In 1996, Congress enacted legislation that allows owners to expense the unrecovered basis of leasehold improvements in the year they are destroyed or abandoned. Previously, only tenants who owned such improvements could do so. Unfortunately, leasehold improvements must still be depreciated over a 39-year recovery period while they are in service.

In 2000, the consulting firm of Deloitte & Touche completed a study that estimated the economic depreciation of various types of real estate structures and analyzed such estimates for tax depreciation purposes. According to the study, retail structures have an estimated economic depreciation recovery period of 12 years based on annual rents (12 years based on building values) – both of which are significantly shorter than the 39 years currently allowed under the tax code.

LEGISLATION

In March, President Bush signed into law an economic stimulus bill that, among other things, allows taxpayers to claim (for both regular and alternative minimum tax purposes)



an additional 30% "bonus" first-year depreciation for certain qualified property including leasehold improvements, purchased between Sept. 11, 2001 and Sept. 10, 2002. The law also provides various investment incentives for property built in the damaged area of New York City. The IRS later issued Revenue Procedure 2002-33 to assist taxpayers in claiming such additional depreciation benefits. Representative Jerry Welton (R-IL) has since introduced legislation (H.R. 4020) that would permanently extend the "bonus" depreciation provision.

Representative Clay Shaw, Jr. (R-FL) and Senator Kent Conrad (D-ND) are the lead sponsors of legislation (H.R. 1030, S. 1087) that would reduce the depreciation period for leasehold improvements from 39 to 10 years. Before the final economic stimulus bill was enacted into law, the House passed three versions that contained provisions that would have permanently reduced the depreciation period for leasehold improvements to 15 years.

OUR POSITION

ICSC advocates shortening the depreciable lives of leasehold improvements so they are more closely aligned with their economic lives. We strongly support legislation, such as H.R. 1030 and S. 1087 that would permanently reduce the depreciation period for leasehold improvements to 10 years, and believe it would encourage shopping center owners to invest more resources into such property. Alternatively, we support the permanent extension of the first-year "bonus" depreciation provision recently enacted and put forth in H.R. 4020.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.



PRIVATE PROPERTY

Issue Brief

Updated June 2012

ISSUE

The “takings” clause of the Fifth Amendment to the U.S. Constitution states, in part, “nor shall private property be taken for public use without just compensation.” Despite the protection of the Constitution, countless landowners have been deprived of their property, prosecuted, fined, or in some cases, jailed, because of wetlands and endangered species on their property.

BACKGROUND

The often reckless enforcement of laws such as the Endangered Species Act (ESA) and Section 404 of the Clean Water Act (CWA) (the source of regulations limiting the development of wetlands) has driven down market value and often rendered private property useless for agricultural or development purposes. Government “takings” are essentially an act of government restricting the rights of private property owners to pursue specific activities on their private land without compensation—have grown dramatically with the increase of regulation and galvanized private property owners into action to defend their property rights. All too often, however, property owners are faced through a variety of procedural and judicial hurdles that take years to resolve.

The Fifth Amendment is being attacked, both legislatively and judicially. ICSC members ultimately want to be able to develop their land. Developers purchase land as an investment tool, not as an opportunity to seek compensation from any government entity.

The vast majority of land in America is privately owned. Regulators need to work with these landowners, not against them. Regulators and lawmakers should recognize the progress we have made since the 1970s and encourage new and better ways to protect and enhance our environment.

LEGISLATION

ICSC continues to advocate the need for Congress to enact legislation that would strengthen the rights of property owners. The 107th Congress has thus far not initiated any serious legislative efforts on the property rights issue(s). ICSC has, however, recently joined other real estate organizations in the filing of an amicus curiae brief in the Circuit Court of Appeals and we will continue to monitor property rights issues across the country.

OUR POSITION

ICSC believes that it is necessary to protect private property through the adoption of appropriate environmental legislation and regulation and supports any action that:



- Provides standards by which the environmental value of property shall established;
- Provides an efficient and fair system by which a property owner can seek time redress for laws and regulations that result in a taking without compensation that deny the economic benefits of the “highest and best” use of his property;
- Provides for responsible, responsive, and timely judicial review and/or regulatory rulings on development applications; and
- Incorporates an economic impact assessment of the imposition of legislation a resulting regulation.

For more information, contact William H. Hoffman, III at 703-549-7404, ext. 224.



TERRORISM INSURANCE

Issue Brief

Updated June

ISSUE

Before September 11, coverage for terrorist activities was generally included as part of a business' property and casualty insurance policy. "Acts of war" are traditionally excluded, however, "acts of terrorism" have not been separately included or excluded from such policies. Even after the Oklahoma City and World Trade Center bombings, U.S. insurers did not see the need to offer, and U.S. businesses did not have to buy separate coverage for acts of terrorism. September 11 changed all of that.

BACKGROUND

Although the insurance industry is able to absorb the estimated \$40-\$70 billion in loss from September 11, most reinsurance companies have decided, on a prospective basis, to exclude terrorism coverage because they are unable to price such coverage. As a result, terrorism insurance from primary insurers is either unobtainable (especially for high value and "trophy" properties) or available only at extremely high prices (with liability caps and high deductibles). Most states' insurance commissions, with the exception of New York and California, have been approving requests by insurance companies to exclude terrorist coverage from their policies.

Without proper terrorism insurance, shopping center owners will be forced to bear some or all of the risk of damages resulting from any future terrorist events, and may be in technical default of their existing loan agreements. In addition, the lack of such coverage is beginning to cause banks and other lenders to either cease or significantly curtail financing new projects or refinancing existing ones.

LEGISLATION

Last November, the House of Representatives passed legislation (H.R. 3210), introduced by Representatives Michael Oxley (R-OH) and Richard Baker (R-LA), that would have the federal government act as an "insurer of last resort," thereby enabling insurers to offer reasonably-priced terrorism insurance to their policyholders. Specifically, the bill would create a one-year program (with an optional two-year extension) whereby the government would provide up to \$100 billion in loans to the insurance industry to cover losses from future terrorist attacks. The loans would cover 90% of claims exceeding \$1 billion in industry losses (or 10% of an individual company's capital surplus and net premiums).

H.R. 3210 also contains controversial legal liability reforms that, among other things, would ban punitive damage awards against the federal government and property owners. Unfortunately, the bill would not require insurance companies to offer terrorism insurance to all their policyholders, and contains a somewhat restrictive definition of "terrorism."



As of early June, the Senate has been unable to reach agreement on similar legislation (mainly due to the tort reform provisions), despite the fact that President Bush and numerous business and labor organizations have publicly urged the Senate to act promptly. However, legislation (S. 2600) introduced by Senators Chris Dodd (D-CT), Paul Sarbanes (D-MD), Harry Reid (D-NV) and Charles Schumer (D-NY) was recently placed on the Senate calendar and will hopefully be voted on shortly. In addition, Senators Phil Gramm (R-TX) and Mitch McConnell (R-KY) have drafted an amendment to help move the process along.

A preliminary agreement last year between the White House and key Senate negotiators would have the federal government cover 90% of future terrorist-related claims exceeding \$10 billion (for events under \$10 billion, the government would cover 80% of losses exceeding an individual company's retention level of 7.5% of premiums). Neither the insurance industry nor its policyholders would have to reimburse the government for such assistance and the program would last for one year. Tort reform measures had not been agreed to, but insurers would have to offer terrorist coverage to all of their policyholders.

Several groups, including Morgan Stanley and the General Accounting Office, have released reports highlighting the negative effects of the lack of, or high cost of, terrorism insurance on the business community. In addition, two securities-rating firms are considering downgrading the debt on those companies that have little or no terrorism insurance – a move that would make refinancing debt more expensive and could lower the value of their securities.

OUR POSITION

ICSC supports H.R. 3210, as well as various Senate measures, that would provide federal backstop for terrorism insurance and urges Congress to work together to pass legislation immediately. Such legislation, however, should (1) require insurers to offer coverage to all of their policyholders and for all of their properties; (2) contain a broad enough definition of "terrorism" to include all acts of terror even if they are classified for political purposes as "acts of war"; and (3) include appropriate legal safeguards to protect all victims of a terrorist attack, including property owners.

ICSC is a member of the Coalition to Insure Against Terrorism (CIAT) – a policyholder group formed to promote the enactment of terrorism insurance legislation. Several dozen groups have joined CIAT, including NAREIT, the Real Estate Roundtable, the U.S. Chamber of Commerce, Host Marriott and the National Football League.

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ENDANGERED SPECIES

Issue Brief

Updated June

ISSUE

The Endangered Species Act (ESA) needs to be reformed. It has failed to conserve the species it was meant to protect and in the process has wreaked economic havoc and social distress on communities throughout our nation.

BACKGROUND

The ESA has often been used as a tool by no-growth advocates to curtail progress and economic growth. The ESA was first enacted in 1973 to protect species believed to be on the brink of extinction. When enacted, 109 species were listed for protection. Today, almost 1,000 species are listed, with more than 400 additional candidate species. Only twenty or thirty species have been "delisted" or removed from the species list since 1973: seven because of extinction, six because of data errors in the original listing process, and only six officially declared as reaching recovery populations.

LEGISLATION

It is clear that the ESA does not work. According to the General Accounting Office, more than 90 percent of the species listed under the ESA rely upon private land for some or all of their habitat. The current system inadequately protects the environment and is often economically harmful. In addition, species are listed without appropriate scientific peer review. It is imperative that the ESA be reformed to reflect current scientific and economic realities.

Legislation has been introduced in both the House and Senate to require that sound science becomes a stronger part of the ESA process. The Sound Science for Endangered Species Decision-Making Act (H.R. 2829 and S. 1912) would also require greater input from stakeholders as listing and delisting decisions are made. ICSC supports this legislation.

OUR POSITION

ICSC will continue to advocate for reform of the Endangered Species Act so that landowners are treated fairly and responsibly. We will work with supporters to achieve legislative reform of the act which include, at a minimum the following principles:

- Responsible, responsive, and timely judicial review and/or regulatory rulings on development applications;
- Economic impact assessment of the imposition of legislation and resulting regulation;



- Efficient and fair system by which a property owner can seek timely redress of laws and regulations that result in a taking without compensation or that deny the economic benefits of the “highest and best” use of his/her property;
- Standards by which the environmental value of property shall be established; and
- Enhancement of the state and local role in the listing and delisting process, reflect local biological and economic concerns.

For more information, contact William H. Hoffman, III at 703-549-7404, ext. 224.



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ENERG

Issue Br

Updated Jun

ISSUE

The United States needs to implement a comprehensive energy policy that will result in increased energy supplies, electrical generation and transmission capacity and improved reliability, efficiency and conservation, while addressing the concerns currently faced by commercial, industrial and residential consumers. A comprehensive approach is the best way to ensure all consumers, including ICSC members, realize the most wide-ranging benefits while ensuring the country conserves its natural resources. In addition, the federal government should continue to support deregulation efforts, mirroring the states that have implemented successful deregulation programs.

LEGISLATION

The Congress is expected to continue to debate energy legislation in 2002. ICSC will advocate for those elements in the legislation that will provide for increased energy supplies while ensuring advances made under state deregulation programs are not rolled back by the federal government.

OUR POSITION

ICSC believes elements of a comprehensive energy policy should consist of, but not be limited by, the following:

- Modernization and expansion of the existing power transmission capabilities
- Increasing domestic energy supplies;
- Increasing electrical generation capacity where needed;
- A national framework governing utility restructuring modeled on the state plans that have proven extremely beneficial to consumers;
- Incentives for all consumers to improve their energy efficiency such as tax credits and equipment upgrade benefits
- Increased R&D on alternative energy sources and new technologies
- Regulators should be vigilant in their elimination of undue market power that could negatively influence pricing.

In addition, ICSC is committed to ensuring that thoughtful and manageable electricity restructuring programs are implemented. ICSC believes a national framework should be developed – modeled on successful state programs – to reduce confusion being generated by the state-by-state deregulation process.

ICSC also believes that its members with operations in multiple locations should be able to aggregate power among these locations without regulatory restrictions. Local aggregation by multiple operators, whether in the shopping center industry or other commercial/industrial interests, will increase efficiency for the individual interests as well.

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promote an overall efficiency increase to the benefit of all suppliers and users of energy and conservation while at the same time benefit the operators. The end result is a benefit to the entire community both economically and environmentally. ICSC member companies will continue to work toward more efficient energy usage and work with federal, state and local governments to support efforts that will provide our members with economical and reliable energy supplies.

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GROWTH MANAGEMENT

Issue Brief

Updated October 20

POSITION

ICSC does not oppose sound, well thought out growth management planning. However, "smart growth" is not the same as "no growth." We will work to ensure that we respond to the needs of regional populations in an environmentally and economically sound matter. Neighborhood convenience shopping centers have many benefits to communities including an increased tax base, job creation, and serving to reduce traffic congestion.

Development decisions are based on the demands of the local market and should not be dictated or restricted by the federal government and non-elected federal agencies. Local authority must be maintained in determining how communities choose to develop. It is the local government officials and economic planners that understand the underpinning of their local economies, their needs and the cultural environment. Injecting federal agencies into the growth management process as a federal planning commission will create an overly bureaucratic and inefficient arbiter to development that does not understand the nuances of each individual local economy.

ICSC has created a multi-disciplinary task force to address these growth management issues. Working with membership and with other organizations, ICSC will work to preserve local control over growth and development issues.

POLICY PROPOSALS

ICSC acknowledges that the concern over growth was not created in a void. Traffic congestion and over-crowded public schools are most often noted as issues of great concern to the general public, especially those who live in growing suburbs. These challenges must be balanced with the positive aspects of growth and development, and positive economic benefits that development in general (and retail development in particular) has on state and local economies, such as an increased tax base, the convenient provision of goods and services to the community, and the creation of jobs.

The owners, developers and retailers of shopping centers understand that growth is a concern, but also recognize that smart growth cannot mean no-growth. If it were to be embraced as a planning tool, the key elements of our growth management strategy would include:

1. Create an environment that will encourage citizens to stay in the community instead of moving out: better schools, better infrastructure, less crime, and better integration of land uses. Encourage retail development at appropriate locations within the community so that citizens won't have to drive long distances to do their regular shopping.
2. Provide incentives and adopt flexible regulations that allow development to expand.



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3. Balance protection of agricultural and forest land, open spaces, scenic and cultural resources, and environmentally sensitive lands with the provision of adequate land to meet the future economic and growth needs of the community.
4. Maintain vitality of traditional downtowns, main streets, older suburban and inner city areas where feasible by encouraging redevelopment and infill development while continuing to recognize the need to provide retail to growing areas.
5. Maintain land use planning and control at the local level, with the states providing financial resources and generalized policies for local planning and economic development.
6. Establish long-term local comprehensive plans providing for adequate supply of land with infrastructure for residential, commercial, recreational and industrial uses to meet future growth needs of the community.
7. Make development decisions predictable, fair, timely and cost effective.
8. Plan for a diversity of shopping opportunities; locating neighborhood and regional scale centers in appropriate locations so that consumers have a wide variety of shopping alternatives while also reducing required travel distances.
9. Develop public/private partnerships to work collectively to meet the needs of the community.
10. Create economic and regional incentives to encourage infill development and the reuse of brownfields.

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MOLD GROWTH

Issue Brief

Updated November 2003

BACKGROUND

Mold growth in schools, courthouses, libraries, office buildings, hotels and residential dwellings is receiving increased public attention. Mold growth in shopping centers has not been a significant problem to date. Molds are everywhere in the environment and their mere presence is not cause for concern. In the presence of moisture, mold can grow on almost any organic material, including wood, paper, paint, fabric, plant soil, and dust. In an effort to propagate, live molds release airborne spores.

The health effects associated with exposure to molds vary among individuals and are directly related to exposure durations. Some individuals may experience an allergic reaction or sensitivity to high concentrations of airborne mold spores. Other health effects have been alleged but are unsupported by current medical research. It is not known which molds at what levels pose a threat to human health. In addition to the health effects, active mold growth is often associated with objectionable odors, which reduces the overall level of satisfaction with indoor air. The U.S. Environmental Protection Agency (EPA) has testified that additional basic scientific research is necessary before health-based indoor air standards for mold can be established, and has indicated that there is insufficient scientific/medical data to establish guidelines for which molds cause disease and at what levels.

In order to protect the public health, it is important that any standards developed in this area not be premature and be based upon sound science. Despite the lack of information, political and popular concerns have prompted legislation in several states to pursue health-based exposure standards for mold in indoor air. An increasingly aggressive plaintiffs' bar is pursuing thousands of liability inquiries nationally.

The research literature shows that active growth is almost always associated with visible biological contamination (e.g., black or colored patches, water stains). Mold needs a moist, wet, or damp environment in order to thrive. Therefore, to prevent mold propagation, all buildings should undergo scheduled maintenance that includes inspection for water leaks, inspection of seals around windows and doors, inspection of rooftops and inspection for visible mold in moist or damp parts of a building. Conditions that could lead to mold or fungi growth should be corrected immediately to prevent possible problems in the future.

OUR POSITION

- ICSC supports the development of sound science concerning the effects of mold on people, reflecting various exposure scenarios.
- State and Federal Regulators should desist from setting action levels for mold at this time, since sufficient and sound scientific data do not yet exist to do so.

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- Observations for visible mold growth are usually sufficient to determine the potential for mold growth.
- Testing for mold spores is often inconclusive and misleading and not helpful in addressing the root problem of mold growth (moisture entry).
- When moisture control problems in buildings are found, property managers should correct them for reasons of property protection, health and comfort.
- ICSC supports the continued development of effective and practical Federal guidance summarizing standard observation and remediation procedures for moisture control problems and mold growth.

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TELECOMMUNICATION

Issue Brief

Updated Jur.

ISSUE

The provisions of the Telecommunications Act of 1996 deregulated and promoted competition in every segment of the communications industry. As a result, shopping centers and their tenants have been presented with the choice of a variety of new providers of telecommunications services that are in competition with the existing service providers and each other. Shopping Center owners continue to obtain and offer the best available services to their tenants in this competitive environment and should not be forced by government action to make their private property available to any fly-by-night telecommunications providers.

BACKGROUND

Some issues shopping center owners and managers may face include the management, control, and cost of the provision of telecommunications, including those involving space, security, liability, control of service facilities and personnel, and compliance with laws and regulations. A major concern is whether any and all telecommunication service providers, in the name of encouraging competition, would be granted forced access to private property, under government order, without the permission of the property owner. ICSC helped form in 1999 the Real Access Alliance to ensure that the current competitive free market availability of telecommunications service options would not be usurped by regulative proposals that would mandate access to private properties.

REGULATION

1) Federal Communications Commission (FCC)

The FCC has statutory authority over aspects of the activities of various telecommunication providers, including telephone companies and cable operators. Under the 1996 Telecommunications Act, the FCC is responsible for deregulating and bringing competition to these and other areas. It is through these new regulations that private property owners face the threat of the required access of telecommunication providers to their property without their permission. Through ICSC lobbying efforts, the FCC has become educated on the intricacies facing the commercial real estate industry in this matter. We have made it clear that deregulation of the telecommunications industry should not lead to increased regulation of the shopping center industry. ICSC and the Real Access Alliance have successfully prevented the federal government from moving forward with forced access regulations. The real estate industry has established a set of best practices and voluntary agreements that reiterate and maintain our commitment to providing the best services to our tenants in a competitive real estate market.

2) States

States retain the right to regulate the access of service providers to private property consistent with fundamental state and federal laws. There is pressure in the states, often generated by a coalition of alternative telecommunications providers (cable and



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newspapers), to provide for forced entry to private property for telecommunication providers. These efforts have manifested themselves in two forms of legislation. The first would impose such requirements legislatively. The second would grant the state Public Utility Commission (PUC) the authority to deal with the issue with the view that the PUC would impose such requirements. ICSC has been actively involved at the state level to ensure forced access is not imposed on the private property concerns of the shopping center industry. There are still efforts in many states to move toward forced access, and ICSC and the Real Access Alliance continue to oppose them.

FEDERAL LEGISLATION

Currently, and for the first time in the past two years, there is no federal legislative effort to mandate forced access. ICSC and the Real Access Alliance continue to work to educate and lobby congress so that when the inevitable introduction of forced access legislation is made again, members of the House and Senate will understand that forced access legislation is a violation of private property rights and not needed to foster competition in an already competitive commercial real estate industry.

OUR POSITION

ICSC has taken an active role in opposing any regulatory or legislative action that would force property owners to grant access to any and all telecommunications providers. We have filed extensive comments with the FCC stating our position that the current market-based system of contract negotiation is working and that any mandate for forced access is illegal, violating the "takings" clause of the Fifth Amendment to the Constitution, and is not needed.

ICSC believes the right of property owners to maintain their property is paramount. The deregulation of the telecommunications industry has proven to be extremely complex and will pose many opportunities and challenges as we continue to lobby and monitor the impact on our industry. The current, free market system has been working to provide greater choice to center owners to better serve their tenants. ICSC will act at both the federal and state levels to promote and protect the interests of our members by continuing to oppose any and all federal efforts that violate our members' Constitutional Rights and work to undermine the current free market system of telecommunication choice.

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WETLANDS REFOR

Issue Br

Updated Jun

BACKGROUND

The environmental importance of the nation's valuable wetlands is widely known. However, the federal wetlands program in effect today under Section 404 of the Clean Water Act is not the product of a carefully considered and fully debated legislative policy. The Clean Water Act is not a wetland protection law; it is a water quality law that has been used in an attempt to achieve wetland protection, a goal for which it was not designed. In fact, the Supreme Court ruled in January 2001 (*Solid Waste Agency v. Northern Cook County v. U.S. Army Corps of Engineers*) that the Corps does not have regulatory authority over isolated waters of the United States because, in part, Congress had not delegated the authority to the Corps.

REGULATORY ACTIVITY

The Corps, in January 2002, reauthorized all Nationwide Permits (NWP), including NWP 39. The changes to the permitting program went into effect in March 2002. NWP 39 was promulgated by the U. S. Army Corps of Engineers (The Corps) to replace NWP 26 and went into effect on June 5, 2000. Large regional malls typically are forced into the more lengthy individual permit category. General, or nationwide permits, were authorized by Section 404(e) of the Clean Water Act (CWA) in an effort by Congress to provide a streamlined permitting process for minimal impact projects. NWP 39 is the replacement permit covering residential, commercial and institutional real estate development activities. To be eligible for this permit projects cannot result in the fill of more than ½ acre of wetlands. A Pre-Construction Notification must be filed with the Corps if the project will result in the fill of more than 1/10 of an acre of wetlands. ICSC members are unable to qualify for NWP 39 they will be forced into the more expensive and time-consuming individual permitting category. Conservative estimates regarding the impact of the new permits are an increased cost to the regulated community of over \$300 million, necessitating a 30% increase in the Corps' regulatory staff to maintain current customer service standards. ICSC continues to stress the need for a more rational regulatory approach that would yield a more useful NWP 39.

The regulated community is still waiting for the Corps and EPA to issue regulatory guidance on the SWANCC case. The guidance will be important to ICSC members – as is expected to clarify the federal government's regulatory authority over isolated waters. ICSC members and staff continue to meet with federal officials on the SWANCC matter.

LEGISLATION

The politically charged climate surrounding national wetlands policy makes meaningful legislative reform nearly impossible. However, Rep. Walter Jones (R-NC) has introduced legislation (HR 1474) which would legislatively create a wetlands mitigation banking program. ICSC believes this legislation would stimulate the creation and funding of mitigation banks because it would provide a greater degree of certainty. ICSC



has endorsed Rep. Jones' bill and has worked with his office to encourage additional support from other members.

OPPOSING VIEWPOINTS

Many in the environmental community argue that no progress has been made in the national effort to protect our wetlands and that the federal government must play an even stronger role in permitting and land use decisions. However, statistics illustrate that through mitigation and conservation landowners are protecting and improving the quality of wetlands throughout the country by working with state and municipal agencies.

OUR POSITION

Serious questions concerning the legality of the new permitting procedures, the lack of supporting data to justify the changes and the ability of the Corps to adequately handle the increased workload resulting from these changes make the new permits vulnerable to legal challenges. ICSC is participating in litigation filed by other industry groups through an *amicus curiae* brief. In addition, ICSC will be filing an amicus brief as part of a multi-industry coalition in a number of cases important to deciding the regulatory authority of the federal government over isolated, non-contiguous wetlands. ICSC believes it is time to reauthorize the Clean Water Act in order to bring clarity and fairness to the wetland permitting program, and to adequately insure the protection of valued wetland resources. Among the principles that should be embodied in this legislative reform are:

- Respect for existing local and state laws on water quality and land use planning and development so that they are not be subordinated to federal wetland regulations.
- Explicit statutory requirement that the value and functionality of wetlands be taken into account in the regulatory process, including reasonable limits on mitigation.
- Define circumstances where the landowner would be entitled to compensation in instances where permit denials constitute an unlawful "taking."

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