Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510

SECRETARY OF THE
05 FEB 16 PM

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 ☒ Check if different than previously reported
1399 New York Avenue #720 NW Washington,DC 20005

3. Principal Place of Business (if different from line 2)
City: State/zip (or Country)

4. Contact Name / Telephone / E-mail (optional)
Judy Laniak 202 626 1400 jlaniak@icsc.org

5. Senate ID #
19935-12

7. Client Name ☒ Self

6. House ID #
19935

TYPE OF REPORT

8. Year 2004 Midyear (January 1-June 30) ☐ OR Year End (July 1-Decemb

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 A

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ ________
Income (nearest $20,000)

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).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ 332,000
Expenses (nearest $20,000)

14. REPORTING METHOD. Check box to indicate expens accounting method. See instructions for description of option

☒ **Method A.** Reporting amounts using LDA definitions c

☐ **Method B.** Reporting amounts under section 6033(b)(8 Internal Revenue Code

☐ **Method C.** Reporting amounts under section 162(e) of Internal Revenue Code

Signature ________ Date 2/8/2005

Printed Name and Title Herb Tyson Staff VP Government Relations

00000132018

Registrant Name ICSC Client Name SELF

Information Update Page - Complete ONLY where registration information has changed.

20. Client new address

21. Client new principal place of business (if different from line 20)

City State/Zip (or Country)

22. New general description of client's business or activities

LOBBYIST UPDATE

23. Name of each previously reported individual who is **no longer** expected to act as a lobbyist for the client

Wayne Mehlman

ISSUE UPDATE

24. General lobbying issues previously reported that **no longer** pertain

AFFILIATED ORGANIZATIONS

25. Add the following affiliated organization(s)

Name	Address	Principal Place of Bu (city and state or co

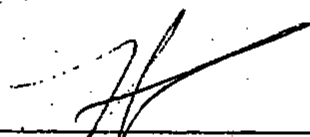
26. Name of each previously reported organization that is **no longer** affiliated with the registrant or client

FOREIGN ENTITIES

27. Add the following foreign entities

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities

28. Name of each previously reported foreign entity that **no longer** owns, or controls, or is affiliated with the registra affiliated organization

Signature  Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the reg engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code,** p 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)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ______________________ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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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

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

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Registrant Name ICSC Client Name SELF

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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

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)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ____________ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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15. General issue area code CAW (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)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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15. General issue area code TEC (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)
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Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ______ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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15. General issue area code ENV (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)
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Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ______ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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

15. General issue area code CSP (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)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ______ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code, [p]**
information as requested. Attach additional page(s) as needed.

15. General issue area code HOM (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)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature ______ Date 2-8-05

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

ADA Notification Act

Issue Br

Updated January

The Issue:

The intent and spirit of the *Americans with Disabilities Act of 1990* is unfortunately being abused by a gr
number of unscrupulous attorneys who are filing, or threatening to file, lawsuits against property owne
minor access violations. These attorneys have created a cottage industry of inspecting various shopping ce
stores and restaurants in order to locate minor, easily-correctable ADA infractions, such as those relati
parking lot striping and signs, bathroom dispensers, ramps and braille signage.

While most provisions of the Act require a plaintiff to notify and provide the owner an opportunity to corr
alleged violation(s) before a lawsuit can go forward, the section of the Act relating to public access to p
property does not contain such notice or opportunity to correct. Taking advantage of this loophole,
attorneys (without giving property owners an opportunity to fix the alleged violations) are filing, or threaten
file, lawsuits that usually lead to cash settlements – since the owners want to avoid the time, expense and has
litigation and the potential negative publicity associated with it. To make matters worse, many of these o
thought their properties were ADA-compliant based on assurances by state or local inspectors and/or o
consultants.

The Supreme Court, in *Buckhannon v. West Virginia Dept. of Health and Human Resources* (2001), held
business is not liable for attorneys' fees if it voluntarily corrects an ADA violation before the case gets to
Despite this ruling, federal legislation is still needed to thwart the filing of minor ADA access cases.

Our Position:

ICSC and a coalition of other business groups have supported legislation introduced over the yea
Representative Mark Foley (R-FL) – the *ADA Notification Act,* that would give property owners 90 days to
alleged ADA access violation after they have been notified before a related lawsuit can proceed in court.
and others in the business community are committed to finding a solution, legislative or otherwise, tha
curtail the abuse of ADA while at the same time preserve the rights of the disabled community.

ICSC recommends that its members take appropriate measures to comply with Federal, state and local
access laws in order to better serve people with disabilities and to reduce the risk of related lawsuits.

Opposing Argument:

Some disabled rights advocates say that property owners should not be given additional time to correct alleg
violations since they have had over a decade to bring their properties into compliance with existing ADA law
Response: In some cases property owners may be unaware that their properties contain minor ADA violatio
since they have passed state or local inspections. We believe a compromise must be reached that balances th
spirit of ADA with a common sense and fair approach to correcting alleged violations. Under current law,
unscrupulous attorneys and others are benefitting rather than those ADA was meant to protect.

For more information, contact Betsy Laird, Vice President, Federal Government Relations at blaird@icsc.org or 202-626-1406

Leasehold Improvements Depreciation

Issue Br

Updated January

The Issue:

One of the most important obligations of shopping center owners is to provide modern, efficien environmentally sound retail space for their tenants and the public. Owners must periodically refurbis replace (usually between 5-10 years) many structural components of their buildings, including internal partitions, lighting, plumbing, flooring and communication outlets, in order to meet the specific needs oi tenants and to comply with government regulations.

After years of advocating for modernization of the depreciation schedules for leasehold improvements, Cong granted short-term relief. In October 2004 President Bush signed into law HR 4520, "The Jumpstart Our Business Strength" (now Public Law 108-357) which contains a temporary 15-year straight-line depreciation period for leasehold improvements. The provision covers improvements placed in service after the bill was enacted and prior to January 1, 2006.

Our Position:

In the 109th Congress, ICSC will work towards improving the provision and making the shortened deprec period for leasehold improvements permanent. We believe a real-world depreciation schedule will enco shopping center owners to invest more resources into their properties.

Opposing Argument:

Some have said that leasehold improvements should not receive preferential tax treatment over other tyı building assets and that any change should be part of an overall, comprehensive depreciation reform pac <u>Response</u>: 39 years is an extremely lengthy time period when compared to the actual economic lives (betw and 10 years) of leasehold improvements, and is more out of line than other building assets that have l economic lives. While ICSC supports overall depreciation reform, because of the cost, it is unlikely to anytime soon.

For more information, contact Betsy Laird at blaird@icsc.org or 202-626-1406

Proposed Banking Rules

Issue Br

Updated January

The Issue:

In 1999, the *Gramm-Leach-Bliley Act* was signed into law. Among other things, it allows financial instituti participate in securities and insurance activities (by treating such activities as "financial in nature" or "inci to a financial activity"). Shortly after enactment, the banking industry persuaded the Treasury Department a Federal Reserve Board to issue Proposed Rules that would also allow financial institutions to engage in real brokerage and management activities, even though the Act does not give any indication, either explici implicitly, that banks can participate in such activities.

In the 109th Congress that recently convened, Representatives Ken Calvert (R-CA) and Paul Kanjorski (I once again introduced the *Community Choice in Real Estate Act* (H.R. 111) that would bar national bank financial holding companies from directly or indirectly participating in real estate brokerage or manag activities. Senator Wayne Allard (R-CO) is expected to reintroduce a similar bill in that chamber. I meantime, the consolidated appropriations bill for 2005, H.R. 4818 (Public Law 108-447), enacted late in forbids the Treasury Department from promulgating its Proposed Rules for a year.

Our Position:

ICSC, the National Association of Realtors and other real estate organizations strongly support H.R. 111 and Treasury and the Board to withdraw their Proposed Rules.

Congress has made it clear throughout the years that financial institutions cannot participate in commercial activities, such as real estate brokerage and management. Treasury and the Board should not be able to cons such activities as either "financial in nature" or "incidental to a financial activity" in order to allow banks to engage in these real estate functions. Significant changes to the Act should be deliberated and legislated by Congress, not by these two Agencies through administrative regulations.

If finalized, these Proposed Rules could have a significant negative impact on our members that practice real estate management. ICSC is not opposed to fair and healthy competition, however, we are concerned that so financial institutions could use their leverage in a manner that could harm many real estate management firm suppress competition in the long term

Opposing Argument:

Our opponents argue that real estate management services involve financial activities and, that banks should therefore be able to offer these services to the public. ICSC's response: Real estate is not a financial asset, l certificate of deposit, stock or bond. Real estate management, therefore, does not involve the safeguarding o financial asset or the facilitation of a financial transaction. Instead, it is a commercial activity that banks are clearly prohibited from participating in. Minor fiscal activities, such as the collection and remittance of pay to owners, are customary management services and do not constitute the facilitation of a financial transactio

For more information, contact Betsy Laird, Vice President of Federal Government Relation: at blaird@icsc.org or (202) 626-1406

Bankruptcy Reform

Issue Br

Updated January

The Issue:

An increasing number of solvent companies have been filing for bankruptcy protection under Chapter 11 Bankruptcy Code in order to restructure themselves and shed unprofitable stores. In many instances judg giving bankrupt retail tenants unreasonably long periods of time to decide whether they want to assume or their leases – while their stores often remain vacant. As a result, many shopping center owners are losing c over their own properties, customer traffic at theses centers is down, and neighboring tenants are losing bu (which can affect their leases). In addition, some bankrupt tenants are being allowed to assign their leases to retailers whose operations clearly violate "use" and other important clauses in the original lease.

Our Position:

There are reports that the 109th Congress will take up bankruptcy reform legislation early this year and that most likely resemble the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2003* (H.R. 975 108th Congress). That bill addressed several issues important to the shopping center industry, including relating to:

(1) The amount of time a bankrupt tenant has to assume or reject its leases. The bill would give retailers 120 days to decide, plus another 90 days "for cause," plus additional time if agreed to by the landlord;
(2) The adherence of "use" and other lease provisions upon assignment;
(3) Greater access to creditors' committees;
(4) The administrative priority of rents due under leases that are assumed and later rejected; and
(5) The curing of certain non-monetary defaults before a lease can be assumed and assigned.

While the House passed H.R. 975 in March 2003 and as part of another bill in early 2004, the Senate never on the matter.

On the judicial front, in April 2004 the U.S. Court of Appeals (4th Circuit) overruled a U.S. District Court an held that the "use" clause that West Town Center (Chicago) and Trak Auto originally entered into must be adhered to upon assignment in bankruptcy. Trak Auto wanted to assign its lease to an apparel retailer, but th Court denied its motion and stressed the importance of the Center's "tenant mix." ICSC filed amicus briefs i support of West Town Center in both cases and was pleased with the Appeals Court's ruling. This decision contradicts a 3rd Circuit Court ruling that allowed Rickel Home Centers to assign one of its leases to a retaile direct violation of its "use" clause.

Opposing Argument:

Some retailers and trustees argue that they need more time than what H.R. 975 would have allowed to decide which leases they should assume and which ones they should reject. ICSC's response: Most retailers have control over when they file for bankruptcy and know (at the time of filing) which stores are profitable (leases should assume) and which ones are not (leases they should reject). Furthermore, unlike most vendors, shopp center owners are compelled creditors and can not rent out a vacant store until the retailer officially rejects th lease (which often takes many months or years).

For more information, contact Betsy Laird at blaird@icsc.org or (202) 626-1406

Streamlined Sales & Use Tax

Issue Bri

Updated January 2

The Issue:

Over the years, Congress and the courts have addressed whether states should be able to require out-of-state order retailers to collect sales taxes. In 1992, the Supreme Court in *Quill v. North Dakota*, held that a state not require a remote retailer to collect sales or use tax on its behalf unless that merchant had a physical pre (or "nexus") in that state. At the time, the high Court said it would be too burdensome on retailers if they required to collect sales taxes for hundreds of states and localities across the country. However, it also sai Congress could address this issue in the future.

Since that 1992 decision, the Internet marketplace has rapidly expanded, but sales tax collection from ecom sales lags behind. Still, states and localities are experiencing budget deficits – which may result in l business/property taxes and/or reduced governmental services (such as police and fire protection and educa According to estimates prepared by the University of Tennessee's Center for Business and Economic Resea July 2004, states and localities lost between $15.5 and $16.1 billion in sales and use taxes from Internet sa 2003 and are projected to lose between $19.2 and $26.6 billion in 2006 and between $21.5 and 33.7 bill 2008.

Our Position:

ICSC and the e-Fairness Coalition believe that tax policy should be consistent and equitable for all for consumer purchases – whether they take place in shopping centers, via mail order or over the Internet. In retailers should not receive a tax advantage at the expense of traditional retailers and state and local governr 21 states have enacted legislation to streamline their sales and use tax rules and procedures. The U.S. Co must pass legislation giving those states the authority to require out-of-state retailers to collect such taxes o behalf. In the 108th Congress, H.R. 3184 and S. 1736 were bipartisan bills that would give states that a ICSC is optimistic that similar bills will be reintroduced in the 109th Congress and is working to build supp this issue in the new Congress. THIS IS NOT A NEW TAX, RATHER AN UNCOLLECTED ONE.

Opposing Arguments:

Opponents claim that allowing states to collect remote sales taxes is equivalent to raising taxes. ICSC be the legislation would not create or raise taxes but would simply allow states to collect existing sales and use that are already owed to them but remain uncollected.

They also argue that it would be too costly and burdensome to require remote retailers to collect sales tax other states and localities. There is inexpensive software available that easily determines and remits the a of taxes owed to taxing jurisdictions all across the country. In the legislation small businesses were giv exemption from having to collect.

For more information, contact Betsy Laird, Vice President of Federal Government Relations, at *blaird@icsc.org* or 202-626-1406

Terrorism Insurance

Issue Brie

Updated January 200

The Issue:

Before September 11, 2001, coverage for acts of terrorism was generally included in a business' proper casualty insurance policy. While "acts of war" have been traditionally excluded from policies, "acts of terr were not. Even after the Oklahoma City and the 1993 World Trade Center bombings, U.S. insurers did not need to offer separate coverage for acts of terrorism. September 11 changed all of that.

Although the insurance industry was able to absorb the estimated $40-$70 billion in damages from the Septem attacks, most reinsurance companies decided, on a prospective basis, to exclude terrorism coverage because c inability to price such coverage. As a result, terrorism insurance from primary insurers was either unobta (especially for high-profile properties) or available only at extremely high prices (with high deductibles, li limits and exclusions).

Without proper terrorism insurance, property owners must bear some or all of the risk of loss from future te attacks. This, in turn, could put them in technical default of existing loan agreements, prompting some len "force place" expensive insurance on them. The lack of such coverage also caused some banks to stop financir projects or refinancing existing ones (which affects jobs) and some securities-rating firms, such as Mood downgrade certain "high-profile" companies.

Our Position:

The *Terrorism Risk Insurance Act of 2002* (TRIA) is due to expire at the end of 2005. ICSC and the Coali Insure Against Terrorism (CIAT) strongly supports an extension of the temporary federal "backstop" ear Congress. The purpose of the program is to better enable insurers to offer affordable terrorism insurance commercial properties across the country. Under TRIA the federal government would pay 90-percent of terr related insurance claims that exceed certain industry-wide and per-company thresholds (up to $100 billion ann The Treasury Secretary has the authority to require that the insurance industry and its policyholders rep government some or all of the assistance it receives.

Last year there was legislation to extend TRIA in both chambers of Congress. While the House Financial S Committee approved its version, H.R. 4634, which extended TRIA for 2 years, there was no other action. W clock ticking on existing policies and deal-making/financing often dependent on terrorism insurance coverage and CIAT will continue to make this a top legislative priority that requires Congressional attention sooner than

Opposing Arguments:

Those who oppose TRIA's extension assert that it was designed to be a temporary program and that extending could justify additional extensions. ICSC's response: TRIA needs to be extended to give the private secto time to create a feasible alternative and to prevent economic disruption. We are hopeful that such an alternati be developed soon, thereby eliminating the need for any further extensions.

Opponents also argue that TRIA should not be extended since it is a bailout for the insurance industry. response: Without TRIA, most insurers will not offer terrorism insurance, which in turn would negatively affe policyholders. Even with the federal backstop, insurers are at great financial risk in the event of another te attack and can be required to reimburse the government for any financial assistance it receives.

For more information contact Betsy Laird, Vice President of Federal Government Relations at blaird@icsc.org or (202) 626-1406

International Council of Shopping Centers

Contaminated Property

Issue Br

Updated January

The Issue:

Since the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), com known as the Superfund law, was passed in 1980, communities nationwide have seen many valuable comn properties abandoned. Not because of any fear of hazardous pollution in the soil, but because of a f potentially astronomical liability from excessive cleanup costs. Superfund imposed unfair burdens on p landowners without regard to whether they had created or allowed the original contamination of the site. members have long supported reform of Superfund.

In the early 1990's, under pressure from private citizens and their Congressional allies, EPA officials be refer to those sites suspected of being only lightly contaminated as "Brownfields." Such sites were usuall for light industrial purposes or for such businesses as gas stations and dry cleaners. ICSC was an early sup of the Brownfields initiative and was an active partner in the EPA's national Brownfields conferences.

The drive to enact Brownfields legislation finally succeeded with the passage of the Small Business Li Relief and Brownfields Revitalization Act. President Bush signed the bill into law on Jan. 11, 2002. Brownfields Revitalization Act provides some protection from Superfund liability for landowners seek return contaminated properties to productive use. Federal tax rules were also changed to allow the expens remediation costs in the year in which they are incurred. ICSC members have also contributed development of new regulations dealing with the environmental "due diligence" required of property purc in order to be protected from Superfund liability resulting from the discovery of preexisting contamination.

Our Position:

Rep. Jerry Weller (R-IL) is expected to reintroduce legislation to make permanent the recent extension (thro 2005) of the tax provision that allows expensing of remediation costs. Rep. Michael Turner (R-OH) will reintroduce his bill to provide a federal tax credit for up to 50 percent of the remediation costs at a state-appr brownfield redevelopment. The tax credits, capped at $1 billion annually, would be distributed among the st according to population. ICSC supports the permanent extension of brownfields tax expensing, the creation tax credit incentive and the expansion of such coverage to include petroleum and other contaminants. Much progress has been made on these issues in recent years. ICSC will continue to work in favor of a flexible, re interpretation of federal legislation and adequate funding for incentive programs.

Opposing Arguments:

Some argue that by offering limited liability relief to parties that contribute 25 percent or more of cleanup cc Turner's legislation violates the "polluter pays" principle. ICSC's Response: Under Superfund, individuals entities that had little or nothing to do with creating the original pollution may be held retroactively liable fo cleanup costs – often millions of dollars. This is unfair and creates a strong disincentive to ever become inv with contaminated properties. The goal should be cleaning up – not punishing people.

For more information, contact Kent Jeffreys at kjeffreys@icsc.org or 202-626-1405.

International Council of Shopping Centers

Property Rights

Issue Br

Updated January

The Issue:

The "takings" clause of the Fifth Amendment to the U.S. Constitution states, in part, "nor shall private prope be taken for public use without just compensation." Two important controversies are related to this clause. I environmental regulations have become so onerous that they often amount to a regulatory "taking" of private property without any offsetting compensation. In addition, the condemnation of private land through eminer domain by local governments is often challenged if the land eventually will be turned over to private develop

With environmental issues, the application of laws such as the Endangered Species Act and Section 404 of tl Clean Water Act (the source of regulations limiting the development of wetlands) often renders private prop useless for economic purposes. Private landowners in these situations almost never receive any compensatio their lost land values. On the other hand, outright condemnation of private land under eminent domain is alv compensated and landowners may challenge any amount they deem insufficient.

Our Position:

ICSC believes that it is necessary to protect private property through appropriate compensation under both environmental regulations and eminent domain actions. Specifically, ICSC supports:

- Universal standards by which the value of property may be established;
- An efficient and fair system by which a property owner can seek timely redress for laws and regulati that result in a taking without compensation or that deny the economic benefits of the "highest and b use of private property;
- Responsible, responsive, and timely judicial review and/or regulatory rulings on development applications; and
- An "economic impact assessment" of the costs of legislation and resulting regulation.

Opposing Arguments:

Many environmental regulations are based upon the assumption that private property owners may be require provide environmental "amenities" to the public -- such as habitat for rare plants and animals -- without compensating them for any lost development values. Courts, generally siding with the regulators, consider tl "slippery slope" situation: if you compensate property owners under one set of regulations, you may soon be required to compensate landowners under all federal regulations. Thus, they have been extremely reluctant t in favor of compensation for environmental "takings." On the other hand, many argue that eminent domain s never be used to transfer property from one private owner to another, even when the condemnation is carried by a state or local government. Although eminent domain has long been used to redevelop blighted urban ar the US Supreme Court recently agreed to review the limits on condemnations when used for economic revitalization through private development. ICSC will continue to monitor this situation.

For more information, contact Kent Jeffreys at kjeffreys@icsc.org or 202-626-1405.

Energy Issues

Issue Br

Updated January

The Issue:

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

Energy legislation that would address many of these concerns passed the House in 2003 but became bogged in the Senate by election-year politics in 2004. In an effort to find acceptable compromises, the comprehensi energy bill was broken up into separate parts. In May 2004 the Senate passed a corporate tax bill (S. 1637) t included an $18 billion energy tax package.. When the final version of the corporate tax bill was passed by Congress it did not include incentives for energy efficient homes but did include tax breaks for renewable fu Most of the provisions dealing with energy security and electricity supplies were left unfinished.

Our Position:

ICSC believes elements of a comprehensive energy policy should consist of, but not be limited to, the follow

- Modernization and expansion of the existing power transmission capabilities;
- Increasing domestic energy supplies;
- Increasing electrical generation capacity where needed;
- National utility restructuring modeled on those state plans that have proven beneficial to consumers;
- Incentives to improve energy efficiency such as tax credits and equipment upgrade benefits;
- Increased R&D on alternative energy sources and new technologies;
- Vigilant regulatory protection against undue market power that negatively influences pricing.

ICSC also believes that its members with operations in multiple locations should be able to aggregate power among these locations without regulatory restrictions. Load aggregation by multiple operators, whether in the shopping center industry or other commercial/industrial interests, will increase efficiency for individual inter and promote an overall efficiency increase to the benefit of all suppliers and users of energy.

Opposing Arguments:

Much of the paralyzing struggle over energy policy has involved issues in which ICSC has no direct stake, su as ethanol subsidies and liability issues. However, when opponents argue against expanded domestic produc of energy resources, ICSC points out that affordable energy is critical to economic growth. ICSC supports environmentally and economically sound approaches to expanding domestic energy production and efficienc

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Endangered Species Act

Issue Br

Updated January

The Issue:

The Endangered Species Act (ESA) needs to be reformed. It has failed to conserve the species i meant to protect and in the process has wreaked economic havoc and social distress on commu throughout our nation. According to the General Accounting Office (GAO), more than 90 percent (species listed under the ESA rely upon private land for some, if not all, of their habitat. Yet the ES often been used as a tool by no-growth advocates to curtail progress and economic developme private property.

The ESA was first enacted in 1973 to protect species believed to be on the brink of extinction. Init 109 species were placed on the endangered list. Today, nearly 1300 species are listed, whi additional 300 species are proposed for listing. Only twenty-five species have been "delisted removed from the endangered list, since 1973: Seven because of extinction, twelve because of errors in the original listing process, and only six officially declared as reaching recovery popula Further undermining the value of the ESA is the fact that many of the remaining "species" are accurately described as geographically isolated subpopulations of more commonly distributed sp In addition, species can be listed without appropriate scientific peer review while ignoring availabl from commercial or other private sources. It is imperative that the ESA be reformed to reflect c scientific and economic realities.

Our Position:

Two bills were passed by the House Resources Committee in 2004. H.R. 1662, introduced by Greg Walden (R-OR) in the House of Representatives would require the use of peer-reviewed scie data in making listing and de-listing decisions. A companion bill, S. 2009, was introduced in the S by Sen. Gordon Smith (R-OR). H.R. 2933, introduced by Rep. Dennis Cardoza (D-CA), would res an improved habitat designation process. ICSC will support both of these legislative initiatives i 109th Congress.

Opposing Arguments:

Opponents of ESA reform often argue that all species have great – if unknown – value to society an therefore, all species must be protected even if that means imposing economic burdens on private landowners. ICSC's response: Because the ESA can be used to strip landowners of their property rights, it is imperative that accurate and complete data be utilized in the decision-making process. I cases of extreme restrictions on private landowners, compensation for lost value should be required.

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Wetlands Reform

Issue Br

Updated January

The Issue:

The environmental importance of the nation's true 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 considere fully debated environmental policy. Construction permits in wetland areas must be obtained through the US Army Corps of Engineers, which otherwise concerns itself with maintaining navigable waterways. Section 4 requires a permit prior to the "discharge of dredged materials" into "navigable water." Simply by a redefinit these otherwise clear terms, Section 404 has been expanded to require a permit before altering many propert with only the most tenuous connection to navigable waterways – such as manmade ditches and ponds intend stormwater control..

For most large projects, an "individual permit" is required. Successfully obtaining an individual permit is expensive and time-consuming. As an alternative, the Corps has developed a range of "Nationwide Permits, NWPs, that can expedite the permit process if a development falls within the scope of a particular NWP. NV are further modified by regional requirements developed by Corps District Offices. For example, NWP 39 c residential, commercial and institutional real estate development activities that do not result in filling or othe disturbing more than one half acre of wetlands. In addition, a Pre-Construction Notification must be filed wi Corps if the project will result in filling of more than one tenth of an acre of wetlands. Large projects, such a regional malls, are unlikely to qualify under NWP 39. All NWPs are to be reauthorized by 2007.

Our Position:

The Supreme Court ruled in January 2001 (*Solid Waste Agency of Northern Cook County v. U.S. Army Corp Engineers,* or *SWANCC*) that the Corps does not have regulatory authority over many isolated waters and wetlands. Unfortunately, the SWANCC reasoning has not been followed by all federal courts or Corps offic Despite this confusion, the Supreme Court refused to hear the appeal of a recent case involving isolated "wetlands" (*Deaton v. US*). ICSC supported this unsuccessful appeal through a "friend of the court" brief. A result of the SWANCC confusion, Rep. Richard Baker has introduced legislation, H.R. 4843, which would c the limits of federal jurisdiction over wetlands. ICSC supports this proposal. Rep. James Oberstar has introd H.R. 962 (S. 473 in the Senate) which would essentially expand federal jurisdiction to all wetlands and adjac properties. ICSC opposes this approach.

Opposing Arguments:

Some argue that without this federal program commercial development would soon destroy the nation's remaining wetland areas. ICSC's Response: Most of the nation's ecologically significant wetlands have bee impacted by flood control projects, forestry, and agricultural expansion – not retail developments. Sound pu policy would produce a streamlined procedure for identifying environmentally important wetland areas and a appropriate method to mitigate impacts.

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