Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

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

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	Telephone	E-mail (optional)	5. Senate ID #
Judy Laniak	703 549-7404	jlaniak@icsc.org	19935-12
7. Client Name ☒ Self			6. House ID # 19935

TYPE OF REPORT 8. Year 2003 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 Ac

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 ☐ ➪ $ 260,000
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 o

☐ **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 2/12/2004

Herb L. Tyson, Staff Vice President

Printed Name and Title

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 engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each cod** 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)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

Herb Tyson, Staff V.P. Government Relations

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

Form LD-2 (Rev.6/98)

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 engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each cod** 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

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)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

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

Registrant Name International Council of Shopping Centers 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

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Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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Signature _____ Date 2/12/2004

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

Registrant Name International Council of Shopping Centers 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)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

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

Form LD-2 (Rev.6/98)

Registrant Name International Council of Shopping Centers 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)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

Herb Tyson, Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers 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)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

Herb Tyson, Staff V.P. Government Relations

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

Form LD-2 (Rev.6/98)

Registrant Name International Council of Shopping Centers Client Name Self

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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.

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Name	Covered Official Position (if applicable)
Herb L. Tyson	
Wayne Mehlman	
Betsy Laird	

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

Signature _____ Date 2/12/2004

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

Form LD-2 (Rev.6/98)

International Council of Shopping Centers

ADA NOTIFICATION A

Issue

Update

ISSUE

The intent and spirit of the Americans with Disabilities Act of 1990 is unf being abused by a growing number of attorneys who are filing, or threatenir lawsuits against property owners for minor, technical access violations. Fearing hassle and expense of lawsuits, as well as the potential negative publicity, these owners are being forced into settling these claims with these attorneys.

BACKGROUND

Some attorneys have created a cottage industry of inspecting various shoppin retail stores and restaurants and then identifying minor infractions of the ADA, those in parking lots, walkways or bathrooms. Without giving property o merchants an opportunity to remedy the alleged violations, these attorneys are threatening to file, lawsuits that usually lead to cash settlements – part of whic the attorneys and the rest to a disabled plaintiff(s). By creating a multitude of ca attorneys are generating substantial amounts of income for themselves at the ex shopping center owners and retailers.

LEGISLATION

To help rectify this problem, Representative Mark Foley (R-FL) has reintrod *ADA Notification Act* (H.R. 728) which would give property owners 90 days alleged ADA violation after they have been notified before a related lawsuit can We are hopeful that the House Judiciary Committee will debate this bill during Congress, and that companion legislation will soon be introduced in the Senate.

Legislation is still needed despite the fact that the Supreme Court, in *Buckhanno and Care Home, Inc. v. West Virginia Department of Health and Human R* (2001), held that a business is not liable for attorneys' fees if it voluntarily co ADA violation before the case gets to court.

OUR POSITION

ICSC supports H.R. 728 since it would curtail the abusive practice of certain a filing, or threatening to file, lawsuits for easily correctable ADA infractions, whi same time preserve the rights of disabled people to bring lawsuits for more violations. ICSC has been working with a coalition of business groups to legislation enacted into law.

ICSC recommends that its members take appropriate measures to comply with state and local ADA access laws in order to better serve the disabled communit reduce the risk of related lawsuits.

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

International Council of Shopping Centers

BANKRUPTCY REFO

Issue

Update

ISSUE

Over the past few years, an increasing number of financially healthy compa been filing for bankruptcy protection as a business tool. Because businesses do to be insolvent to declare bankruptcy, more and more solvent companies are reo under Chapter 11 of the Bankruptcy Code in order to restructure themselves unprofitable stores.

To make matters worse, many judges are giving bankrupt tenants unreasona periods of time to decide whether they want to assume or reject their leases (w stores often remain vacant). As a result, many shopping center owners are losin over their own properties, customer traffic at theses centers is down, neighborin are losing business (and may be able to cancel their leases), retail employees a jobs, and local economies are losing desperately-needed tax revenues. In additi bankrupt tenants are being allowed to assign their leases to other retailer operations clearly violate "use" and other important clauses in the original lease.

BACKGROUND

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

Despite repeated attempts by proponents to pass bankruptcy reform legislation last three Congresses, its enactment has remained elusive. In 1998, legislation pa House but languished in the Senate. In 2000, a reform package passed both th and Senate but died by "pocket veto" on former President Clinton's desk.

In November 2002, a long-awaited Conference Report failed to pass the Hous though the original bills were approved overwhelmingly in both the House and and had President Bush's support. The bill's downfall was mainly due to a pr initiated by Senator Charles Schumer (D-NY) relating to abortion clinic protesters caused a block of conservative House Republicans to vote against the bill – ult killing it. The House then passed a modified bill (without the abortion clinic pr and sent it to the Senate, but Democratic leaders refused to bring it up for a vote.

LEGISLATION

ICSC supports the *Bankruptcy Abuse Prevention and Consumer Protection Ac* (H.R. 975) which was introduced by House Judiciary Committee Chairm

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Sensenbrenner (R-WI) (without the abortion clinic provision) and passed by th
March 19 by a 315-113 vote. Senate action on the bill is still pending.

H.R. 975 addresses several issues important to our industry, including those rel
the amount of time a bankrupt tenant has to assume or reject its leases – the bill
retailers 120 days to decide, plus another 90 days "for cause," plus additional tin
to by the landlord; (2) the adherence of "use" and other lease provisions upon
(3) greater access to creditors' committees; (4) the administrative priority of rent
leases that are assumed and later rejected; and (5) the curing of certain no
defaults before a lease can be assumed and assigned.

OPPOSING VIEWPOINTS

Some retailers claim that they need the long extensions of time in order to
determine which leases should be assumed and rejected. While we agree that th
60-day period may not be enough time to make such decisions, a fixed, dete
period of time in which to assume or reject needs to be established so shoppin
owners can retain some control over their properties.

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

OUR POSITION

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

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CONTAMINATED PROPE

Issue

Updated

ISSUE

The stringent liability provisions of Superfund have been a historic impediment t returning contaminated real estate to beneficial re-use. Endless litigation and the litigation have resulted in lightly contaminated properties being left undeveloped economically stagnant.

BACKGROUND

For more than 20 years, since the passage of the landmark Superfund legislation countless parcels of real estate across the United States have been idled---not specter of significant hazardous waste contamination, but from the fear of lawsu stringent liability provisions of the Comprehensive Environmental R Compensation and Liability Act (CERCLA), commonly known as Superfur enacted to address the problem of inactive or abandoned hazardous waste sites. imposed unfair burdens on private citizens and companies retroactively, without r their negligence, fault, or failure to exercise due care. ICSC members suppo advocated reform of Superfund to remove the chill it inadvertently cast upon all suspected of even the slightest hazardous waste contamination.

In the early 1990's, EPA officials began to explicitly recognize the distinction bet legitimate sites deserving of sustained remedial measures because of the threat of imminent danger to human health and the environment, and those smaller parcels may contain little or no actual hazardous wastes. EPA began to refer to those sites suspected of being only lightly contaminated as Brownfields. The agency began i Brownfields initiative modestly, funding assessments of a handful of Brownfield s with small grants to communities and sponsoring conferences and workshops to d and refine this class of under-utilized properties. ICSC became an early supporter EPA Brownfields initiative as an active partner in the national Brownfields confer

LEGISLATION

ICSC members quickly grasped the economic potential held by these sites providi way could be found to correct some of the residual liability issues presented by Superfund. As legislative efforts to amend Superfund continued, ICSC was an ear active supporter. In recent years, efforts were undertaken in Congress to enact sep Brownfields legislation, again with strong ICSC support. The drive to enact Brow legislation succeeded in 2001 with the passage of the Small Business Liability Reli Brownfields Revitalization Act. President Bush signed the bill into law on Jan. 11,

The Brownfields Revitalization Act provides the liability protection from Superfun necessary to unleash the economic potential of these real estate parcels---protectio prospective purchasers, and of innocent landowners, and protection from liability o contamination from contiguous landowners. EPA believes these provisions are lar

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self-implementing, but a decision must still be made on standards of due diligen members believe that the Association of Standard Testing Materials (ASTM) cu use by EPA is sufficient.

The Brownfields Revitalization Act establishes a new grant program for assess cleanup of Brownfields sites. While recipients of the grants are restricted to go agencies and non-profit organizations, opportunities for partnerships between r developers and local communities can significantly enhance the commercial vi many marginal commercial real estate transactions. EPA is currently en developing guidance for the new grant program.

OUR POSITION

Much progress has been made on these issues in recent years. ICSC has be center of the action to unleash the economic potential embodied in the redevelop reuse of Brownfields sites. We will continue to work with EPA to implement a interpretation of the legislation and with Congress on adequate funding for the As efforts unfold for further modification of Superfund, ICSC's role will largel of vigilance to ensure that gains realized from the Brownfields Revitalization Ac weakened or lost.

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

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E-COMMERCE TAXATI

Issue

Update

ISSUE

The Internet is rapidly becoming America's new marketplace. While tax poli not discourage consumers from exploring this new purchasing channel, it sl favor Internet purchases over store purchases either. Instead, tax policy should level playing field for traditional retail businesses, mail order companies and based merchants.

BACKGROUND

Over the years, Congress and the courts have addressed the issue of state-impo and use taxes on remote sellers as it applied to mail-order merchants. In 1 Supreme Court in *Quill v. North Dakota*, held that a state could not require a retailer to collect sales or use tax on its behalf unless that merchant had a presence (or "nexus") in that state. The Court said it would be too burden retailers if they were required to collect sales taxes for hundreds of state a jurisdictions across the country. However, it did say that Congress could add interstate commerce issue at some other time.

The recent explosion of Internet commerce brings a new focus and sense of ur this issue. The Internet marketplace is rapidly expanding, yet it remains mostly f traditional forms of taxation. According to a University of Tennessee study, unc state and local sales taxes from e-commerce exceeded $13 billion in 2001 projected to exceed $45 billion in 2006.

In a dramatic reversal from the late-1990's, most states are now experiencing sig budget deficits and desperately need to look for other sources of revenue, ir uncollected sales and use taxes. Otherwise, states and localities will have to star taxes (including business income and real estate taxes) and/or cut back on e governmental services.

The current dilemma facing Congress is whether it should give states the auth require out-of-states merchants to collect taxes currently owed on e-commerce maintain the current tax collection system (which gives most on-line sellers a advantage over traditional merchants.).

LEGISLATION

In 1998, Congress enacted a three-year moratorium which expired on October 2 on Internet access taxes and new, multiple or discriminatory taxes on ele commerce. The moratorium was later extended until November 2003, however, it address the remote sales tax collection issue.

ICSC supported legislation introduced in the 107th Congress by Senators Mike E WY) and Byron Dorgan (D-ND) and Representatives Ernest Istook (R-OK) and V Delahunt (D-MA) that, in addition to extending the moratorium, would give thos that simplify their sales tax systems the authority to collect remote sales Unfortunately, a Senate amendment that would have provided such authority was t

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In the meantime, the Streamlined Sales Tax Implementing States, a group con 34 states and the District of Columbia, last year approved a Streamlined Sale Tax Agreement that would encourage, but not require, remote sales tax c Among other things, the agreement calls for uniform definitions, sourcing rules, number of state and local sales tax rates, and amnesty provisions. The agree become effective once 10 states representing at least 20% of the U.S. populatior conforming changes. So far, 11 states have enacted conforming legislation, because those are states with smaller populations, the 20% threshold has not met. 12 other state legislatures are currently considering the Tax Agreement.

In February 2003, some of the nation's largest retailers, including Wal-Mart, Tar Toys R Us, entered into an agreement with 38 states and the District of Columbi voluntarily collect sales taxes from their customers who buy over the Internet, ev those in states where their on-line subsidiaries do not have a physical presence. I those states have agreed not to pursue sales and use taxes they believe are owed t due to the close relationship (agency) between the on-line retailers and their brick mortar affiliates.

Legislation will soon be introduced in the 108th Congress that would allow tho that simplify their sales tax systems (based on the Streamlined Sales and Agreement) to require remote sellers to collect sales taxes on their behalf.

OPPOSING VIEWPOINTS

Many Internet-based retailers claim that imposing remote sales tax c requirements on them would be too burdensome, given the thousands of state a taxing jurisdictions across the country. While we agree that states and localities simplify their sales and use tax systems, there is currently software available adequately determine, collect and remit a merchant's remote sales taxes. These also claim that remote sales tax collection will slow the growth e-commerce. A to Juniper Research, most of those surveyed said that remote sales tax collectio not affect their Internet purchase decisions.

OUR POSITION

ICSC believes that tax policy should be consistent and equitable for all f consumer purchases – whether they take place in shopping centers, via mail orde the Internet. Internet retailers should not receive a tax advantage at the exp traditional retailers and state and local governments.

ICSC and the e-Fairness Coalition will continue to work to convince Congress Administration to enact remote sales tax collection legislation as they debate a extension of a moratorium on Internet access taxes and discriminatory e-commerc

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

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ENEF

Issue

Updated

ISSUE

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

LEGISLATION

The Congress is expected to continue to debate energy legislation in 2003. IC advocate for those elements in the legislation that will provide for increased supplies while ensuring advances made under state deregulation programs are n back by the federal government.

OUR POSITION

ICSC believes elements of a comprehensive energy policy should consist of, bu limited to, the following:

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

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

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

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

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

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GROWTH MANAGEME

Issue E

Updated

POSITION

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

Development decisions are based on the demands of the local market and should dictated or restricted by the federal government and non-elected federal agencies. authority must be maintained in determining how communities choose to develop the local government officials and economic planners that understand the underpi of their local economies, their needs and the cultural environment. Injecting fede agencies into the growth management process as a federal planning commission v 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 managem issues. Working with membership and with other organizations, ICSC will work t preserve local control over growth and development issues.

POLICY PROPOSALS

ICSC acknowledges that the concern over growth was not created in a void. Traff congestion and over-crowded public schools are most often noted as issues of grea concern to the general public, especially those who live in growing suburbs. Thes challenges must be balanced with the positive aspects of growth and development, 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 con 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 concern, but also recognize that smart growth cannot mean no-growth. If it were t embraced as a planning tool, the key elements of our growth management strategy include:

1. Create an environment that will encourage citizens to stay in the community inst moving out: better schools, better infrastructure, less crime, and better integration c uses. Encourage retail development at appropriate locations within the community 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 expa

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3. Balance protection of agricultural and forest land, open spaces, scenic and cul resources, and environmentally sensitive lands with the provision of adequate la meet the future economic and growth needs of the community.

4. Maintain vitality of traditional downtowns, main streets, older suburban and i areas where feasible by encouraging redevelopment and infill development whil 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 provi financial resources and generalized policies for local planning and economic development.

6. Establish long-term local comprehensive plans providing for adequate supply with infrastructure for residential, commercial, recreational and industrial uses to 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 regic scale centers in appropriate locations so that consumers have a wide variety of sh alternatives while also reducing required travel distances.

9. Develop public/private partnerships to work collectively to meet the needs of t community.

10. Create economic and regional incentives to encourage infill development and reuse of brownfields.

For more information, contact Stephanie Spooner at 703-549-7404, ext. 223.

International Council of Shopping Centers

LEASEHOLD IMPROVEM

Issu

ISSUE

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

BACKGROUND

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

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

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

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

LEGISLATION

In 2002, President Bush signed into law an economic stimulus bill that, amor things, allows taxpayers to claim (for both regular and alternative minimum tax pu an additional 30 percent "bonus" first-year depreciation for certain qualified p

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including leasehold improvements, purchased between Sept. 11, 2001 and Sept. The law provides for even greater tax incentives for property built in the damag New York City.

In May 2003, Congress enacted another economic stimulus package that increasing the first-year "bonus" depreciation allowance to 50-percent and exte expiration date to December 31, 2004. It is unclear at this time whether this will become one of the many so-called temporary "extender" provisions that Cc pressured to extend every few years.

Representative Clay Shaw, Jr. (R-FL) and Senator Kent Conrad (D-N reintroduced legislation, H.R. 1634 and S. 576, that would permanently re depreciation period for leasehold improvements from 39 to 10 years. [Before economic stimulus bill was enacted into law, the House passed three versions c provisions that would have permanently reduced the depreciation period for l improvements to 15 years.]

OUR POSITION

ICSC advocates shortening the depreciable lives of leasehold improvements so more closely aligned with their economic lives. As a result, we strongly supp 1634 and S. 576 and believe they would encourage shopping center owners more resources into their properties. We would also support any measures th further extend and/or expand the first-year "bonus" depreciation provision.

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PRIVATE PROPEI

Issue

Updated

ISSUE

The "takings" clause of the Fifth Amendment to the U.S. Constitution states, in p shall private property be taken for public use without just compensation." De protection of the Constitution, countless landowners have been deprived of their prosecuted, fined, or in some cases, jailed, because of the existence of wetl endangered species on their property.

BACKGROUND

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

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

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

LEGISLATION

ICSC continues to advocate the need for Congress to enact legislation that strengthen the rights of property owners. The 108th Congress has thus far not initia serious legislative efforts on the property rights issue(s). ICSC, in 2002, did joi real estate organizations in the filing of an amici curiae brief in the 8th Circuit C 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 adop appropriate environmental legislation and regulation and supports action that:

- Provides standards by which the environmental value of property sl established;

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- Provides an efficient and fair system by which a property owner can se redress for laws and regulations that result in a taking without compen that deny the economic benefits of the "highest and best" use of his prope

- Provides for responsible, responsive, and timely judicial review and/or r rulings on development applications; and

- Incorporates an economic impact assessment of the imposition of legisl resulting regulation.

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PROPOSED BANKING RU

Issue E

Updated

ISSUE

The Department of Treasury and the Federal Reserve Board issued Proposed December 2000 that would permit financial holding companies and financial sub of national banks to engage in real estate brokerage and management activitie believes these Proposed Rules could have a significant negative impact on our r management members.

BACKGROUND

In 1999, Congress passed and President Bill Clinton signed into law the *Gramm Bliley Act* – a bill that amends the *Bank Holding Company Act*. Among other th Act allows financial institutions to participate in securities and insurance acti including such activities in its definitions of activities that are "financial in nat "incidental to a financial activity."

Although the Act permits financial institutions to engage in other activities Treasury determines, in consultation with the Federal Reserve Board, to be "fin nature" or "incidental to a financial activity," it does not give any indicatio explicitly or implicitly, that real estate brokerage or management activities are, o be, included in either definition.

However, shortly after the Act became law, the banking industry persuaded Treas the Board to issue Proposed Rules (also known as "Regulation Y") that would t estate brokerage and management activities as "financial in nature" or "incid financial activity."

ICSC has been working with the National Association of Realtors, NAREIT, t Estate Roundtable, and the Building Owners and Managers Association Inter (BOMA) to oppose these Proposed Rules. Elizabeth Holland (Abbell Corp Chicago), Chair of ICSC's Economic Issues Subcommittee, expressed our conce House Financial Services Subcommittee last July. As a result of the intense l pressure against the Proposed Rules, former Treasury Secretary Paul O'Neil ann last year that it would not make a final decision on this issue until sometime in 20

LEGISLATION

Representatives Ken Calvert (R-CA) and Paul Kanjorski (D-PA) and Senator Allard (R-CO) have reintroduced the *Community Choice in Real Estate Act* (H.R. S. 98) that would bar national banks and financial holding companies from directly indirectly participating in real estate brokerage or management activities.

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In February, Congress approved an omnibus spending bill that includes a provisi introduced by Representative Anne Northup (R-KY), prohibiting the Treasury Department from spending funds through September 30, 2003 to implement the I Rules.

OUR POSITION

ICSC supports H.R. 111 and S. 98, and urges Treasury and the Federal Reserve withdraw their Proposed Rules. We believe that real estate is not a financ instrument or product. Therefore, related activities such as real estate broke management, cannot, and should not, be construed by Treasury and the Board to "financial in nature" or "incidental to a financial activity."

We also believe that Congress, in passing the *Gramm-Leach-Bliley Act*, made it c financial institutions can only participate in financial activities and not in cor activities, such as real estate brokerage and management. Furthermore, si changes to the Act, such as those proposed by Treasury and the Board, sh deliberated and legislated by Congress, not by the aforementioned Agencies administrative regulations.

ICSC is not opposed to fair and healthy competition, however, we are concerned t some financial institutions could use their leverage in a manner that could negativ affect our real estate management members and suppress competition in the long t For example, if a financial institution is allowed to engage in real estate brokerage management activities, its objectivity could be compromised or completely erode it reviews a proposed loan that also gives it the opportunity to participate in the pr the project as a broker or a property manager.

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WETLANDS REFC

Issue

Updated F

BACKGROUND

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

REGULATORY ACTIVITY

The Corps, in January 2002, reauthorized all Nationwide Permits (NWPs), i
NWP 39. The changes to the permitting program went into effect in March 20(
39 was promulgated by the U. S. Army Corps of Engineers (The Corps) to repla
26 and went into effect on June 5, 2000. Large regional malls typically are fo
the more lengthy individual permit category. General, or nationwide perm
authorized by Section 404(e) of the Clean Water Act (CWA) in an effort by Co
provide a streamlined permitting process for minimal impact projects. NWP
replacement permit covering residential, commercial and institutional rea
development activities. To be eligible for this permit, projects cannot result in tl
more than ½ acre of wetlands. A Pre-Construction Notification must be filed
Corps if the project will result in the fill of more than 1/10 of an acre of wet
ICSC members are unable to qualify for NWP 39 they will be forced into t
expensive and time-consuming individual permitting category. Conservative e
regarding the impact of the new permits are an increased cost to the regulated co
of over $300 million, necessitating a 30% increase in the Corps' regulatory
maintain current customer service standards. ICSC continues to stress the need fo
rational regulatory approach that would yield a more useful NWP 39.

EPA and the Corps finally issued nationwide guidance to Corps district of
modification of jurisdictional determinations in light of the SWANCC decision
15, 2003. Accompanying the guidance was an Advanced Notice of Proposed Rul
(ANPRM) on the Clean Water Act definition of "waters of the United State
guidance states that the Corps and EPA are now precluded from assertin
jurisdiction over isolated, non-navigable waters. The stated goal of the ANPR
enable the agencies to receive additional information from the public to develop p
regulations designed to clarify what waters are subject to CWA jurisdiction in the

ICSC is working with other interested parties to respond to the questions pose
ANPRM through the submission of formal comments. In addition, ICSC will cor
work with the agencies, encouraging them to move forward with a timely issua
formal proposed rulemaking on the issue of jurisdictional determinations that c
with the intent of the SWANCC decision.

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TERRORISM INSURANC

Issue B

Updated Febru

ISSUE

Before September 11, 2001, coverage for terrorist activities was generally includ part of a business' property and casualty insurance policy. While "acts of war" have traditionally excluded from policies, "acts of terrorism" were not separately includ excluded from such policies. Even after the Oklahoma City and World Trade C bombings, U.S. insurers did not see the need to offer, and U.S. businesses did not ha buy, separate coverage for acts of terrorism. September 11 changed all of that.

BACKGROUND

Although the insurance industry was able to absorb the estimated $40-$70 billi losses from September 11, most reinsurance companies decided, on a prospective to exclude terrorism coverage because of their inability to price such coverage. result, terrorism insurance from primary insurers has been either unobtainable (espe for highly visible and "trophy" properties) or available only at extremely high p (with liability caps and high deductibles). Most states' insurance commissions, wit exception of New York and California, approved requests by insurance compani exclude terrorist coverage from their policies.

Without proper terrorism insurance, shopping center owners will be forced to bear or all of the risk of damages resulting from any future terrorist events, and may technical default of their existing loan agreements. In addition, the lack of such cov has started to cause banks and other lenders to either cease or significantly c financing new projects or refinancing existing ones. Several securities-rating firms also begun downgrading companies that have little or no terrorism insurance.

ICSC and other trade associations and business owners, including NAREIT, the Estate Roundtable, the U.S. Chamber of Commerce, Host Marriott and the Nat Football League, formed the Coalition to Insure Against Terrorism (CIAT) in orc promote the enactment of terrorism insurance legislation. After more than a ye intense lobbying and debate, Congress and the Bush Administration finally reach agreement on a terrorism insurance bill.

LEGISLATION

In November 2002, President Bush signed into law the *Terrorism Risk Insurance Ac 2002*. This legislation is designed to stabilize the insurance industry and better enabl individual insurers to offer terrorism insurance on all commercial properties across tl country at more affordable rates.

The new law provides for a three-year program that would have the federal governm pay 90 percent of terrorist-related insurance claims that exceed certain industry-wide

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individual company thresholds (up to $100 billion annually). It also gives the Treasu Secretary the authority to require that the insurance industry and its policyholders rep the government some or all of the assistance it receives. In order to advance the bill, President Bush dropped earlier demands for a provision that would prohibit punitive damage awards against property owners. Other tort reform measures, however, such case consolidation and language that state law govern the availability of punitive damages, were agreed to.

The Treasury Department has since released interim guidance on the new law's disclosure requirements, various definitions and scope of insurance coverage under tl program. Additional guidance will be forthcoming.

In addition, New York and District of Columbia state regulators reached an agreemer with the Insurance Services Office (a national insurance advisory group) that will cap terrorism insurance premiums for commercial buildings located in Manhattan and Washington, D.C. to 25 percent of commercial property premiums. Both areas will b subdivided into three separate risk categories. Similar negotiations are taking place i Chicago and San Francisco.

OUR POSITION

ICSC is proud to have worked with CIAT to help get federal terrorism insu legislation enacted. We will continue to monitor the marketplace and our members t if terrorism insurance has become more available and affordable.

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ENDANGERED SPECIE

Issue B

Updated Ju

ISSUE

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

BACKGROUND

The ESA has often been used as a tool by no-growth advocates to curtail progres growth. The ESA was first enacted in 1973 to protect species believed to be on the of extinction. When enacted, 109 species were listed for protection. Today, nearly species are listed, while an additional 300 species are proposed or are candidate listing. Only twenty or so species have been "delisted" or removed from the specie since 1973: Seven because of extinction, six because of data errors in the original li 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, than 90 percent of the species listed under the ESA rely upon private land for some of their habitat. The current system inadequately protects the environment and is economically harmful. In addition, species are listed without appropriate scientific review. It is imperative that the ESA be reformed to reflect current scientific economic realities.

ICSC supports legislative initiatives that ensure sound scientific practice plays a integral role in the determination of listing and delisting of species and habitat unde ESA. ICSC has endorsed S.369, The Endangered Species Listing and De-Listing Re Act of 2003. This legislation, introduced by Sen. Craig Thomas (R-WY) is per before the Senate Committee on Environment and Public Works. In addition, I supports H.R. 1662 introduced by Rep. Greg Walden (R-OR) in the Hous Representatives.

OUR POSITION

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

- The use of sound, peer-reviewed scientific data in making listing and de-l decisions;
- Economic impact assessment of the imposition of legislation and resu regulation;

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- Efficient and fair system by which a property owner can seek timely redres laws and regulations that result in a taking without compensation or that den economic benefits of the "highest and best" use of his/her property;

- Standards by which the environmental value of property shall be established;

- Enhancement of the state and local role in the listing and delisting proces reflect local biological and economic concerns.

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TELECOMMUNICATIOI

Issue E

Updated .

ISSUE

The provisions of the Telecommunications Act of 1996 deregulated and pron competition in every segment of the communications industry. As a result, shop centers and their tenants have been presented with the choice of a variety of providers of telecommunications services that are in competition with the existing se providers and each other. Shopping Center owners continue to obtain and offer the available services to their tenants in this competitive environment and should nc forced by government action to make their private property available to any fly-by-i telecommunications providers.

BACKGROUND

Some issues shopping center owners and managers may face include the managen control, and cost of the provision of telecommunications, including those invol space, security, liability, control of service facilities and personnel, and compliance laws and regulations. A major concern is whether any and all telecommunication se: providers, in the name of encouraging competition, would be granted forced acce: private property, under government order, without the permission of the property ov ICSC helped form in 1999 the Real Access Alliance to ensure that the cu competitive free market availability of telecommunications service options would nc 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 va: telecommunication providers, including telephone companies and cable operators. U the 1996 Telecommunications Act, the FCC is responsible for deregulating and brin competition to these and other areas. It is through these new regulations that pri property owners face the threat of the required access of telecommunication provide their property without their permission. Through ICSC lobbying efforts, the FCC become educated on the intricacies facing the commercial real estate industry in matter. We have made it clear that deregulation of the telecommunications ind should not lead to increased regulation of the shopping center industry. ICSC anc Real Access Alliance have successfully prevented the federal government from mo forward with frced access regulations. The real estate industry has established a s best practices and voluntary agreements that reiterate and maintain our commitmer 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 prop consistent with fundamental state and federal laws. There is pressure in the states, c generated by a coalition of alternative telecommunications providers (cable

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

FEDERAL LEGISLATION

Currently, and for the first time in the past two years, there is no federal legislative to mandate forced access. ICSC and the Real Access Alliance continue to wor educate and lobby congress so that when the inevitable introduction of forced a legislation is made again, members of the House and Senate will understand that f access legislation is a violation of private property rights and not needed to f 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 v force property owners to grant access to any and all telecommunications providers filed extensive comments with the FCC stating our position that the current market-l system of contract negotiation is working and that any mandate for forced acce illegal, violating the "takings" clause of the Fifth Amendment to the Constitution, an needed.

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

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