00020371814

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

RECEIVED
SECRETARY OF THE SENATE
PUBLIC RECORDS
02 AUG 22 AM 9:43

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 E. Laniak	(703) 549-7404	jlaniak@icsc.org	19935-12

7. Client Name ☒ Self

6. House ID # 19935

TYPE OF REPORT

8. Year_____ Midyear (January 1-June 30) ☒ **OR** Year End (July 1-Dece

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

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 repo period were:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ 357,900.00
Expenses (nearest $2

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

☒ **Method A.** Reporting amounts using LDA definitic

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

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

Signature Rebecca M Sullivan

Rebecca M. Sullivan, Staff Vice President, Gov't Relations

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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebecca M Sullivan Date 8-13-02

Rebecca M. Sullivan, Staff V.P. Government Relations

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 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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebecca M Sullivan Date 8-13-02

Printed Name and Title Rebecca M. Sullivan, Staff V.P. Government Relations

Printed Name and Title_____

00020371817

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

15. General issue area code 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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebecca M Sullivan Date 8-13-02

Printed Name and Title Rebecca M. Sullivan, Staff V.P. Government Relations

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

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

16. Specific lobbying issues

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

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

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

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

Signature Rebecca M Sullivan Date 8-13-02

Printed Name and Title Rebecca M. Sullivan, Staff Vice President, Government Relations

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 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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebecca M Sullivan Date 8-13-02

Rebecca M. Sullivan, Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

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

15. General issue area code 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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebeccam Sullivan Date 8-13-02

Rebecca M. Sullivan, Staff V.P. Government Relations

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

15. General issue area code 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)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

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

Signature Rebecca M Sullivan Date 8/13/02

Printed Name and Title Rebecca M. Sullivan, Staff V.P. Government Relations

International Council of Shopping Centers

ADA NOTIFICATION AC

Issue Bri

Updated June 2

ISSUE

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

BACKGROUND

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

LEGISLATION

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

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

CAPITAL GAINS REFORM

Issue Brie

Updated February 2

ISSUE

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

BACKGROUND

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

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

LEGISLATION

A tax-cut bill signed into law last June – the *Economic Growth and Tax Relie Reconciliation Act of 2001* – did not include any capital gains tax relief for individuals o corporations. An economic stimulus package passed by the House in October 200 contained a provision that would have eliminated the five-year holding perio requirement for the 18 and 8% rates referred to above. The bill also would have increased the amount of ordinary income that could be offset by capital losses from $3,000 to $5,000. Unfortunately, the House later passed a revised stimulus bill withou any capital gains or loss measures. As of January 2002, the Senate has not reached agreement on their own economic stimulus package.

OUR POSITION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council
of Shopping Centers

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

E-COMMERCE TAXATIOI

Issue Brie

Updated June 2

ISSUE

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

BACKGROUND

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

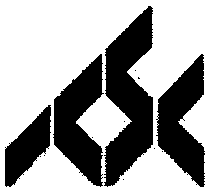
In 1998, Congress enacted a three-year moratorium which expired on October 21, 200 on Internet access taxes and new, multiple or discriminatory taxes on electroni commerce. In addition, it established an Advisory Commission to examine Interne taxation and interstate sales transactions. Unfortunately, the Commission failed to reac a consensus on the collection of state and local sales taxes on remote sales. However, did issue a majority report that recommended not only extending the moratorium, but als creating special "nexus" carve-outs and sales tax exemptions for Internet businesses.

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

LEGISLATION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)



International Council
of Shopping Centers

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

OPPOSING VIEWPOINTS

Many Internet-based retailers claim that imposing remote sales tax collectio requirements on them would be too burdensome, given the thousands of state and loca taxing jurisdictions across the country. While we agree that states and localities need t simplify their sales and use tax systems, there is currently software available that ca adequately determine, collect and remit a merchant's remote sales taxes.

Our opponents also claim that states are currently flush with cash, and therefore need nc be concerned with uncollected sales taxes on electronic commerce. While most, but nc all, states are currently enjoying budget surpluses, if the economy continues to soften an more sales gravitate from traditional stores to the Internet, states and localities could fin themselves with budget deficits and forced to cut back on essential services or raise othe taxes.

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

TERRORISM INSURANC

Issue Bri

Updated June

ISSUE

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

BACKGROUND

Although the insurance industry is able to absorb the estimated $40-$70 billion in losse from September 11, most reinsurance companies have decided, on a prospective basis, t exclude terrorism coverage because they are unable to price such coverage. As a resul terrorism insurance from primary insurers is either unobtainable (especially for highl visible and "trophy" properties) or available only at extremely high prices (with liabilit caps and high deductibles). Most states' insurance commissions, with the exception o New York and California, have been approving requests by insurance companies t exclude terrorist coverage from their policies.

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

LEGISLATION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

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

A preliminary agreement last year between the White House and key Senate negotiato would have the federal government cover 90% of future terrorist-related claim exceeding $10 billion (for events under $10 billion, the government would cover 80% c losses exceeding an individual company's retention level of 7.5% of premiums). Neith the insurance industry nor its policyholders would have to reimburse the government fc such assistance and the program would last for one year. Tort reform measures had nc been agreed to, but insurers would have to offer terrorist coverage to all of the policyholders.

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

OUR POSITION

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

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

BANKRUPTCY REFORM

Issue Brief

Updated June 2

ISSUE

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

BACKGROUND

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

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

LEGISLATION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

OPPOSING VIEWPOINTS

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

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

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

LEASEHOLD IMPROVEMEN

Issue E

Updated J

ISSUE

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

BACKGROUND

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

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

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

In 2000, the consulting firm of Deloitte & Touche completed a study that estimated th economic depreciation of various types of real estate structures and analyzed such estimates for tax depreciation purposes. According to the study, retail structures have an estimated economic depreciation recovery period of 12 years based on annual rents (15 years based on building values) – both of which are significantly shorter than the 39 year currently allowed under the tax code.

LEGISLATION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council
of Shopping Centers

an additional 30% "bonus" first-year depreciation for certain qualified property including leasehold improvements, purchased between Sept. 11, 2001 and Sept. 10, 2004 The law also provides various investment incentives for property built in the damage area of New York City. The IRS later issued Revenue Procedure 2002-33 to assis taxpayers in claiming such additional depreciation benefits. Representative Jerry Welle (R-IL) has since introduced legislation (H.R. 4020) that would permanently extend th "bonus" depreciation provision.

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

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

LEASEHOLD IMPROVEMEN

Issue E

Updated J

ISSUE

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

BACKGROUND

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

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

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

In 2000, the consulting firm of Deloitte & Touche completed a study that estimated th economic depreciation of various types of real estate structures and analyzed suc estimates for tax depreciation purposes. According to the study, retail structures have a estimated economic depreciation recovery period of 12 years based on annual rents (1 years based on building values) – both of which are significantly shorter than the 39 year currently allowed under the tax code.

LEGISLATION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

an additional 30% "bonus" first-year depreciation for certain qualified propert including leasehold improvements, purchased between Sept. 11, 2001 and Sept. 10, 200 The law also provides various investment incentives for property built in the damage area of New York City. The IRS later issued Revenue Procedure 2002-33 to assi taxpayers in claiming such additional depreciation benefits. Representative Jerry Well (R-IL) has since introduced legislation (H.R. 4020) that would permanently extend th "bonus" depreciation provision.

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

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

PROPOSED BANKING RULE
Issue Bri

Updated June 20

ISSUE

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

BACKGROUND

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

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

However, after the Act became law, the banking industry persuaded Treasury and th Board to issue Proposed Rules (also known as "Regulation Y") that would treat rea estate brokerage and management activities as "financial in nature" or "incident to financial activity". ICSC has since signed onto letters with the National Association o Realtors and submitted a comment letter with NAREIT, the Real Estate Roundtable, an the Building Owners and Managers Association International (BOMA) opposing thes Proposed Rules. In April, Treasury stated that it would not make a final decision on th Proposed Rules until sometime next year.

LEGISLATION

Senators Wayne Allard (R-CO) and Hillary Clinton (D-NY) introduced the *Communit Choice in Real Estate Act* (S. 1839) that would bar national banks and financial holdin companies from directly or indirectly participating in real estate brokerage o management activities. Representatives Ken Calvert (R-CA) and Paul Kanjorski (D-PA introduced similar legislation, H.R. 3424, which currently has 235 cosponsors.

Subcommittees of the House Financial Services, House Judiciary, and Senate Bankin Committees have held hearings on this issue, however, none of the full Committees hav held hearings or markups of H.R. 3424 or S. 1839.

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council
of Shopping Centers

OUR POSITION

ICSC supports S. 1839 and H.R. 3424, and urges Treasury and the Federal Reserve Boa to withdraw their Proposed Rules. We believe that real estate is not a financial asse instrument or product. Therefore, related activities such as real estate brokerage ar management, cannot, and should not, be construed by Treasury and the Board to be eith "financial in nature" or "incidental to a financial activity."

We also believe that Congress, in passing the *Gramm-Leach-Bliley Act*, made it clear th financial institutions can only participate in financial activities and not in commerci activities, such as real estate brokerage and management. ICSC is not opposed to fair a healthy competition, however, we are very concerned that some financial institutio could use their leverage in a manner that could negatively affect our real esta management members and suppress competition in the long term.

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

CONTAMINATED PROPERT

Issue Br

Updated June

ISSUE

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

BACKGROUND

For more than 20 years, since the passage of the landmark Superfund legislation in 198(countless parcels of real estate across the United States have been idled---not from th specter of significant hazardous waste contamination, but from the fear of lawsuits. Th stringent liability provisions of the Comprehensive Environmental Respons(Compensation and Liability Act (CERCLA), commonly known as Superfund, wer enacted to address the problem of inactive or abandoned hazardous waste sites. The A(imposed unfair burdens on private citizens and companies retroactively, without regard t their negligence, fault, or failure to exercise due care. ICSC members supported an(advocated reform of Superfund to remove the chill it inadvertently cast upon all propert suspected of even the slightest hazardous waste contamination.

In the early 1990's, EPA officials began to explicitly recognize the distinction between legitimate sites deserving of sustained remedial measures because of the threat of imminent danger to human health and the environment, and those smaller parcels that 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 its Brownfields initiative modestly, funding assessments of a handful of Brownfield sites with small grants to communities and sponsoring conferences and workshops to define and refine this class of under-utilized properties. ICSC became an early supporter of the EPA Brownfields initiative as an active partner in the national Brownfields conferences.

LEGISLATION

ICSC members quickly grasped the economic potential held by these sites if a 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 early and active supporter. In recent years, efforts were undertaken in Congress to enact separate Brownfields legislation, again with strong ICSC support. The drive to enact Brownfields legislation succeeded in 2001 with the passage of the Small Business Liability Relief and Brownfields Revitalization Act. President Bush signed the bill into law on January 11, 2002.

The Brownfields Revitalization Act provides for the liability protection from Superfund necessary to unleash the economic potential of these real estate parcels---protection of prospective purchasers, and of innocent landowners, and protection from liability of

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

contamination from contiguous landowners. EPA believes these provisions are largely self-implementing, but a decision must still be made on standards of due diligence. ICSC members believe that the Association of Standard Testing Materials (ASTM) currently in use by EPA is sufficient.

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

OUR POSITION

Much progress has been made on these issues in recent years. ICSC has been at the center of the action to unleash the economic potential embodied in the redevelopment and reuse of Brownfields sites. We will continue to work with EPA to implement a flexible interpretation of the legislation and with Congress on adequate funding for the program. As efforts unfold for further modification of Superfund, ICSC's role will largely be one of vigilance to ensure that gains realized from the Brownfields Revitalization Act are not weakened or lost.

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

PRIVATE PROPERT

Issue Br

Updated June

ISSUE

The "takings" clause of the Fifth Amendment to the U.S. Constitution states, in part, "nc shall private property be taken for public use without just compensation." Despite th protection of the Constitution, countless landowners have been deprived of their property prosecuted, fined, or in some cases, jailed, because of wetlands and endangered specie on their property.

BACKGROUND

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

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

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

LEGISLATION

ICSC continues to advocate the need for Congress to enact legislation that woul strengthen the rights of property owners. The 107th Congress has thus far not initiated an serious legislative efforts on the property rights issue(s). ICSC has, however, recently joined other real estate organizations in the filing of an amici curiae brief in the 8th Circuit Court of Appeals and we will continue to monitor property rights issues across the country.

OUR POSITION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

ENERG
Issue Br

Updated Jun

ISSUE

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

LEGISLATION

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

OUR POSITION

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

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

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council
of Shopping Centers

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

ENDANGERED SPECIE

Issue Bri

Updated June 2

ISSUE

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

BACKGROUND

The ESA has often been used as a tool by no-growth advocates to curtail progress an growth. The ESA was first enacted in 1973 to protect species believed to be on the brin of extinction. When enacted, 109 species were listed for protection. Today, almost 1,00 species are listed, with more than 400 additional candidate species. Only twenty or s species have been "delisted" or removed from the species list since 1973: seven becaus of extinction, six because of data errors in the original listing process, and only si officially declared as reaching recovery populations.

LEGISLATION

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

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

OUR POSITION

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council
of Shopping Centers

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

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

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

WETLANDS REFOR

Issue Br

Updated June

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 Clea Water Act is not the product of a carefully considered and fully debated legislativ policy. The Clean Water Act is not a wetland protection law; it is a water quality law th has been used in an attempt to achieve wetland protection, a goal for which it was n designed. In fact, the Supreme Court ruled in January 2001 (*Solid Waste Agency c Northern Cook County v. U.S. Army Corps of Engineers*) that the Corps does not hav regulatory authority over isolated waters of the United States because, in part, Congres had not delegated the authority to the Corps.

REGULATORY ACTIVITY

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

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

LEGISLATION

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

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

OPPOSING VIEWPOINTS

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

OUR POSITION

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

- Respect for existing local and state laws on water quality and land use planning and development so that they are not be subordinated to federal wetland regulations.

- Explicit statutory requirement that the value and functionality of wetlands be taken into account in the regulatory process, including reasonable limits on mitigation.

- Define circumstances where the landowner would be entitled to compensation for instances where permit denials constitute an unlawful "taking."

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

TELECOMMUNICATION

Issue Br

Updated June

ISSUE

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

BACKGROUND

Some issues shopping center owners and managers may face include the management control, and cost of the provision of telecommunications, including those involvin space, security, liability, control of service facilities and personnel, and compliance wit laws and regulations. A major concern is whether any and all telecommunication servic providers, in the name of encouraging competition, would be granted forced access t private property, under government order, without the permission of the property owne ICSC helped form in 1999 the Real Access Alliance to ensure that the curren competitive free market availability of telecommunications service options would not b 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 variou telecommunication providers, including telephone companies and cable operators. Unde the 1996 Telecommunications Act, the FCC is responsible for deregulating and bringin competition to these and other areas. It is through these new regulations that private property owners face the threat of the required access of telecommunication providers t their property without their permission. Through ICSC lobbying efforts, the FCC has become educated on the intricacies facing the commercial real estate industry in this matter. We have made it clear that deregulation of the telecommunications industry should not lead to increased regulation of the shopping center industry. ICSC and the Real Access Alliance have successfully prevented the federal government from moving forward with forced access regulations. The real estate industry has established a set of best practices and voluntary agreements that reiterate and maintain our commitment to providing the best services to our tenants in a competitive real estate market.

2) States

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)

International Council of Shopping Centers

newspapers), to provide for forced entry to private property for telecommunication providers. These efforts have manifested themselves in two forms of legislation. The fir would impose such requirements legislatively. The second would grant the state Publ Utility Commission (PUC) the authority to deal with the issue with the view that the PU would impose such requirements. ICSC has been actively involved at the state level t ensure forced access is not imposed on the private property concerns of the shoppin center industry. There are still efforts in many states to move toward forced access, an 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 effo to mandate forced access. ICSC and the Real Access Alliance continue to work t educate and lobby congress so that when the inevitable introduction of forced acces legislation is made again, members of the House and Senate will understand that force access legislation is a violation of private property rights and not needed to foste 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 woul force property owners to grant access to any and all telecommunications providers. W filed extensive comments with the FCC stating our position that the current market-base system of contract negotiation is working and that any mandate for forced access i illegal, violating the "takings" clause of the Fifth Amendment to the Constitution, and nc needed.

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

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

INTERNATIONAL COUNCIL OF SHOPPING CENTERS
1033 NORTH FAIRFAX STREET, SUITE 404 • ALEXANDRIA, VA 22314-1540 • 703-549-7404 • 703-549-8712 (Fax)