

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
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LOBBYING REPORT

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

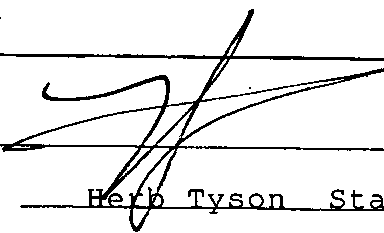
1. Registrant Name <p style="text-align: center;">International Council of Shopping Centers</p>			
2. Address <input type="checkbox"/> Check if different than previously reported <p style="text-align: center;">1399 New York Avenue #720</p>			
3. Principal Place of Business (if different from line 2) <p>City: Washington State/zip (or Country) DC 20005</p>			
4. Contact Name	Telephone	E-mail (optional)	5. Senate ID #
Judy Laniak	202 626 1401	jlaniak@icsc.org	19935-1
7. Client Name	<input checked="" type="checkbox"/> Self		6. House ID #
			19935

TYPE OF REPORT 8. Year 2005 Midyear (January 1-June 30) OR Year End (July 1-December 31)

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

10. Check if this is a Termination Report ⇨ Termination Date _____ 11. No Lobbying Activities

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13	
<p style="text-align: center;">12. Lobbying Firms</p> <p>INCOME relating to lobbying activities for this reporting period was:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇨ \$ _____ Income (nearest \$20,000)</p> <p>Provide a good faith estimate, rounded to the nearest \$20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).</p>	<p style="text-align: center;">13. Organizations</p> <p>EXPENSES relating to lobbying activities for this reporting period were:</p> <p>Less than \$10,000 <input type="checkbox"/></p> <p>\$10,000 or more <input type="checkbox"/> ⇨ \$ <u>380,000</u> Expenses (nearest \$20,000)</p> <p>14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options</p> <p><input checked="" type="checkbox"/> Method A. Reporting amounts using LDA definitions of expenses</p> <p><input type="checkbox"/> Method B. Reporting amounts under section 6033(b)(8) Internal Revenue Code</p> <p><input type="checkbox"/> Method C. Reporting amounts under section 162(e) of Internal Revenue Code</p>

Signature  Date 8/12/2005

Printed Name and Title Herb Tyson Staff VP Government Relations

0000420968

Registrant Name ICSC

Client Name SELF

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

20. Client new address

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

City

State/Zip (or Country)

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

LOBBYIST UPDATE

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

Wayne Mehlman

ISSUE UPDATE

24. General lobbying issues previously reported that no longer pertain

AFFILIATED ORGANIZATIONS

25. Add the following affiliated organization(s)

Name	Address	Principal Place of Business (city and state or country)

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

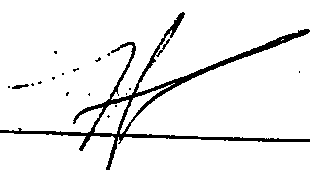
FOREIGN ENTITIES

27. Add the following foreign entities

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

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

Signature



Date

8/10/2005

0000420969

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

Form LD-2 (Rev. 6/98)

Page 2

Registrant Name ICSC Client Name SELF

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

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

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

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

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

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

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005

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

1000420970

Registrant Name ICSC Client Name SELF

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant is engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide 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)
Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005
Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

0000420971

Registrant Name ICSC Client Name SELF

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

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

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

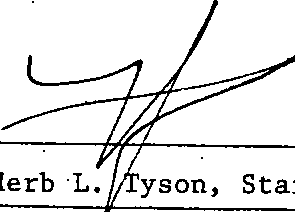
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U.S. Senate
E.P.A.

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Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005
Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

0000420972

Registrant Name ICSC Client Name SELF

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

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

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

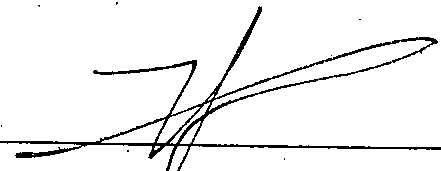
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U.S. Senate
E.P.A.

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Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005
Printed Name and Title Herb J. Tyson, Staff Vice President, Government Relations

0000420973

Registrant Name ICSC Client Name SELF

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

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

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

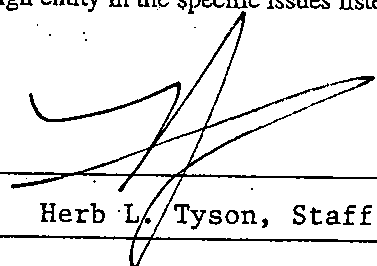
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U.S. Senate
E.P.A.

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Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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Signature  Date 8/12/2005
Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

000420974

Registrant Name ICSC Client Name SELF

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

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

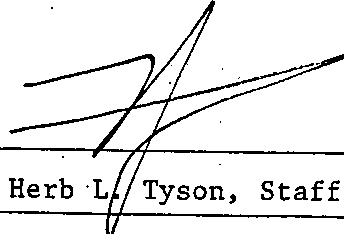
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U.S. Senate
E.P.A.

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

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005
Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

1000420975

Registrant Name ICSC Client Name SELF

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide 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

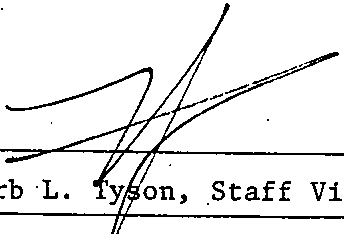
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U.S. House Of Representatives
U.S. Senate
E.P.A.

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

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Jennifer Platt	

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

Signature  Date 8/12/2005
Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

0000420976



Extension of Terrorism Insurance

Issue Brief

Updated April 2005

Background:

Although the insurance industry was able to absorb the estimated \$40-\$70 billion in damages from the September 11 attacks, most reinsurance companies decided, on a prospective basis, to exclude terrorism coverage because of inability to price such coverage. As a result, terrorism insurance was either unobtainable (especially for high-profile properties) or available only at extremely high prices (with high deductibles, liability limits and exclusions). With the terrorism risk insurance marketplace in disarray, Congress passed the Terrorism Risk Insurance Act (TRIA) in 2002. TRIA established a temporary insurance backstop to help insure against catastrophic losses caused by an act of terrorism. To date TRIA has achieved two major national goals envisioned by bipartisan leadership: 1) it has enabled the U.S. economy to keep going in the face of continued terrorist threats by allowing businesses such as shopping centers to secure terrorism insurance (which developers must have to obtain financing); 2) it serves as an important placeholder to help with the almost certain severe economic disruption that will occur if there is a future terrorist attack.

ICSC's Position:

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

Senators Robert Bennett (R-UT) and Christopher Dodd (D-CT) have introduced S. 467, legislation that extends TRIA for two years. The bill also calls for the establishment of a public/private partnership/commission to recommend a long-term solution to the terrorism risk problem. House Democrats have also introduced H.R. 1153, which extends TRIA for two years. With the clock ticking on existing policies and deal-making/financing often dependent on terrorism insurance coverage, ICSC and CIAT will continue to make this a top legislative priority that requires immediate Congressional attention.

Opposing Arguments:

1. Those who oppose TRIA's extension assert that it was designed to be a temporary program and that extending it once could justify additional extensions.

ICSC's response:

We agree with statements made by Federal Reserve Board Chairman Alan Greenspan to the House Financial Services Committee on Feb. 17, 2005. Chairman Greenspan said, "There are regrettable instances in which markets do not work," and added "I have yet to be convinced [that the terrorism insurance market can be made to work]. TRIA needs to be extended to give the private sector more time to create a feasible alternative and to prevent economic disruption. We are hopeful that such an alternative will be developed soon, thereby eliminating the need for any future extensions.

2. Opponents also argue that TRIA should not be extended since it is a bailout for the insurance industry.

ICSC response:

Without TRIA most insurers will not offer terrorism insurance, which in turn would negatively impact many policyholders. Even with the federal backstop, insurers are at great financial risk in the event of another terrorist attack and can be required to reimburse the government for any financial assistance they receive.

For more information contact Jennifer Platt at jplatt@icsc.org or (202) 626-1404.

0000420977



Bankruptcy Reform

Issue Brief

Updated May 2005

The Issue:

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

Our Position:

ICSC has been a proud supporter of S. 256, “The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” and applauds the passage of this legislation through the U.S. House of Representatives and the Senate. On April 10, 2005, President George W. Bush signed S. 256 into law, (Public Law 109-8). Norman Kranzdorf and John Gose, ICSC members and long-time advocates for alterations to the bankruptcy code related to tenant bankruptcy, were in attendance for the bill signing ceremony.

ICSC has supported bankruptcy reform legislation for several years as the legislation contains a number of provisions important to the shopping center industry, among them:

- (1) A reasonable limit to the time period that bankrupt tenants have to assume or reject their existing leases;
- (2) The requirement that a lease’s “use clause” be adhered to upon assignment;
- (3) Greater access to creditors’ committees;
- (4) The administrative priority of rents due under leases that are assumed and later rejected;
- (5) The curing of certain non-monetary defaults before a lease can be assumed and assigned.

Public Law 109-8 will take place six months after enactment, October 2005. This law represents an important step forward to protect our neighborhood economies and restore balance to the U.S. Bankruptcy Code. To review the text of the legislation sent to the President visit: <http://thomas.loc.gov>.

Enactment of this legislation represents the culmination of years of dedicated efforts on the part of ICSC members.

For more information, contact Jennifer Platt at jplatt@icsc.org or (202) 626-1404.

1000420978



Property Right Issue Brief

Updated April

The Issue:

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

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

Our Position:

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

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

Opposing Arguments:

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

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

0000420979



Sales Tax Simplification Issue Brief

Updated April

Background:

The Supreme Court ruled in 1992 in the *Quill* case that the multitude of diverse state and local sales tax rules were a burden on retailers engaged in interstate commerce. Therefore, Internet and catalog retailers cannot be required to collect sales taxes unless they have a physical presence, such as a store or warehouse, in the purchaser's state. As a result of *Quill*, some Internet and catalog retailers without physical stores do not collect sales taxes, while other "click and bricks" retailers with both online and traditional stores are required to collect sales taxes on all sales. This is not only unfair to traditional brick and mortar retailers, but costs states billions in lost revenues. The Supreme Court advised that allowing states to require collection is an issue that "Congress maybe be better qualified to resolve, an one that it has the ultimate power to resolve."

The majority of states have taken steps to simplify their sales tax systems - 41 states and the District of Columbia approved "The Streamlined Sales and Use Tax Agreement (SSUTA)." The Agreement provides one uniform system to administer and collect sales taxes thus streamlining the country's more than 7,500 diverse sales tax jurisdictions, each of which has different definitions of what is taxable. Congressional action is needed to authorize states to collect taxes from out-of-state sellers.

While the Internet marketplace has rapidly expanded, sales tax collection for e-commerce sales lags behind. States and localities are experiencing budget deficits, which may result in higher business/property taxes and/or reduced governmental services. According to estimates prepared by the University of Tennessee's Center for Business and Economic Research in July 2004, states lost **\$15.5 billion in uncollected taxes in 2003**. That number is expected to grow to between \$21.5 and \$33.7 billion in 2008 if state and local governments remain unable to collect sales taxes from online purchases.

Our Position:

Streamlined Sales Tax Simplification is NOT A NEW TAX, RATHER AN UNCOLLECTED ONE. ICSC and the Fairness Coalition believe that tax policy should be consistent and equitable for all forms of consumer purchases - whether they take place on Main Street, at shopping centers, via mail order or over the Internet. Internet retailers should not receive a tax advantage at the expense of traditional retailers and state and local governments. ICSC expects legislation to be introduced in the 109th Congress by Senators Michael Enzi (R-WY) and Byron Dorgan (D-ND).

States are losing billions of dollars to fund schools, parks, law enforcement, first responders and other services because of uncollected sales tax revenue. ICSC urges Congress to pass authorizing legislation on sales tax simplification this year. Doing so will simplify the nation's sales tax laws, reduce red tape on America's businesses and facilitate equitable sales tax collection for all retailers.

Opposing Arguments:

1. Opponents claim that allowing states to collect remote sales taxes is equivalent to raising taxes.

ICSC's Response:

ICSC believes the legislation would not create or raise taxes but would simply allow states to collect existing sales use taxes that are already owed to them but remain uncollected.

2. Opponents also argue that it would be too costly and burdensome to require remote retailers to collect sales taxes in other states and localities.

ICSC's Response:

There is inexpensive software available that easily determines and remits the amount of taxes owed to all jurisdictions all across the country. In prior legislation small businesses were exempt from having to collect taxes. ICSC anticipated that this year's bill will also have the exemption.

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





Wetlands Reform Issue Brief

Updated April

The Issue:

The environmental importance of the nation's true wetlands is widely known. However, the federal wetlands program in effect today under Section 404 of the Clean Water Act is not the product of a carefully considered fully debated environmental policy. Construction permits in wetland areas must be obtained through the US Army Corps of Engineers, which otherwise concerns itself with maintaining navigable waterways. Section 404 requires a permit prior to the "discharge of dredged materials" into "navigable water." Simply by a redefinition of these otherwise clear terms, Section 404 has been expanded to require a permit before altering many properties with only the most tenuous connection to navigable waterways – such as manmade ditches and ponds intended for stormwater control.

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

Our Position:

The Supreme Court ruled in January 2001 (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, or *SWANCC*) that the federal government does not have regulatory authority over many isolated waters and wetlands. Unfortunately, the *SWANCC* reasoning has not been followed by all federal courts or Corps offices. Despite this confusion, the Supreme Court refused to hear the appeal of a recent case involving isolated "wetlands" (*Deaton v. US*). ICSC supported this unsuccessful appeal through a "friend of the court" brief. As a result of the *SWANCC* confusion, Rep. Richard Baker introduced legislation, H.R. 4843, in the 106th Congress which would clarify the limits of federal jurisdiction over wetlands. He is expected to reintroduce the bill soon. ICSC supports this approach. Rep. James Oberstar has introduced H.R. 1356 (S. 473 in the Senate) which would essentially expand federal jurisdiction to all wetlands and adjacent properties by eliminating the "navigable" requirement. ICSC opposes this approach.

Opposing Arguments:

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

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

0000420981



Endangered Species Act Issue Brief

Updated April

The Issue:

The Endangered Species Act (ESA) needs to be updated and improved. It has failed to conserve species it was meant to protect and in the process has wreaked economic havoc and social distress on communities throughout our nation. According to the General Accounting Office (GAO), more than 50 percent of the species listed under the ESA rely upon private land for some, if not all, of their habitat. Yet the ESA has often been used as a tool by no-growth advocates to curtail progress and economic development on private property rather than a species conservation measure.

The ESA was first enacted in 1973 to protect species believed to be on the brink of extinction. Initially, 109 species were placed on the endangered list. Today, 1265 species are listed as threatened or endangered, while an additional 257 species are proposed for listing. Another thirty-nine species have been "delisted," or removed from the endangered list. Yet only ten of those were declared "recovered" for a "success rate" of less than one percent. Even more were removed because of original errors in data. This is unsurprising. Because research funding becomes more available after a species is listed, researchers have a strong incentive to add species to the list. In addition, species can be listed without sufficient scientific peer review while ignoring available data from commercial or other private sources. It is imperative that the ESA be reformed to reflect current scientific and economic realities.

Our Position:

Two bills supported by ICSC were passed by the House Committee on Resources in 2004. H.R. 1299, introduced by Rep. Greg Walden (R-OR) would require the use of peer-reviewed scientific data in making listing and de-listing decisions. A companion bill, S. 2009, was introduced in the Senate by Gordon Smith (R-OR). H.R. 2933 was introduced by Rep. Dennis Cardoza (D-CA) and would restitute an improved habitat designation process. Rep. Cardoza has reintroduced his bill as H.R. 1299 in the current Congress. ICSC continues to support both of these legislative initiatives.

Opposing Arguments:

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

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

1000420982



The Issue:

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

Energy legislation that would address many of these concerns passed the House in 2003 but became bogged down in the Senate by election-year politics in 2004. Legislation is once again moving in the 109th Congress. HR 6000, introduced by Rep. Judy Biggert, brings back many of the energy efficiency provisions of the last Congress including R&D funds for building efficiency and transmission and distribution systems. Comprehensive legislation is being discussed by members of the House Energy and Commerce Committee and a bill may be finalized as soon as mid-April.

Our Position:

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

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

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

Opposing Arguments:

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

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

0000420983



ADA Notification Act

Issue Brief

Updated June

The Issue:

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

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

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

On June 8, 2005 Congressman Mark Foley (R-FL-16th) introduced H.R. 2804, the "ADA Notification Act" in the House. The bill amends Title III of the Americans with Disabilities Act to require that before commencing an action with respect to a place of public accommodation or commercial facility, that a 90-day window of opportunity is provided to correct alleged violations. H.R. 2804 incorporates important changes from previous versions of the bill introduced in past Congresses. Namely, the bill expands the notification requirement to state courts as well as federal courts. Secondly, there are exceptions to the notification requirement in instances where preliminary injunctive relief or temporary restraining orders are sought in either federal or state courts. This H.R. 2804 drops provisions that sanctioned attorneys in and disallowed attorney fees if they failed to provide an opportunity for correction of an alleged violation.

Our Position:

ICSC and others in the business community are committed to finding a solution, legislative or otherwise, that curtail the abuse of ADA while at the same time preserve the rights of the disabled community. ICSC recommends that its members take appropriate measures to comply with Federal, state and local ADA access requirements in order to better serve people with disabilities and to reduce the risk of related lawsuits.

Opposing Argument:

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

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