

**Senate Joint Resolution No. 40 —
Relative to international investment agreements.**

LEGISLATIVE COUNSEL'S DIGEST

SJR 40, Kuehl. International investment agreements.

This measure would memorialize the President and Congress of the United States that the Congress and the United States Trade Representative should preserve the traditional powers of state and local governments by requiring that negotiators of international investment agreements perform specified duties in that regard.

WHEREAS, The United States government, through the United States Trade Representative, is negotiating to create or interpret investment agreements under the proposed Free Trade Area of the Americas (FTAA), bilateral agreements such as the United States-Chile agreement, the investment chapter of the North American Free Trade Agreement (NAFTA), and potentially under the World Trade Organization (WTO); and

WHEREAS, Investment agreements affect state and local powers, including, but not limited to, zoning, protection of groundwater and other natural resources, corporate ownership of land and casinos, law enforcement by courts, public services, and sovereign immunity; and

WHEREAS, Investment rules under these agreements deviate from United States legal precedents on takings law and deference to legislative determinations on protecting the public interest; and

WHEREAS, Investment rules do not safeguard any category of law from investor complaints, including, but not limited to, laws passed in the interest of protecting human or animal health, environmental resources, human rights, and labor rights; and

WHEREAS, Foreign investors have used the provisions of NAFTA's investment chapter to challenge core powers of state and local government, including, but not limited to, regulatory power to protect groundwater in California; the power of civil juries to use punitive damages to deter corporate fraud in Mississippi; the ability of states to invoke sovereign immunity in Massachusetts; and a decision by local government to deny a zoning permit for construction of a hazardous waste dump in Guadalcazar, Mexico; and

WHEREAS, Serious concerns about international investment agreements have been expressed by national government associations, including the National Conference of State Legislatures, which urged federal trade negotiators not to commit the United States to further investor-to-state dispute provisions such as those pending under NAFTA; the National League of Cities, which has expressed concern that expansion of investment rules could undermine the successful effort by state and local governments to defeat legislation to expand compensation for takings in the 104th Congress; and the National Association of Attorneys General, which has encouraged Congress to ensure that foreign investors receive no greater rights to financial compensation than those afforded our citizens in any new international trade agreements; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States that the Congress and the United States Trade Representative should preserve the traditional powers of state and local governments by requiring that negotiators of international investment agreements do all of the following:

(a) Either carve out state and local governments from the scope of future investment agreements or exclude investor-to-state disputes from investment agreements.

(b) Ensure that international investment rules do not give greater rights to foreign investors than United States investors enjoy under the United States Constitution.

(c) Ensure that international investment rules do not undermine traditional police powers of state and local governments to protect public health, conserve environmental resources, and regulate fair competition.

(d) Ensure that all proceedings are open to the public and that all submissions, findings, and decisions are promptly made public, consistent with the need to protect classified information, and that amicus briefs will be accepted and considered by investment tribunals.

(e) Provide that an investors' home government must consent to the investor's claim against its host government, if investor-to-state disputes are retained; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the United States Trade Representative, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.