

HJR

38

SENATE COMMITTEE REPORT

DATE: 3/19/08

FURTHER:

D. TE TURNED
IN TO OFFICE: _____

State Affairs Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 38(STA)

HJR 38 ISRAEL 60TH ANNIVERSARY

Recognizing the State of Israel on the 60th anniversary of its founding.

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____



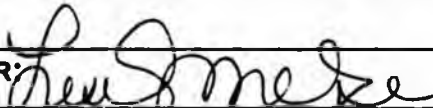
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
(H) STA	3/11/08			✓	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	✓			
	Strauss	X			
CHAIR: 	Maurice	✓			

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Economic Development, Trade & Tourism
Committee
Education Committee
Joint Armed Services Committee

Finance Subcommittees
Labor & Workforce Development
Community & Economic Development
Military & Veterans' Affairs



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Sponsor Statement

HJR 38

"Recognizing the State of Israel on the 60th anniversary of its founding."

While the plain language of this resolution is the best description of what it intends, in brief, the resolution simply recognizes and congratulates the people of Israel on the 60th anniversary of the establishment of their sovereign and independent modern state.

Over the past six decades, the people of Israel have persevered to build a strong and pluralistic democratic society in their biblical homeland, even in the face of frequent wars, on-going terrorist attacks, hostility and isolation among its Middle Eastern neighbors.

The people of Alaska share many connections with the people of Israel, individually, spiritually, and in other ways. Through this resolution, we express our support and appreciation for Israel and extend our best wishes to her people for a prosperous, peaceful and successful future.

The resolution is to be delivered to Israel's Consulate General to the Pacific Northwest, and to members of the Alaska delegation in Congress.

LEGAL SERVICES

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MEMORANDUM

March 7, 2008

SUBJECT: Resolution recognizing the 60th anniversary of the creation of Israel (Work Order No. 25-I.S1569\A)

TO: Representative Bob Lynn
Attn: Nancy Manly

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

This memorandum accompanies the draft joint resolution you requested. Please be aware of the following issue.

As explained by the Third Circuit Court of Appeals, the foreign affairs power of the United States is vested in the federal government.

The formulation and administration of foreign affairs is vested exclusively in the federal government. Consequently, any state law that involves the state in the actual conduct of foreign affairs is unconstitutional. *United States v. Pink*, 315 U.S. 203, 233, 86 L. Ed. 796, 62 S. Ct. 552 (1942). See also, L. Tribe, *American Constitutional Law*, § 4-6, at 230 (2d ed. 1988) ("state action, whether or not consistent with current federal foreign policy, that distorts the allocation of responsibility to the national government for the conduct of American diplomacy is void"). In contrast, any action that has only "some incidental or indirect effect in foreign countries" does not intrude on the foreign relations power. *Zschernig v. Miller*, 389 U.S. 429, 432, 19 L. Ed. 2d 683, 88 S. Ct. 664. [**31] (1968) (citation omitted).

Trojan Techs. v. Pennsylvania, 916 F.2d 903, 913 (3d Cir. 1990). The United States Supreme Court Case, *United States v. Pink* quoted in the *Trojan* case quoted above, describes the legal principle applicable with regard to the foreign affairs powers more fully as follows:

We recently stated in *Hines v. Davidowitz*, 312 U.S. 52, 68, that the field which affects international relations is "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority"; and that any state power which may exist "is restricted to the narrowest of limits." There, we were dealing

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with the question as to whether a state statute regulating aliens survived a similar federal statute. We held that it did not. Here, we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted. These are delicate matters. If state action could defeat or alter our foreign policy, serious consequences might ensue. The nation as a whole would be held to answer if a State created difficulties with a foreign power. *Cf. Chy Lung v. Freeman*, 92 U.S. 275, 279-280. Certainly, the conditions for "enduring friendship" between the nations, which the policy of recognition in this instance was designed to effectuate, are not likely to flourish where, contrary to national policy, a lingering atmosphere of hostility is created by state action.

United States v. Pink, 315 U.S. 203, 232-233 (1942). However, enforcement of national foreign relations power has been limited. The Third Circuit in 1990 stated:

On only one occasion has the Supreme Court struck down a state statute as violative of the foreign relations power. In *Zschemig* the Court held unconstitutional an Oregon statute which provided that a nonresident alien could not inherit from an Oregon decedent unless three conditions were met: (1) the alien's government must accord Americans the right to inherit on equal terms; (2) the alien's government must give Americans the right to receive payment in the United States of funds from foreign estates; and (3) foreign heirs inheriting from Oregon estates must be able to do so without confiscation by their government.

. . . The Court concluded that the "real desiderata" of Oregon court decisions were the foreign policy attitudes of local probate courts, attitudes that moved with the wax and wane of the cold war. *Id.* at 437. Applied in this way, the Court thought that the Oregon statute "held great potential for disruption or embarrassment." *Id.* at 435. The Court concluded that the statute had a direct impact upon foreign relations and had potential to affect adversely the power of the central government to deal with such problems. As such it was invalid. *Id.* at 441.

Trojan Techs. v. Pennsylvania, 916 F.2d 903, 913 (3d Cir. 1990).

In summary, the United States Constitution prohibits a state law that interferes with the foreign affairs powers of the federal government. It seems to me that the resolution proposed could be challenged on that basis even though it is in the form of a resolution rather than a law.

To avoid the constitutional issue, you might want to consider directing the resolution toward the President or Congress urging the federal government to take the actions listed in the resolves. This approach may accomplish your goals without offending the foreign

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affairs power of the federal government.

If I may be of further assistance, please advise.

DCB:med
08-160.med

Enclosure


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Operation Magic Carpet

Golden Anniversary: Alaska Airlines helped roll out a Magic Carpet to Israel

When Alaska Airlines sent them on "Operation Magic Carpet" 50 years ago, Warren and Marian Metzger didn't realize they were embarking on an adventure of a lifetime.

Warren, a DC-4 captain, and Marian, a flight attendant, were part of what turned out to be one of the greatest feats in Alaska Airlines' 67-year history: airlifting thousands of Yemenite Jews to the newly created nation of Israel.



The logistics of it all made the task daunting. Fuel was hard to come by. Flight and maintenance crews had to be positioned through the Middle East. And the desert sand wreaked havoc on engines.

It took a whole lot of resourcefulness the better part of 1949 to do it. But in the end, despite being shot at and even bombed upon, the mission was accomplished—and without a single loss of life.



Known as the lost tribe of Israel, the Yemenite Jews had wandered the deserts for at least two centuries after being driven out of Palestine. Nomads, they had never seen an airplane and never lived anywhere but a tent.

Ironically, their faith included a prophecy that they would be returned to their Holy Land on the wings of eagles.

"One of the things that really got to me was when we were unloading a plane at Tel Aviv," said Marian, who assisted Israeli nurses on a number of flights. "A little old lady came up to me and took the hem of my jacket and kissed it. She was giving me a blessing for getting them home. We were the wings of eagles."

For both Marian and Warren, the assignment came on the heels of flying the airline's other great adventure of the late 1940s: the Berlin Airlift.



"I had no idea what I was getting into, absolutely none," remembered Warren, who retired in 1975 as Alaska's chief pilot and vice president of flight operations. "It was pretty much seat-of-the-pants flying in those days. Navigation was by dead reckoning and eyesight. Planes were getting shot at. The airport in Tel Aviv was getting bombed all the time. We had to put extra fuel tanks in the planes so we had the range to avoid landing in Arab territory."

British officials advised them that Arabs, angry over the establishment of the Jewish state, would certainly kill all the passengers and likely the whole crew if they were forced to land on Arab soil. Many planes were shot at.

Days often lasted between 16 and 20 hours and the one-way flights, in twin-engine C-46 or DC-4 aircraft, covered nearly 3,000 miles.

"We'd take off from our base in Asmara (in Eritrea) in the morning and fly to Aden (in Yemen) to pick up our passengers and refuel," Warren said. "Then we'd fly up the Red Sea and the Gulf of Aqaba to the airport at Tel Aviv to unload. Then we'd fly to Cyprus for the night. We couldn't keep the planes on the ground in Israel because of the bombings."

"One of our pilots got a little bit too close to Arab territory when flying into Israel from the Gulf of Aqaba and tracers started arching up toward the plane," Warren said. "Another one of our planes got a tire blown out during a bombing raid in Tel Aviv. One of our crews practically lived on their plane from the end of April through June."

Bob Maguire, another Alaska pilot, once had to drop down to several hundred feet above the ground, squirming through hills and passes, to evade Arab gunfire.



What Warren and Marian thought was a temporary assignment turned into a seven-month mission of mercy. It also launched a marriage that has also celebrated its golden anniversary. Warren and Marian were married in Asmara in January 1949.

"I had met Warren when I started working for Alaska in July of 1948," Marian said. "We had both worked the Berlin airlift. I was sent to Shanghai

and I didn't know where Warren was. I landed in Asmara after one flight and when the door of the plane opened, one of the guys who knew I'd been seeing Warren from time to time said he was in Tel Aviv and he'd be flying in the next day."



Before her Operation Magic Carpet flights in the Middle East, Marian, who retired from Alaska in 1952, assisted on flights from Shanghai transporting Jews who fled to China to escape persecution in Germany. When communists came to power in China, the German Jews took flight again to Israel.

"We had been doing a lot of trips, a lot of different kinds of trips," Marian said. "We realized this was going to be part of the history of Israel, but it seemed like more of an adventure at the time."

In all, with the help of Alaska Airlines, charter carriers and the military, more than 40,000 Yemenite Jews were airlifted to Israel between late 1948 and early 1950.

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FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HJR 38
 () Publish Date: _____

Identifier (file name): HJR 38 Dept. Affected: _____
 Title: Israel 60th Anniversary RDU: _____
 Component: _____
 Sponsor: House State Affairs Committee
 Requester: House State Affairs Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nancy Manly, Committee Aide
 Division: House State Affairs Committee
 Approved by: Representative Bob Lynn
Chair

Phone 465-2794
 Date/Time 3/11/08 12:00 AM
 Date 3/11/2008