

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HR 1027 Capital of Israel
SPONSOR(S): Moskowitz and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 1 N	Miller	Miller
2) Government Accountability Committee			

SUMMARY ANALYSIS

The city of Jerusalem is located on one of the oldest continuously occupied sites in the world, with a history extending back over 3,000 years. In 1917, Great Britain issued the Balfour Declaration, stating support for a Jewish homeland in Palestine. At the end of World War I, the League of Nations placed Jerusalem and the larger area of Palestine under British control with a mandate to administer the area for the benefit of the residents. After World War II, Great Britain brought the issue of the Palestine mandate before the United Nations (U.N.) and in 1948, the U.N. proposed a partition of Palestine into two separate nations, with Jerusalem to be under international administration. With the declaration of the State of Israel in the partition area set aside for a Jewish nation, war broke out resulting in an armistice that divided Jerusalem between Israeli and Jordanian sections. In the Six Day War of 1967, Israel gained control of the entire city and has administered Jerusalem, and its key holy and historical sites, ever since.

In 1950, the State of Israel declared Jerusalem as its national capital. This position has always been opposed by the U.N., which insists that Israel is an occupying power that should return to its prior borders in keeping with U.N. resolutions. The U.N. continues to call for Jerusalem to be a separate area under international administration.

The United States was the first country to recognize the State of Israel as a nation. The U.S. Congress passed the Jerusalem Embassy Act of 1995, directing the U.S. Embassy to the State of Israel to be moved to Jerusalem. The Act allowed the President to waive its requirements for a period of six months if found to be necessary for national security purposes, which waivers were continued by each administration. On December 6, 2017, President Trump issued a Presidential Proclamation recognizing Jerusalem as the undivided capital of the State of Israel and stating the U.S. Embassy would be relocated to Jerusalem as soon as practicable.

The resolution recognizes the historical, religious, and cultural importance of Jerusalem; supports recognizing Jerusalem as the undivided capital of the State of Israel; and supports relocating the U.S. Embassy to Jerusalem. The resolution does not provide for its transmission to any specific authority.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Jerusalem is located within the State of Israel (Israel),¹ adjacent to the west of the area known as the West Bank. The city sits on one of the oldest continuously occupied sites in the world, with a history extending back over 3,000 years. Originally recorded as occupied by a Canaanite people known as the Jebusites, Jerusalem in turn has been occupied by Hebrew (later known as Jewish), Babylonian, Persian, Hellenistic, Roman, Byzantine, Muslim, Christian, and Ottoman rulers. As noted by the International Council on Monuments and Sites:

The site of Jerusalem, which has been continuously inhabited from prehistory, presents a series of exceptional testimonies to its vanished civilizations: that of the Jebusites (from the third millennium to ca. 1,000 before Christ); also, that of the Hebrews, from David to the siege of Titus in 70 A.D.; that of the Roman Empire, of which Aelia Capitolina, from 135, became one of the most important Eastern colonies; and, of course, that of Byzantium, not to mention the successive medieval civilizations characterized by the co-existence of Arabs and Christians from 638 to 1099, by a short western interlude terminated definitively in 1244 and by the Turkish domination which reached its peak under the reign of Sulaiman the Magnificent.²

From ancient times to the present, Jerusalem occupies a central historical, religious, and political role in the Jewish, Christian, and Muslim faiths.

First Mandate for Palestine and the Balfour Declaration

Jerusalem and the surrounding area known as Palestine remained within the Ottoman Empire until the upheavals of the First World War and the collapse of the Empire. Among the diplomatic complexities of World War I were the internal discussions of the major allies about the disposition of the Ottoman possessions in the event of the Empire's defeat. After two months of negotiations, on January 3, 1916, Great Britain and France entered a preliminary agreement dividing into respective spheres of influence the area south of present day Turkey and north of present day Saudi Arabia. France would control the area north of an artificial boundary (present day Lebanon and Syria) and Britain would control the southern area (present day Jordan and Iraq). Palestine, defined to include Jerusalem, would be administered by some sort of international body.³

In a letter dated November 2, 1917, the British Foreign Secretary, Arthur Balfour,⁴ wrote "[h]is Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine..."⁵ Known as the Balfour Declaration, this principle would inform and confound British action in Palestine after the War. Concurrent with the final peace

¹ In Hebrew, Medinat Yisra'el. See at <https://www.britannica.com/place/Israel> (accessed 1/6/2018).

² Report on Application C 148 (April 1981), at <http://whc.unesco.org/en/list/148> (accessed 1/6/2018). The application was submitted by the Kingdom of Jordan for the Old City of Jerusalem and its Walls to be placed on the List of World Heritage in Danger. See at *id.*

³ David Fromkin, *A Peace to End All Peace*, 192 (Holt Paperbacks, NY 1989). This is the Sykes-Picot agreement, named for the principal negotiators: Sir Mark Sykes for Great Britain and François Georges Picot for France.

⁴ Arthur James Balfour, First Earl of Balfour. Fromkin, at 631.

⁵ Fromkin, at 297.

settlement entered with the new nationalist Turkish government, Great Britain received the League of Nations mandate to administer Palestine and Jerusalem.⁶

Division of Palestine and Jerusalem, Creation of Nation of Israel

Britain administered the Mandate for Palestine until relinquishing the issue for resolution by the newly formed United Nations (U.N.). On November 26, 1947, the U.N. adopted Resolution 181, providing for the division of Palestine into two separate Jewish and Arab states. Jerusalem would be a separate region administered by the U.N. and not included in either of the new nations.⁷ On May 14, 1948, Great Britain withdrew its forces. On the same day, a Jewish state was proclaimed in the areas allotted under U.N. Resolution 181. After extensive fighting that saw the State of Israel forces occupy additional areas originally allotted to the Palestine sector, as well as the western portion of Jerusalem, an armistice was imposed by the U.N.

Jerusalem as the Capital of Israel

On December 5, 1949, the Israeli Cabinet declared Jerusalem to be the capital of Israel. A similar proclamation was issued by the Knesset⁸ on January 23, 1950.⁹ As recited on the website of Israel's Knesset, "[o]n December 13th 1949, the first Prime Minister of Israel, David Ben Gurion, stated that 'Jewish Jerusalem is an organic and inseparable part of the State of Israel, just as it is inseparable from Israeli history, from the faith of Israel and from the soul of our people.'"¹⁰ The Knesset moved its place of meeting from Tel Aviv to Jerusalem in 1950.¹¹

After years of armed tension with its neighbors Egypt, Jordan, and Syria, Israel determined a series of actions taken principally by Egypt's head of state, Gamel Nasser, constituted existential threats to the nation. War broke out on June 5, 1967, ending with a cease fire on June 11. During the Six Day War Israel captured the West Bank from Jordan, Gaza from Egypt, and the Golan Heights from Syria. On June 6, 1967, Israeli forces captured the eastern portions of Jerusalem, giving the nation control of the entire city.¹²

Response of the United Nations

For its part, the U.N. continues to adhere to the general outline of Resolution 181, calling for a partition into two states with Jerusalem as a separate area under international administration.¹³ Responding to the changed situation brought about by the Six Day War, the U.N. General Assembly called on Israel to return to its 1948 borders and reaffirmed the desirability of international regime for Jerusalem.¹⁴ On August 20, 1980, the General Assembly adopted Resolution 478, refusing to recognize the Knesset vote declaring Jerusalem as the capital of Israel and directing all member nations not to place diplomatic missions to Israel in Jerusalem.

⁶ Fromkin, at 558-559. *See also* The Palestine Mandate adopted by the League of Nations (7/24/1922), at http://avalon.law.yale.edu/20th_century/palmanda.asp (accessed 1/6/2018).

⁷ U.N. Resolution 181, Parts II & III. *See also* U.N. Brochure DPI/2157/Rev. 1 "The Question of Palestine and the United Nations," ch. 2 (2003), at <http://www.un.org/Depts/dpi/palestine/> (accessed 1/6/2018).

⁸ The Knesset is the parliament of the State of Israel. *See* https://www.knesset.gov.il/description/eng/eng_mimshal0.htm (accessed 1/6/2018).

⁹ Martin Gilbert, *Jerusalem in the Twentieth Century* (New York, 1996), pp. 243-244.

¹⁰ At https://www.knesset.gov.il/birthday/eng/EarlyYears_eng.htm

¹¹ *Id.*

¹² John Westwood, *The History of the Middle East Wars*, 80-107 (World Publications Group, Inc., Boston 2002).

¹³ Since 1947, the General Assembly has considered 368 reports and resolutions pertaining to the status of Jerusalem. *See* listing at http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1515O576L7585.2672&profile=bib&page=8&group=0&term=Jerusalem&index=.GW&uindex=&aspect=subtab124&menu=search&ri=2&limitbox_2=TM01+%3D+tm_b01&source=~!horizon&1515257677439 (accessed 1/6/2018).

¹⁴ General Assembly, A/L.523/Rev.1, 4 July 1967, at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/510EF41FAC855100052566CD00750CA4> (accessed 1/6/2018).

Since 1982 the World Heritage Commission (WHC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) has maintained the eastern part of Jerusalem captured in the Six Day War on the List of World Heritage in Danger.¹⁵ The WHC continually renews this status in a series of resolutions referring to Israel as the “occupying power,” criticizing the archaeological, urban renewal, and general administration under Israel’s control of the area, and using almost exclusively the Arabic names for various significant locations.¹⁶

U.S. Recognition of Jerusalem as Capital

After Israel’s founding in 1948, the United States was the first country to recognize the State of Israel.¹⁷ United States-Israel relations are characterized by support, cultural resonance, and cooperative mutual interests. The shared democratic values and religious affinities of the two countries have contributed to the bilateral ties.¹⁸ Regarding the Israeli-Palestinian conflict, official United States policy continues to favor a two-state solution to “address core Israeli security demands as well as Palestinian aspirations for national self-determination.”¹⁹ The United States, together with the European Union and the U.N., continues to advocate for Israeli-Palestinian talks in order to broker a peace deal.

In 1995, Congress enacted the Jerusalem Embassy Act of 1995 (Act).²⁰ Congress made numerous findings supporting the Act, including:

- Israel, as a sovereign nation, has designated Jerusalem as its capital since 1950.
- Not only is Jerusalem home to the three main branches of Israel’s government, it is the spiritual center of Judaism and holy to members of other religious faiths.
- Divided in 1948, since 1967 Jerusalem has been a united city administered by Israel.
- Under Israeli administration, members of all religious faiths are guaranteed access to the holy sites in the city.
- The United States maintains its embassy in the functioning capital of every nation except in the case of the State of Israel.²¹

The Act states the policy of the United States is for Jerusalem to remain an undivided city and to be recognized as the capital of the State of Israel, and to establish the U.S. Embassy in Jerusalem. If the embassy is not so established by the deadline in the bill, 50 percent of the funds appropriated to the State Department for “Acquisition and Maintenance of Buildings Abroad” may not be obligated until the Secretary of State reports to Congress that the Embassy in Jerusalem is officially opened.²² The Act further provides that the President may suspend the limitation on the use of funds for six months if the President determines such suspension is necessary to protect national security and so reports to Congress in advance. The suspension may be renewed at the end of any six-month period if necessary

¹⁵ The application, C 148, was filed in 1980 by the Kingdom of Jordan under the name “Old City of Jerusalem and its Walls.” See documents listed generally at <http://whc.unesco.org/en/list/148> (accessed 1/6/2018).

¹⁶ See 2017 UNESCO World Heritage Committee Decision 41 COM 7A.36, “Old City of Jerusalem and its Walls (site proposed by Jordan) (C 148 rev),” at <http://whc.unesco.org/en/decisions/6982> (accessed 1/6/2018); 2015 UNESCO World Heritage Committee Decision 39 COM 7A.27, “Old City of Jerusalem and its Walls (site proposed by Jordan) (C 148 rev),” at <http://whc.unesco.org/en/decisions/6243/> (accessed 1/6/2018).

¹⁷ U.S. Department of State, *U.S. Relations with Israel*, available at <https://www.state.gov/r/pa/ei/bgn/3581.htm> (last visited January 30, 2017).

¹⁸ Congressional Research Service report, *Israel: Background and U.S. Relations*, October 28, 2016, available at <https://webcache.googleusercontent.com/search?q=cache:kCSNhSZZquUJ:https://fas.org/sgp/crs/mideast/RL33476.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited February 3, 2017).

¹⁹ *Supra* note 2

²⁰ Pub. L. 104-45, Nov. 8, 1995, 109 Stat. 398. See at <https://www.congress.gov/bill/104th-congress/senate-bill/1322/text> (accessed 1/6/2018).

²¹ 109 Stat. 398, s. 2.

²² 109 Stat. 398, s. 3.

to protect national security.²³ The Act became law without the President's signature.²⁴ In a 1995 Memorandum, the Justice Department expressed significant concerns that the requirements of the Act may violate the President's exclusive constitutional authority over foreign affairs, including the appointment of ambassadors and recognition of foreign governments.²⁵ Since the 1995 enactment of the Act, every President has renewed the waiver every six months.

On June 1, 2017, President Trump signed another waiver of the Act.²⁶ On June 5, 2017, by a 90 – 0 vote the U.S. Senate passed Senate Resolution 176, acknowledging the 50th anniversary of the reunification of Jerusalem and reaffirming the 1995 Act.²⁷ On December 6, 2017, President Trump issued a Presidential Proclamation recognizing Jerusalem as the capital and stating the U.S. Embassy will be moved to Jerusalem “as soon as practicable.” The Proclamation provided that the move is a determination of the President “consistent with the will of Congress, as expressed in the Act.”²⁸ On the same date, the President issued a Memorandum to the Secretary of State renewing the waiver under section 7(a) of the Act due to national security concerns.²⁹

In an emergency special session held on December 21, 2017, the U.N. General Assembly adopted draft resolution ES-10/L.22, declaring the U.S. decision recognizing Jerusalem as the capital of the State of Israel to be “null and void.”³⁰ As with any other nation joining the U.N., the United States did not relinquish sovereignty over its own affairs, the U.S. is the sovereign equal of any other nation, and the resolution does not appear to impair the efficacy of the President's actions.³¹

Effect of the Resolution

The resolution recognizes the historical, religious, and cultural importance of Jerusalem; supports recognizing Jerusalem as the undivided capital of the State of Israel; and supports relocating the U.S. Embassy to Jerusalem. The resolution further approves the actions of the federal government recognizing Jerusalem as the undivided capital of the State of Israel.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²³ 109 Stat. 398, s. 7(a).

²⁴ See at <https://www.congress.gov/bill/104th-congress/senate-bill/1322/text> (accessed 1/6/2018).

²⁵ Walter Dellinger, Asst. Attorney General, “Memorandum Opinion For The Counsel To The President” (May 16, 1995), at <https://web.archive.org/web/20100209074518/http://www.justice.gov/olc/s770.16.htm> (accessed 1/6/2018).

²⁶ At <https://www.whitehouse.gov/briefings-statements/statement-american-embassy-israel/> (accessed 1/6/2018).

²⁷ S.R. 176, at <https://www.congress.gov/bill/115th-congress/senate-resolution/176/text> (accessed 1/6/2018). Sen. Rubio was a co-sponsor of the resolution and Sen. Nelson voted for it.

²⁸ Presidential Proclamation Recognizing Jerusalem as the Capital of the State of Israel and Relocating the United States Embassy to Israel to Jerusalem, at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-recognizing-jerusalem-capital-state-israel-relocating-united-states-embassy-israel-jerusalem/> (accessed 1/6/2018).

²⁹ *Presidential Determination No. 18-02*, at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-5/> (accessed 1/6/2018).

³⁰ The vote was 128 For and 9 Against, with 35 abstentions. At <http://research.un.org/en/docs/ga/quick/emergency> (accessed 1/6/2018).

³¹ Art. II, principle 1, U.N. Charter, at <http://www.un.org/en/sections/un-charter/un-charter-full-text/> (accessed 1/6/2018).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The resolution neither provides authority nor requires rulemaking by executive branch entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The resolution does not provide for its transmission to any specific authority in the United States Government or to Ambassadorial or Consular officials of the State of Israel.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES