

ELEVENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 11-42

H. B. NO. 11-292, HD1

SECOND REGULAR SESSION, 1998

AN ACT

To authorize the Marianas Visitors Authority (MVA) to utilize Fiscal Year 1998 funds and pay I&S Corporation (I&S) an amount commensurate with the benefit received or to be gained by the Commonwealth, but no more than \$2,243,028, from promotional services rendered by I&S during Fiscal Year 1998 and products, materials, image rights, copyrights, other legal rights, and other benefits connected with that certain document denominated "Settlement Agreement" between MVA and I&S executed in July, 1998; and for other purposes.

**BE IT ENACTED BY THE ELEVENTH NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE:**

Section 1. Findings and Purpose. During the early months of Fiscal Year 1998, I&S Corporation of Japan (I&S) performed advertising services for the Marianas Visitors Bureau without a valid contract. These services were intended to promote the Commonwealth as a tourist destination. In July 1998, a document entitled "Settlement Agreement," and pledging the Marianas Visitors Authority to pay \$2,243,028 to the law firm representing I&S Corporation, was executed by the interim chairman of the board of directors of the Marianas Visitors Authority (MVA), the managing director of I&S, and the Office of the Attorney General. The Legislature finds that the Office of the Public Auditor and a special investigative committee of the Senate have made thorough reviews of the facts and circumstances involved in this matter. Based on these reviews, the Legislature finds that there is a substantial question concerning the validity of the Settlement Agreement. The Legislature further finds that under the circumstances of this case, any payment to I&S for these services, under the Settlement Agreement or otherwise, would be illegal and unlawful absent legislative approval.

Nevertheless, the Legislature recognizes that there may have been actual benefit to the Commonwealth from the promotional services rendered, and that the government may obtain valuable rights and other benefits under the terms of the Settlement Agreement. The Legislature finds that the newly constituted Marianas Visitors Authority possesses the necessary expertise and therefore is the body best able to determine the actual benefit to the Commonwealth from the services and an appropriate final resolution of this matter. It is therefore the purpose of this Act to allow payment to I&S to the extent the Commonwealth and its residents actually benefited and it is in the best interest of the Commonwealth to do so.

Despite this Act's purpose of allowing payment commensurate with actual benefit received, the Legislature does not intend anything in this Act to be construed as an admission that the Commonwealth accepted the benefit of the services rendered by I&S. On the contrary, the Legislature finds that the delivery of services would properly be deemed gratuitous, since they were rendered without the benefit of a valid contract and the Commonwealth had no practical way of refusing or returning them. In fact, it is the view of the Legislature that all vendors doing business with the Commonwealth are charged with a duty to determine that they have a valid contract, if they wish to ensure that they get paid for goods or services delivered.

Section 2. Definitions. As used in this Act:

- (a) "Board" means the board of directors of the Marianas Visitors Authority.
- (b) "MVB" means the Marianas Visitors Bureau.
- (c) "MVA" means the Marianas Visitors Authority.
- (d) "I&S" means the I & S Corporation of Japan.
- (e) "Settlement Agreement" means that certain document denominated "Settlement Agreement" between MVA and I&S executed in July 1998, with the stated purpose of being "a compromise among the parties for the complete and final settlement of their claims, differences and causes of action with respect to" a dispute over liability for advertising services performed by the I&S without a binding and valid contract and involving billings totaling \$2,243,028.

Section 3. Payment Authorized. Notwithstanding any other provision of law, MVA is authorized to pay, to I&S, from any unobligated and unexpended funds available to MVA under continuing budget authority for Fiscal Year 1998 and Public Law 11-15, such amounts as the Board finds justified pursuant to Section 4 of this Act; Provided, that the total payments to I&S pursuant to this Act shall not exceed \$2,243,028. This Act authorizes payment from Fiscal Year 1998 funds available to MVA or such other funds as the Governor may make available for this purpose.

Section 4. Basis for Payment. The Board shall determine what amount(s), if any, should be paid to I&S pursuant to this Act. Any such determination(s) shall be conclusive, and disbursement may thereafter be made. In making such determination(s), the Board shall ascertain, in accordance with its best judgment, the actual benefit received or to be gained by the Commonwealth from:

- (a) promotional services rendered by I&S during Fiscal Year 1998; and
- (b) products, materials, image rights, copyrights, other legal rights, and other benefits

connected with the Settlement Agreement;
and the Board may then provide for payment commensurate with such benefit.

Section 5. I&S Bound. Acceptance by I&S of any payment made pursuant to this Act constitutes agreement by I&S to be bound by the terms of the Settlement Agreement and this Act, which thereafter shall be fully binding and enforceable against I&S, except that I&S shall be free to recover from any legally responsible officer, employee, or agent of MVB, any difference between total payments made pursuant to this Act and the settlement amount stated in the Settlement Agreement; Provided that, any claim of the Commonwealth pursued pursuant to this matter shall be superior to any such claim of I&S.

Section 6. Non-Ratification. Nothing in this Act shall be construed as ratifying the Settlement Agreement or otherwise binding the Commonwealth except as expressly stated herein.

Section 7. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 8. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 23rd day of September, 1998

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
Governor
Commonwealth of the Northern Mariana Islands