

ACT 228

H.B. NO. 2574-86

A Bill for an Act Making an Appropriation for Payment of Judgment
Against the Department of Education, State of Hawaii, and in Favor
of the United States Department of Education Through Its Secretary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide for the payment of the judgment entered against the department of education, State of Hawaii, by the United States Court of Appeals for the Ninth Circuit in Department of Education vs. Terrel Bell, C. A. Nos. 82-7697, and -7698. These consolidated appeals were brought by the department of education in an effort to reverse two decisions of the United States Education Appeals Board, which originally required Hawaii to refund \$398,495 and \$1,711,123, respectively, for having misspent federal funds provided pursuant to the Elementary and Secondary Education Act of 1965 (Title I) during the fiscal years 1973-1977. The federal administrative agency and the Ninth Circuit Court of Appeals, in affirming the earlier decisions, found and concluded that Hawaii had misspent these federal funds by using the funds to pay for materials, supplies, and teachers' salaries which should have been paid by state funds (supplanting), and by failing to provide students enrolled in Title I schools with the same level of services provided to children enrolled in non-Title I schools (comparability). The refunds demanded were reduced, however, to \$349,574.30 and \$1,480,207.

The attorney general is assessing the likelihood of securing a writ of certiorari from the United States Supreme Court to review the Ninth Circuit's decision and presently believes that a favorable ruling is not likely. Moreover, even if the United States Supreme Court were to grant certiorari, the likelihood of its diminishing the amount of the refund which Hawaii would have to pay may not be significant, particularly if, as is expected, the United States asserts that interest is owed and has accrued since the refunds were first demanded.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,829,781.30, or so much thereof as may be necessary for fiscal year 1986-1987, for the payment of the judgment entered against the department of education, State of Hawaii, by the United States Court of Appeals for the Ninth Circuit, in Department of Education, State of Hawaii, vs. Terrel Bell, C. A. Nos. 82-7697 and -7698.

SECTION 3. The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 27, 1986.)