

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3292/1dn

MJL:hmh:pg

May 15, 2001

Note that to address the concern the state enforce the prohibition against using TEACH grants for religious purposes, this bill requires the TEACH board to audit sectarian schools. A potential drawback to this approach is that when a court examines state action to determine if it violates the Establishment Clause, it looks to see if the statute in question creates "excessive entanglement between government and religion." It is possible that a court would find that an annual audit creates such an entanglement, even though both the district court and Seventh Circuit in the *Freedom from Religion* case held that the TEACH direct grant program was unconstitutional because there was no statutory prohibition against religious use of the grants *and* no way to enforce such a prohibition.

Another option would be to require the state to hire an independent auditor to assure compliance. This approach may require an increase in a TEACH appropriation to pay the cost of the annual audits.

Please let me know if you have any questions.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380