

Senate

Record of Committee Proceedings

Committee on Privacy, Electronic Commerce and Financial Institutions

Senate Bill 379

Relating to: prohibiting the investment board from making certain investments.

By Senator Moore, George, Erpenbach; cosponsored by Representative Morris-Tatum, Miller, Colon, Turner, Pocan, Young, Bock, Coggs, Berceau, Richards, Williams, Riley.

February 10, 2000 Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

March 8, 2000

PUBLIC HEARING HELD

Present: (4) Senators Erpenbach, Plache, Rude and Fitzgerald.

Absent: (1) Senator Jauch.

Appearances for

- Senator Gwen Moore ✓
- Ed Blume, Wisconsin Assn of Criminal Defense Lawyers ✓
- Rev. Sam Jones ✓

Appearances against

- Ken Johnson, State of Wisconsin Investment Board ✓

Appearances for Information Only

- None.

Registrations for

- Senator Gary George ✓

Registrations against

- None.

March 8, 2000

EXECUTIVE SESSION (POLLING)

Moved by Senator Erpenbach that **Senate Bill 379** be recommended for passage.

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Absent: (0) None.

PASSAGE RECOMMENDED, Ayes 3, Noes 2, Absent 0

Carrie E.H. Templeton

Carrie E.H. Templeton
Committee Clerk

Senate

SB-379

Committee Report

The committee on Privacy, Electronic Commerce and Financial Institutions, reports and recommends:

Assembly Bill 267

Relating to: the use and regulation of electronic signatures, providing an exemption from emergency rule procedures and granting rule-making authority.

By Representative Hutchison, Jensen, Huebsch, F. Lasee, Meyer, Sykora, Kelso, Owens, Musser, Albers, Kaufert, Olsen, Montgomery, Vrakas; cosponsored by Senator Rude.

INTRODUCTION AND ADOPTION OF SENATE AMENDMENT LRBs0312/2, Ayes 5, Noes 0, Absent 0

Ayes: (5) Senators Erpenbach, Jauch, Plache, Rude and Fitzgerald.

Noes: (0) None.

Absent: (0) None.

CONCURRENCE AS AMENDED RECOMMENDED, Ayes 5, Noes 0, Absent 0

Ayes: (5) Senators Erpenbach, Jauch, Plache, Rude and Fitzgerald.

Noes: (0) None.

Absent: (0) None.

Senate Bill 207

Relating to: the release of personally identifiable information by businesses and their employees and providing a penalty.

By Senator Erpenbach; cosponsored by Representative Schneider, Black, Staskunas, F. Lasee, Bock, Musser, Plouff, J. Lehman, Kreuser, Lassa, Gunderson.

INTRODUCTION AND ADOPTION OF SENATE AMENDMENT LRBs0282/3, Ayes 3, Noes 2, Absent 0

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Absent: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 3, Noes 2,
Absent 0

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Absent: (0) None.

Senate Bill 248

Relating to: requiring certain disclosures in advertising per-minute rates for long distance service and providing a penalty.

By Senator Jauch, Erpenbach, Plache, Darling, Roessler; cosponsored by Representative Wasserman, Hutchison, Schneider, Musser, Miller, Black, Bock, Gunderson, Sinicki, Williams, Berceau, Reynolds.

INTRODUCTION AND ADOPTION OF SENATE AMENDMENT
LRBa1325/1, Ayes 5, Noes 0, Absent 0

Ayes: (5) Senators Erpenbach, Jauch, Plache, Rude and
Fitzgerald.

Noes: (0) None.

Absent: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 4, Noes 1,
Absent 0

Ayes: (4) Senators Erpenbach, Jauch, Plache and Rude.

Noes: (1) Senator Fitzgerald.

Absent: (0) None.

Senate Bill 379

Relating to: prohibiting the investment board from making certain investments.

By Senator Moore, George, Erpenbach; cosponsored by Representative Morris-Tatum, Miller, Colon, Turner, Pocan, Young, Bock, Coggs, Berceau, Richards, Williams, Riley.

PASSAGE RECOMMENDED, Ayes 3, Noes 2, Absent 0

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Absent: (0) None.



Senator Jon Erpenbach
Chair

3/8 Privacy Cmte Hearing

AB563

Rep. Schneider

- info sharing
- access to DMV, medical records
- some degree of regulation
- his amendment: an opt-in

Clearinghouse Rules

Ginger Karson

SB379 - Ken Johnson S WLB

CCA investment

- no longer make investments in this type of company
- concerned that placing restrictions is a bad precedent to set

Senator Moore

- conflict of interest
- could be coordination
- \$18 million

Ed Blume - Criminal Defense Lawyers

- constitutional right to an impartial trial in fact + appearance

Rev. Sam Jones

- inmates as lifetime laborers
- conflict of interest

SB-379

Roll Call

	<u>Present</u>	<u>Absent</u>
Sen Erpenbach	✓	
Sen Fitzgerald Jauch		✓
Sen Jauch Plache	✓	
Sen Plache Rude	✓	
Sen Rude Fitzgerald	✓	

Erpenbach

JON ERPENBACH

STATE SENATOR

March 8, 2000

To: Members, Senate Committee on Privacy, Electronic Commerce and Financial Institutions

From: Senator Jon Erpenbach

Re: Paper Ballot on AB 267, SB 207, SB 248, SB 379

Attached is the paper ballot for the bills mentioned above and their respective amendments.

Dick Sweet and Dan Schmidt of the Legislative Council have indicated they are available this afternoon and tomorrow morning should you have questions regarding any of the bills or their amendments.

Also, please feel free to contact Carrie Templeton of my staff at 6-6670 if you have any questions.

Please return the ballot to my office no later than noon tomorrow, March 9, 2000. Thank you.

SB-379

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

PAPER BALLOT
March 8, 2000

AB 267

Recommend adoption of the Committee's Senate Substitute Amendment (LRBs0312/2) to Assembly Bill 267:

X aye _____ no

Recommend passage of Assembly Bill 267 as amended:

X aye _____ no

SB 207

Recommend adoption of Senator Erpenbach's Senate Substitute Amendment (LRBs0282/3) to Senate Bill 207:

X aye _____ no

Recommend passage of Senate Bill 207 as amended:

X aye _____ no

SB 248

Recommend adoption of Senator Jauch's Senate Simple Amendment (LRBa1325/1) to Senate Bill 248:

X aye _____ no

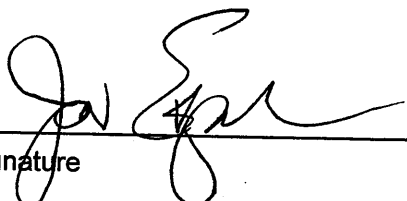
Recommend passage of Senate Bill 248 as amended:

X aye _____ no

SB 379

Recommend passage of Senate Bill 379:

X aye _____ no



Signature

Please return by Noon on March 9, 2000 to Senator Jon Erpenbach's Office. Thank you.

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

PAPER BALLOT

March 8, 2000

AB 267

Recommend adoption of the Committee's Senate Substitute Amendment (LRBs0312/2) to Assembly Bill 267:

aye no

Recommend passage of Assembly Bill 267 as amended:

aye no

SB 207

Recommend adoption of Senator Erpenbach's Senate Substitute Amendment (LRBs0282/3) to Senate Bill 207:

aye no

Recommend passage of Senate Bill 207 as amended:

aye no

SB 248

Recommend adoption of Senator Jauch's Senate Simple Amendment (LRBa1325/1) to Senate Bill 248:

aye no

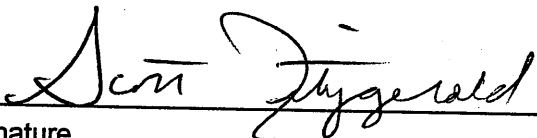
Recommend passage of Senate Bill 248 as amended:

aye no

SB 379

Recommend passage of Senate Bill 379:

aye no



Signature

Please return by Noon on March 9, 2000 to Senator Jon Erpenbach's Office. Thank you.

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

PAPER BALLOT

March 8, 2000

AB 267

Recommend adoption of the Committee's Senate Substitute Amendment (LRBs0312/2) to Assembly Bill 267:

X aye no

Recommend passage of Assembly Bill 267 as amended:

X aye no

SB 207

Recommend adoption of Senator Erpenbach's Senate Substitute Amendment (LRBs0282/3) to Senate Bill 207:

X aye no

Recommend passage of Senate Bill 207 as amended:

X aye no

SB 248

Recommend adoption of Senator Jauch's Senate Simple Amendment (LRBa1325/1) to Senate Bill 248:

X aye no

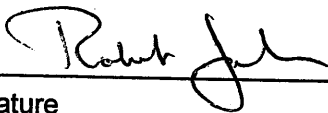
Recommend passage of Senate Bill 248 as amended:

X aye no

SB 379

Recommend passage of Senate Bill 379:

X aye no



Signature

Please return by Noon on March 9, 2000 to Senator Jon Erpenbach's Office. Thank you.

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

PAPER BALLOT

March 8, 2000

AB 267

Recommend adoption of the Committee's Senate Substitute Amendment (LRBs0312/2) to Assembly Bill 267:

X aye _____ no

Recommend passage of Assembly Bill 267 as amended:

X aye _____ no

SB 207

Recommend adoption of Senator Erpenbach's Senate Substitute Amendment (LRBs0282/3) to Senate Bill 207:

X aye _____ no

Recommend passage of Senate Bill 207 as amended:

X aye _____ no

SB 248

Recommend adoption of Senator Jauch's Senate Simple Amendment (LRBa1325/1) to Senate Bill 248:

X aye _____ no

Recommend passage of Senate Bill 248 as amended:

X aye _____ no

SB 379

Recommend passage of Senate Bill 379:

X aye _____ no

Kevin Alache

Signature

Please return by Noon on March 9, 2000 to Senator Jon Erpenbach's Office. Thank you.



State of Wisconsin Investment Board

MAILING ADDRESS
PO BOX 7842
MADISON, WI 53707-7842

121 EAST WILSON ST
MADISON, WI 53702
(608) 266-2381
FAX: (608) 266-2436

February 18, 2000

Senator Gwendolynne Moore
Room 409 South
State Capitol

Re: Senate Bill 379--Prohibiting the Investment Board from Making Certain Investments

Dear Senator Moore:

I am writing to express my concerns regarding Senate Bill 379. This bill would prohibit SWIB from making investments in companies that have a contract with the Wisconsin Department of Corrections to house Wisconsin prisoners in private prisons.

This legislation was prompted because of an investment that SWIB had in Prison Realty Trust, the largest owner of privately operated correctional facilities in the United States. Prison Realty Trust was created in January 1999 through the merger of Corrections Corporation of America and CCA Prison Realty Trust. SWIB originally invested in Corrections Corporation of America several years ago. Our last purchase of stock was made in June 1998.

We had two reasons for making this investment. First, because of the company's strong position in its field, a number of respected Wall Street analysts recommended the stock at the time we were building up our holding. Expectations were that this would be a profitable investment. Second, the stock is part of a market index against which our stock performance is measured. Our investment was completely unrelated to any decision made elsewhere about the housing of Wisconsin's prisoners.

Prison Realty is part of the real estate investment trust sector, which as a whole, did not perform well in 1998 and 1999. In addition, we have been disappointed with the performance of the stock. We began selling this investment in July 1998 and had sold all but 200,000 of our 700,000 shares by August 1999. The remaining 200,000 shares were sold last week as part of a downsizing of our mid cap stock portfolio. Our annual goals and performance report to the Legislature provides additional information about this strategy.

At this time we have no investments that would be prohibited by the bill. However, I am concerned about the larger issue of placing restrictions on the investments that the Board may make. For that reason, we do not support SB 379.

Senator Gwendolynne Moore

February 18, 2000

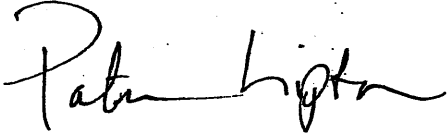
Page 2

State law currently requires that all of our investment decisions be guided solely by the best interests of the trust funds we manage. If we fail to observe this mandated focus, our job becomes one of weighing the relative merits of many possible social objectives. This would be very difficult to do, and incrementally restricting the number of companies in our investment universe is likely to reduce earnings over the long term.

This fundamental principle is recognized in model legislation developed by the National Conference of Commissioners on Uniform State Laws in 1997. The goal of that legislation is to adopt best practices for the management of public pension systems. The legislation grants exclusive authority to trustees to invest and manage fund assets. This recognizes that trustees legally bear the fiduciary responsibility for management of pension funds.

Thank you for your consideration of these comments. Please let me know if there is any additional information that would be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Lipton".

Patricia Lipton
Executive Director

cc: Senate Committee on Privacy, Electronic Commerce and Financial Institutions

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

STATE OF WISCONSIN,
 Plaintiff,

v. Case No.

*****,
 Defendant.

AND

STATE OF WISCONSIN,
 Plaintiff,

v. Case No. *****

JOHN DOE,
 Defendant.

REQUEST FOR DISCLOSURE

COMES NOW *****, by his attorney, Waring R. Fincke, upon all of the files, records and proceedings had herein and the annexed affidavit of counsel, respectfully requests the Courts and all Prosecutors, Law Enforcement Officers and other governmental workers or officials who have worked on this case to disclose to the undersigned all financial interests, direct or indirect, in Prison Realty Corporation, its predecessor and current tenant, Corrections Corporation of America, Inc., and/or its wholly owned subsidiary, Transcor, Inc., and in Appleton Papers, Inc. and/or its parent corporation, Argo Wiggins Appleton.

These disclosures are required so that mandatory and/or discretionary disqualification of the Court and/or the Office of the District Attorney for Outagamie County can be considered and/or requested, the validity of the underlying proceedings can be determined and the credibility of the State's witnesses investigated further.

In support of this request, the Defendant respectfully shows the Court the following:

1. In the past decade, the Wisconsin Legislature has criminalized more and more behavior and extended the amount of prison time associated with criminal convictions. It has been popular to be "tough on crime."

2. Wisconsin Judges have used this increased regulation of human behavior to fill Wisconsin's prisons.

3. To meet the increased demand on our correctional bed space, the Legislature considered building more prisons, an expensive and time consuming process. Because the demand for prison beds outstripped the taxpayer's willingness to build the prisons to hold them quickly enough, the Legislature authorized the Wisconsin Department of Corrections (DOC) to rent prison beds from other states and local governments. Wisconsin then started to transport some of its prisoners to out of state prisons and county jails under the provisions of §301.21, Wis. Stats.

4. When the DOC transportation bills began to mount, buses driven and staffed by union scale DOC guards were expensive, the Legislature authorized use of private

transportation services. §301.21 (2m) (a), Wis. Stats. In September, 1997, DOC contracted with Transcor, Inc. to transport Wisconsin's traveling prison population. Transcor, Inc. was then a wholly owned subsidiary of Corrections Corporation of America, Inc. Soon, many Wisconsin sheriff's began to recognize that Transcor, Inc. could provide services for local prisoner transport as well. Many Wisconsin Counties also contracted with Transcor, Inc., to bring back extradited prisoners and to move prisoners within Wisconsin. Both types of contracts continue to this day.

5. As the national demand to lock up our citizens increased, public prison beds became an increasingly scarce commodity. Private prison providers, driven by the corporate bottom line, stepped into the breach. These corporate creatures started building prisons all over the world. By early 1998, Corrections Corporation of America, Inc. (CCA) was one of the largest of the private prison players. See, <http://www.correctionscorp.com>.

6. Having increasing difficulty renting public prison beds around the same time, Wisconsin's DOC obtained Legislative approval to rent private prison beds as well. §301.21 (2m) (a), Wis. Stats. On March 6, 1998, DOC contracted with CCA to house up to 1,500 Wisconsin prisoners in its facility in Whiteville, TN. That facility is now full and Transcor, Inc., took many of these inmates there and will probably bring them back when asked. In addition, DOC has approved placement of an additional 300 Wisconsin inmates at

a CCA facility in Sayre, OK. CCA gets paid \$42.00 per day for each Wisconsin inmate it warehouses which comes to \$22,176,000 per year for the 1500 inmates at Whiteville, TN alone.

7. In 1997, CCA was a publicly owned corporation. Its stock was traded on the New York Stock Exchange (NYSE) under the symbol CCA. In April, 1997, CCA created a Real Estate Investment Trust named Prison Realty Trust. Its mission was to acquire, hold and operate private prison properties and contracts. This was a publicly held company as well. Its stock was also listed on the NYSE under the symbol PZN. See, <http://www.correctionscorp.com> and <http://www.prisonreit.com>. The following financial institutions and mutual funds currently hold significant numbers of PZN shares: 1. Pacific Life Insurance Co.; 2. Nicholas Co.; 3. Zweig-Dimenna Partners; 4. Baron Capital, Inc.; 5. Gilder Gagnon Howe & Co.; 6. Baron Asset Fund; 7. Safeco Growth Fund; and 8. Nicholas Fund.

8. In the December, 1998 issue of the Atlantic Monthly, Eric Schlosser wrote an informative article titled, The Prison-Industrial Complex. He chronicled the phenomenal growth of the private prison industry and its supporting businesses. By then, CCA was one of two major players in the business.

9. On January 1, 1999, CCA and PZN merged into a newly constituted Prison Realty Corporation which continues to trade on the NYSE under the symbol PZN. CCA stock swapped for

PZN shares and CCA stock stopped being traded. Transcor, Inc. became a wholly owned subsidiary of PZN as part of the deal. See, <http://www.correctionscorp.com>. PZN is now the world's largest private prison provider and CCA is its major tenant. See, <http://www.prisonreit.com>.

10. In this case, ***** is accused of stealing money from Appleton Papers, Inc. which runs paper making facilities in Outagamie County. Many of its employees will be witnesses in Mr. ***** trial. If there is a conviction, restitution of more than \$200,000.00 will be requested by the company. At all times material to these proceedings, Appleton Papers, Inc. was owned by Argo Wiggins Appleton, a company based in London, England. While Appleton Papers' stock is not publicly traded on any American Stock Exchange, the stock of the parent is traded on the London Stock Exchange under the name "Argo Williams."

11. All Wisconsin judges, prosecutors, attorneys general, probation officers, law enforcement officers, crime lab employees, DOJ agents, DOR agents and state employed public defenders are required by law to participate in the Wisconsin Retirement System. State employees can also participate voluntarily in the Deferred Compensation Fund and shelter portions of their income from income tax liability. All contributions the Retirement and Deferred Compensation Funds are invested.

12. The Deferred Compensation Fund is invested by the State Retirement Board in eight mutual funds. They are: 1.

The Vanguard Group - Wellington Fund; 2. T. Rowe Price Mid Cap Fund; 3. The Janus Fund; 4. Fidelity Investments' Contrafund; 5. Dreyfus Third Century Fund; 6. Dimensional Fund Advisors' DFA 9-10 Small Cap Fund; 7. Seligman Capital Fund; and 8. American Century/Twentieth Century - Twentieth Century Select Fund. The State's Deferred Compensation Fund managers cannot tell anyone which individual stocks each of these funds hold or held at any given time.

13. The contributions to the State's retirement system are turned over to the State of Wisconsin Investment Board (SWIB). There are two trust funds comprised of retirement money managed by the SWIB. One is called the Variable Retirement Trust Fund (Variable Fund). The contributions to this fund were made by state employees, but the fund was closed to new members in the late 1980s. Those in this fund when it closed could stay in and the fund still exists. The bulk of the state's retirement money is held in the Fixed Retirement Trust Fund (Fixed Fund).

14. During the fiscal year 1997 (7/1/96 through 6/30/97), the Variable Fund held 112,200 shares of CCA stock which the SWIB's Annual Report valued at \$4,502,025.00 at the end of that fiscal year. During the fiscal year 1998, the Variable Fund continued to hold, as of 6/30/98, 159,818 shares of CCA, valued in the SWIB's Annual Report at \$3,755,723.00. In the same period, the Fixed Fund held 1,190,182 shares of CCA stock valued in the SWIB's Annual Report at \$27,969,277.00. That same report noted that the

stock held in the funds had declined in value during the fiscal year. The Fixed Fund CCA stock holding originally cost \$34,902,761.00, showing a loss in value of \$6,933,484.00 for the year. The Variable Fund CCA holding lost \$1,734,021.00, during the same period. PZN recently reported a first quarter share loss of \$0.23 per share. See, <http://www.prisonreit.com>.

15. After the merger, the SWIB's CCA stock was converted to PZN stock. As of May, 3, 1999, the Variable Fund held 59,932 shares of PZN and the Fixed Fund held 240,068 shares of PZN. At the close of trading on May 5, 1999, PZN was trading at \$21.25 per share for a value of \$6,375,000.00 between these two funds.

16. According to Thomson Research, a respected stock analysis information provider, the value of CCA/PZN has declined over the past two years from a high of over \$37 per share to a low of \$15 per share. The rebound to the current level is relatively recent.

17. Given the overcrowding in DOC's prisons, whenever a defendant is arrested, prosecuted and sentenced to the prison system, another convict has to leave DOC's control. Early parole has been reduced dramatically. A released convict may then go to CCA/PZN's prison in Whiteville, TN, or to a public prison or jail outside of Wisconsin. Most will get on a Transcor van or bus to travel to their new home. Legislatively driven pressure has overfilled the State's prison system. There is now, and there has been since 1997,

an additional financial incentive for those who participate in the Wisconsin Retirement System to make sure the in-state prison system stays full so that the out of state and privately owned prison and prisoner transport systems, in which most of the criminal justice system's participants are invested, will maximize their profits and returns.

18. During the fiscal years 1997 and 1998, the SWIB's Fixed Fund also held the note on a loan, known as a private placement, to Appleton Papers, Inc. In the 1997 fiscal year, the remaining principal balance of the note was \$10,000,000.00 and the market value was \$11,281,000.00, according to the SWIB's Annual Report. In the 1998 SWIB Annual Report, the note's principal balance remained the same, while the value increased \$11,359,000.00. The note matures on July 31, 2005 and carries a coupon rate of 9.850%.

19. Under these circumstances, the Defendant is entitled to know if the individual participants in the criminal justice system which is supposed to treat him fairly have additional financial incentives to put him in prison and to make sure that Appleton Paper's claimed loss is repaid beyond those in the participant's retirement accounts.

18. Judges must disqualify themselves if they have a "significant" financial interest in the outcome of the case. §757.19 (2) (f), Wis. Stats. This is an objective standard. If it exists, disqualification is mandatory. The judge's subjective view of his partiality or bias, or lack thereof, is not relevant to the analysis. State v. American T.V. &



Appliance of Madison, Inc., 151 Wis.2d 175, 186, 443 N.W.2d 662, 666 (1989); Dressler v. Racine County Circuit Court, 163 Wis.2d 622, 642, 472 N.W.2d 532 (App. 1991)

19. Judges must also disqualify themselves if they are in fact biased or believe that they are biased. §757.19 (2) (g), Wis. Stats. This is a subjective standard and only requires disclosure and a statement from the Judge which says, here are the facts and I do not believe that these facts will interfere with my ability to be fair in this case. City of Edgerton v. General Cas. Co., 190 Wis.2d 510, 516-518, 527 N.W.2d 305 (1995); State v. American T.V. & Appliance of Madison, Inc., *supra*;

20. Judges are also required to follow the dictates of SCR §60.03 and §60.04 (4) to avoid the appearance of impartiality or bias and to disqualify themselves if these standards are violated. A judge has the discretion to disqualify himself under these standards when mandatory disqualification is not required. The rules suggest that disqualification should take place in marginal situations to insure a public perception of an impartial judiciary. A defendant cannot rely on violation of these discretionary standards for reversal of a conviction, but the judge is subject to discipline for violations of these standards.

21. Criminal defendants have a constitutional due process right to a financially disinterested and an unbiased judge. Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed.2d 749 (1927); State v. Walberg, 109 Wis.2d 96, 325 N.W.2d 687

(1982) State v. Washington, 83 Wis.2d 808, 833, 266 N.W.2d 597 (1978); State v. Rochelt, 165 Wis.2d 373, 378, 477 N.W.2d 659 (App. 1991). Here, the standard is the appearance of impropriety or bias, plus prejudice, and reversal is then required.

22. Prosecutors are subject to discipline for violating SCR 20:1.7 (b) and SCR 20:1.8 (j). Disciplinary Proceedings Against Penn, 201 Wis.2d 405, 548 N.W.2d 526 (1996). The State has the right to conflict free representation and self-disqualification by the prosecutor if a conflict exists. The defendant is entitled to know if such a disqualifying condition exists, at least, to be able to remind the prosecutor of his professional responsibility or, to report his violation of Supreme Court Rules as required by SCR 20:8.3. See also, Wisconsin Ethics Opinion E-84-9

23. There is a due process right to an impartial prosecutor unencumbered by a financial interest in the outcome of the case. See, Marshall v. Jerrico, 446 U.S. 238, 242 (1980). Disqualification of a conflicted or apparently conflicted prosecutor is within the trial court's discretion. State v. Smith, 198 Wis.2d 584, 543 N.W.2d 512 (App. 1995); State v. Retzlaff, 171 Wis.2d 99, 490 N.W.2d 750 (App. 1992); Burkes v. Hales, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (App. 1991). Disclosure of grounds for disqualification is essential to a fair proceeding. See, State v. Stehle, 217 Wis.2d 50, 537 N.W.2d 29 (App. 1998).

24. The existence of a financial interest in the outcome of the case by law enforcement officers or other governmental workers involved in the case certainly goes to their credibility and is discoverable under Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

For the foregoing reasons, the Courts are requested to disclose to the parties all of their personal and familial investments in CCA/PZN and/or Argo Williams stock in addition to their holdings in the two state retirement funds mentioned above during the time this case has been pending. This should include, but is not limited to actual holdings of these stocks, but also indirect holdings as part of the State's Deferred Compensation Fund, other mutual funds, annuity funds, trusts or other such financial asset holding vehicles.

For the same reasons, the District Attorney of Outagamie County must make similar disclosures and require similar disclosures of all of the Assistant District Attorneys, Assistant Attorneys General, special prosecutors, investigators, law enforcement officers and other government officials or workers who had or will have any involvement in this case. In addition, disclosure of all current and past contracts between Outagamie County law enforcement agencies and Transcor, Inc. is requested.

Waring R. Fincke
State Bar No. 01013875
Attorney for *****

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Attorney at Law
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State Senator
GWENDOLYNNE MOORE



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Member: Joint Finance Committee
Board Member: Wisconsin Housing and
Economic Development Authority

March 8, 2000

Senator Gwendolynne S. Moore

Testimony on Senate Bill 379: relating to prohibiting the Investment Board
from making certain investments

**SENATE COMMITTEE ON PRIVACY, ELECTRONIC COMMERCE
AND FINANCIAL INSTITUTIONS**

Comments by Senator Moore-----

Good Morning. I want to thank Chairman Erpenbach and committee
members for scheduling a hearing on Senate Bill 379 today.

Senate Bill 379--as the LRB analysis notes--would prohibit the investment
board from investing any of the funds under its management in any of the
following:

1. A company that contracts with the Department of Corrections to confine
Wisconsin prisoners in private prisons.
2. A company that has any ownership interest in a company that contracts
with DOC to confine Wisconsin prisoners in private prisons.
3. A company that is owned, wholly or in part, by a company that contracts
with DOC to confine Wisconsin prisoners in private prisons.

This legislation was prompted after I learned about investments in Prison
Realty Trust Incorporated which SWIB made on behalf of the Wisconsin
Retirement System Trust Funds.

For those of you who are unfamiliar with Prison Realty, the corporation is a
real estate investment trust that owns prison facilities where Wisconsin
inmates are being housed out-of-state. In fact, the corporation has been

historically tied with the Corrections Corporation of America by common board members and a common CEO. CCA--as it is known--currently manages contracts for over 3,500 Wisconsin inmates housed in out-of-state private prisons.

While it is true that the Investment Board has sold off its stocks in Prison Realty since the introduction of Senate Bill 379, I think this legislation is still relevant considering the overcrowded conditions in Wisconsin's prisons and the policy of placing inmates in private prisons. The potential continues to exist that the state could invest in these corporations.

Despite the \$18 million dollar losses incurred by SWIB due to the Prison Realty investments, my primary objection --*surprisingly*-- relates to the conflict of interest issues which arise due to investments in private prisons that profit off the placement of Wisconsin inmates in their facilities. With respect to the Prison Realty investment, it appeared that there was a financial incentive for Wisconsin to contract for prison beds with CCA because of investments with Prison Realty. While I do not believe that an agreement was made between the Investment Board and Wisconsin's Department of Corrections, I think that investing in private prisons by the Investment Board sends the wrong message to Wisconsin's citizens. Many relatives of inmates contacted my office expressing outrage that the state employee Retirement Fund stood to gain based on the financial success of Prison Realty--a success that is dependent on continued placement of inmates from Wisconsin and other states in distant CCA facilities. This conflict of interest cast a shadow on the motivations behind our out-of-state inmate transfer policies and the state employees who carry out those policies.

Therefore, I am asking committee members to support Senate Bill 379 in order to further prevent the kind of conflict of interest which arose under the Prison Realty Investment. Wisconsin citizens including the families of inmates deserve I urge you to vote "aye" on committee passage of SB 379. Thank you.