

1 | ENGROSSED SENATE  
BILL NO. 2224

By: Myers of the Senate

and

Terrill and Hickman of the  
House

[ prisons and reformatories - Private Prison

Certificate of Need Act - stating purpose -

defining terms - stating power and duties -

codification -

effective date ]

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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SECTION 1. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 561.7 of Title 57, unless there

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is created a duplication in numbering, reads as follows:

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This act shall be known and cited as the "Private Prison

18

Certificate of Need Act".

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SECTION 2. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 561.8 of Title 57, unless there

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is created a duplication in numbering, reads as follows:

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The Legislature hereby declares that it is the public policy of

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the State of Oklahoma that the offering and development of private

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prison services should be made in a planned, orderly and economical

1 manner that it is essential to the realization of this public  
2 policy. That the offering and development of private prison  
3 services in the state be made in accordance with the needs for such  
4 services. It is the purpose of the Legislature in enacting this act  
5 to further this public policy by providing for the submittal of  
6 plans and applications, and by prohibiting the offering, development  
7 or change of existing services prior to the issuance of a  
8 certificate of need by the Department of Corrections.

9 SECTION 3. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 561.9 of Title 57, unless there  
11 is created a duplication in numbering, reads as follows:

12 As used in the Private Prison Certificate of Need Act:

- 13 1. "Board" means the Board of Corrections;
- 14 2. "Director" means the Director of the Department of  
15 Corrections;
- 16 3. "Department" means the Department of Corrections;
- 17 4. "Private prison" means any correctional facility within this  
18 state which houses minimum, medium or maximum security inmates and  
19 which is not owned or operated by the State of Oklahoma or the  
20 Department of Corrections, whether such facility is operated for  
21 profit or not for profit;
- 22 5. "Disclosure statement" means a written statement by the  
23 applicant which contains:

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- 1 a. the full name, business address, and social security  
2 number of the applicant, and all persons with  
3 controlling interest as defined by the Private Prison  
4 Certificate of Need Act,
- 5 b. the full name and address of any legal entity in which  
6 the applicant holds a debt or equity interest of at  
7 least five percent (5%), or which is a parent company  
8 or subsidiary of the applicant,
- 9 c. a description of the experience and credentials of the  
10 applicant, including any past or present permits,  
11 licenses, certifications, or operational  
12 authorizations relating to private prison regulation,
- 13 d. a listing and explanation of any administrative,  
14 civil, or criminal legal actions against the applicant  
15 or any person with a controlling interest which  
16 resulted in a final agency order or final judgment by  
17 a court of record including, but not limited to, final  
18 orders or judgments on appeal related to private  
19 prison operations in the five (5) years immediately  
20 preceding the filing of the application. Such actions  
21 shall include, without limitation, any permit denial  
22 or any sanction imposed by a state or federal  
23 regulatory authority, and  
24

1 e. a listing of any state, federal, or local government  
2 agency outside this state that has or has had  
3 regulatory responsibility over the applicant;

4 6. "History of noncompliance" means a detailed listing of fines  
5 or other penalties levied against the applicant by state, federal,  
6 or local government regulatory agencies in the past three (3) years;

7 7. "Person" means any individual, corporation, industry, firm,  
8 partnership, association, venture, trust, institution, federal,  
9 state or local governmental instrumentality, agency or body or any  
10 other legal entity however organized; and

11 8. "Person with a controlling interest" means a person who  
12 meets any one or more of the following requirements:

13 a. controls fifty percent (50%) or more of the common  
14 stock of the corporate entity involved or controls  
15 fifty percent (50%) or more of the interest in the  
16 partnership involved,

17 b. controls a percentage of stock greater than any other  
18 stockholder or equal to the other single largest  
19 stockholder or controls a percentage of partnership  
20 interest greater than any other partner or equal to  
21 the other single largest partnership interest, or

22 c. a managing member of a Limited Liability Company  
23 (LLC) .  
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1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 561.10 of Title 57, unless there  
3 is created a duplication in numbering, reads as follows:

4 No private prison facility shall be developed, acquired or  
5 offered unless a certificate of need therefor has been issued as  
6 provided in the Private Prison Certificate of Need Act. No  
7 governmental entity shall approve any grant of funds, issue any  
8 debentures or issue or renew any license for the operation of a  
9 private prison facility, nor shall any third-party purchasers,  
10 licensed or operated by this state, issue reimbursement for services  
11 provided to its insurers or clients, unless the certificate of need  
12 as provided in the Private Prison Certificate of Need Act has been  
13 obtained.

14 SECTION 5. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 561.11 of Title 57, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Every entity desiring to establish a new private prison, to  
18 expand an existing facility whether through construction or  
19 conversion of facilities, or to acquire an existing prison shall  
20 make application to the State Department of Corrections for a  
21 certificate of need. The application for a certificate of need  
22 shall be in such form as the Director of the State Department of  
23 Corrections shall prescribe.

24 B. A certificate of need shall be required for:

1           1. Any capital investment or lease of One Million Dollars  
2 (\$1,000,000.00) or more, including predevelopment activities such as  
3 arrangements and commitments for financing, architectural designs,  
4 plans, working drawings specifications, and site acquisition;

5           2. Acquisition of the ownership or operation of a facility  
6 whether by purchase, lease, donation, transfer of stock or interest,  
7 management contract, corporate merger, assignment, or through  
8 foreclosure; and

9           3. An increase in authorized beds, whether through  
10 establishment of a new facility or expansion of an existing  
11 facility.

12           SECTION 6.           NEW LAW           A new section of law to be codified  
13 in the Oklahoma Statutes as Section 561.12 of Title 57, unless there  
14 is created a duplication in numbering, reads as follows:

15           The Director of the Department of Corrections shall have the  
16 power and duty to:

17           1. Issue, renew, deny, modify, suspend and revoke certificates  
18 of need;

19           2. Establish and enforce standards and requirements for  
20 certificates of need;

21           3. Require the submission of and to review reports from any  
22 person requesting or obtaining a certificate of need;

23           4. Employ or designate personnel necessary to implement the  
24 provisions of the Private Prison Certificate of Need Act;

1           5. Report to the district attorney having jurisdiction or the  
2 Attorney General, any act committed by any person which may  
3 constitute a violation pursuant to the provisions of the Private  
4 Prison Certificate of Need Act;

5           6. Advise, consult and cooperate with other agencies of this  
6 state, the federal government, other states and interstate agencies,  
7 and with affected groups and political subdivisions to further the  
8 purposes of the provisions of the Private Prison Certificate of Need  
9 Act;

10          7. Promulgate and enforce rules subject to the approval of the  
11 Board of Corrections to implement the provisions of the Private  
12 Prison Certificate of Need Act;

13          8. Investigate, request or otherwise obtain the information  
14 necessary to determine the qualifications and background of an  
15 applicant for a certificate of need and to determine whether a  
16 violation of the Private Prison Certificate of Need Act might have  
17 occurred;

18          9. Establish administrative penalties for violations of the  
19 provisions of the Private Prison Certificate of Need Act as  
20 authorized by the Board;

21          10. Institute and maintain or intervene in any action or  
22 proceeding where deemed necessary by the Department pursuant to the  
23 Private Prison Certificate of Need Act; and  
24

1 11. Exercise all incidental powers as necessary and proper for  
2 the administration of the Private Prison Certificate of Need Act.

3 Facility occupancy data used in the review of certificate of  
4 need applications shall be based upon reports to the Department of  
5 Corrections which are submitted by agency facilities and currently  
6 operating private prison facilities and which are available to the  
7 public upon request.

8 SECTION 7. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 561.13 of Title 57, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The Department of Corrections within fifteen (15) days after  
12 receipt of an application, shall issue an exemption from certificate  
13 of need requirements upon written request and demonstration that  
14 applicable exemption criteria have been met, for any of the  
15 following activities:

16 1. An increase of no more than ten beds or ten percent (10%) of  
17 the facility's licensed beds, whichever is greater, per calendar  
18 year if:

- 19 a. the total capital cost of the increase is less than  
20 One Million Dollars (\$1,000,000.00), and
- 21 b. the facility's occupancy rate averaged ninety-three  
22 percent (93%) or more during the twelve (12) months  
23 preceding the filing of the exemption request;

24



1           2. Construction of a private prison facility to replace or  
2 relocate all or part of the licensed bed capacity of an existing  
3 facility if:

- 4           a. the project involves no increase in authorized beds,
- 5           b. the facility shall be constructed no farther than  
6           three (3) miles for rural areas and seven and one-half  
7           (7 1/2) miles for urban areas, as defined by the  
8           Standard Metropolitan Statistical Area (SMSA), from  
9           the facility it is replacing or relocating, and
- 10          c. a plan for the use of the facility to be replaced or  
11          relocated is provided that ensures continuity of  
12          services; and

13          3. A management agreement if:

- 14          a. the management entity discloses all persons with  
15          controlling interest in the management entity and  
16          discloses all experience in correctional facility  
17          management or operation in any state during the  
18          preceding thirty-six (36) months,
- 19          b. the management entity and any person with controlling  
20          interest if the management entity has less than  
21          thirty-six (36) months experience in management or  
22          operation of correctional facilities, does not have a  
23          history of noncompliance, and

1           c.    the approved entity remains responsible for facility  
2                    operation, financial performance, staffing and  
3                    delivery of private prison services.

4           B.    A certificate of need shall not be required for:

5           1.    Any changes of ownership resulting from the operation of  
6 law, including but not limited to divorce, probate, reversions and  
7 bankruptcy if the transfer of interest is to any already existing  
8 stockholder or person or entity listed on the license application  
9 disclosure statement. This shall also include cancellations and  
10 expirations of leases. Operational law ownership changes shall be  
11 reported to the Department within five (5) working days of the  
12 change;

13          2.    Ownership changes for estate planning purposes, treasury  
14 stock purchases, and transfers between existing owners and/or family  
15 members; increases in the amount of common stock or partnership  
16 interest for any individual who already owns fifty percent (50%) of  
17 the common stock or corporate entity involved or controls fifty  
18 percent (50%) or more of the interest in the partnership involved;  
19 and

20          3.    New purchases of common stock or partnership interest by any  
21 legal entity if such new purchaser will own, in total, less than  
22 fifty percent (50%) of the corporate entity involved or partnership  
23 involved.

1           SECTION 8.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 561.14 of Title 57, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. All applicants for the issuance of a certificate of need, at  
5 such time and in such manner as required by the Department of  
6 Corrections, shall file:

7           1. A disclosure statement with their applications unless the  
8 applicant is a publicly held company required to file periodic  
9 reports under the Securities and Exchange Act of 1934, or a wholly  
10 owned subsidiary of a publicly held company. In such case, the  
11 applicant shall not be required to submit a disclosure statement,  
12 but shall submit the most recent annual and quarterly reports  
13 required by the Securities and Exchange Commission, which provide  
14 information regarding legal proceedings in which the applicant has  
15 been involved; and

16           2. Such other relevant information required by the Department  
17 pursuant to the Private Prison Certificate of Need Act that relates  
18 to the competency, reliability, or responsibility of the applicant  
19 and affiliated persons.

20           B. An application for a certificate of need shall be signed  
21 under oath by the applicant.

22           C. Promptly upon receipt of any such application, the  
23 Department shall examine and transmit the application to reviewing  
24 bodies selected by the Department to assist the Department in

1 determining whether the application is complete. Once the  
2 Department has determined that the application is complete, it shall  
3 notify the affected parties and other reviewing bodies and cause a  
4 thorough investigation to be made of the need for and  
5 appropriateness of the new or any private prison service  
6 acquisition, expansion, or establishment of a new facility.

7 D. Except as provided by Section 7 of this act, the  
8 investigation made pursuant to an application for a certificate of  
9 need shall include the following:

10 1. The availability of sufficient occupancy of the private  
11 prison as determined by letters of intent from a state, federal or  
12 local government jurisdiction;

13 2. The adequacy of financial resources for the acquisition,  
14 expansion, or establishment of a new private prison facility and for  
15 the continued operation thereof;

16 3. The availability of sufficient staff to properly operate the  
17 proposed acquisition, expansion, or establishment of a new private  
18 prison facility;

19 4. The record of the applicant's current and prior ownership,  
20 operation and management of similar facilities in this state and in  
21 any other state; and

22 5. Any other matter which the Department deems appropriate.

23 E. Before making a final determination on an acquisition  
24 application, the Director of the Department of Corrections shall

1 cause paid public notices to be published in a newspaper of general  
2 circulation near the facility and in a newspaper of general  
3 circulation in the area where the application is available for  
4 public inspection. The public notices shall offer participating  
5 parties an opportunity to submit written comments.

6 F. The Director's decision to approve or deny the proposed  
7 acquisition, expansion, or establishment of a new facility shall be  
8 made within forty-five (45) days following the deadline for  
9 submitting written comments, or the proposed acquisition or  
10 establishment shall be automatically approved, unless otherwise  
11 prohibited pursuant to the provisions of the Private Prison  
12 Certificate of Need Act.

13 G. If the Director finds that a proposed acquisition,  
14 expansion, or establishment of a new facility is consistent with the  
15 criteria and standards for review of such projects, and is otherwise  
16 in compliance with the provision of the Private Prison Certificate  
17 of Need Act, then the Director shall issue a certificate of need.  
18 If the Director finds that the proposed acquisition, expansion, or  
19 establishment of a new facility is not consistent with the criteria  
20 and standards, or is otherwise not in compliance with the provisions  
21 of the Private Prison Certificate of Need Act, the Director shall  
22 deny the certificate of need.

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1           SECTION 9.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 561.15 of Title 57, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Each application for a new certificate of need applied for  
5 pursuant to the provisions of Section 5 of this act, except for  
6 those applications filed by state agencies, shall be accompanied by  
7 an application fee of Three Thousand Dollars (\$3,000.00).

8           B. The maximum filing fee on an application for replacement of  
9 an existing facility shall be One Thousand Dollars (\$1,000.00).

10          C. 1. The maximum filing fee on an application for an  
11 acquisition shall be Five Thousand Dollars (\$5,000.00).

12          2. The capital cost for acquisition shall be the current book  
13 value of the facility as shown by a recognized method or basis of  
14 accounting as attested by a Certified Public Accountant.

15          D. If an application for a certificate of need is not approved,  
16 the Department of Corrections shall refund the application fee in  
17 full.

18          E. Each request for exemption from certificate of need  
19 requirements submitted under Section 7 of this act, except for a  
20 request filed by a state agency, shall be accompanied by a fee of  
21 One Hundred Dollars (\$100.00).

22           SECTION 10.           NEW LAW           A new section of law to be codified  
23 in the Oklahoma Statutes as Section 561.16 of Title 57, unless there  
24 is created a duplication in numbering, reads as follows:

1 Except as provided in subsection D of Section 7 of this act, no  
2 certificate of need shall be issued by the Department of Corrections  
3 unless, after investigation, the Director of the Department of  
4 Corrections makes the following findings:

5 1. The proposed action can be economically accomplished and  
6 maintained;

7 2. The proposed action will contribute to the orderly  
8 development of corrections services in the state;

9 3. The applicant employs or has the resources to adequately  
10 staff the facility with trained employees; and

11 4. The applicant is found to be in compliance with the  
12 provisions of Section 12 of this act.

13 5. The applicant provides proof of the availability of  
14 sufficient occupancy of the private prison as determined by letters  
15 of intent from a state, federal or local government jurisdiction.

16 SECTION 11. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 561.17 of Title 57, unless there  
18 is created a duplication in numbering, reads as follows:

19 An application for a certificate of need for a capital  
20 expenditure to eliminate or prevent imminent safety hazards as  
21 defined by federal, state or local fire, building or life safety  
22 codes or regulations, or to comply with state licensure standards,  
23 or to comply with accreditation standards, shall be approved unless  
24 the Department of Corrections finds:

1 1. That the facility or service is not needed; or

2 2. That the applicant is found to be out of compliance with the  
3 provisions of Section 12 of this act.

4 Approval under this section shall cover only the capital  
5 expenditure to eliminate or prevent the hazards or to comply with  
6 standards described herein.

7 SECTION 12. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 561.18 of Title 57, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. No certificate of need shall be issued for the acquisition  
11 of an existing facility unless after investigation the Director of  
12 the Department of Corrections finds that the applicant:

13 1. Has financial resources necessary to complete the  
14 transaction and to maintain services and staffing; and

15 2. Is found to be in compliance with the provisions of Section  
16 10 of this act.

17 B. 1. The Director shall refuse to issue a certificate of need  
18 to any applicant who has had, in ten percent (10%) or more of the  
19 applicant's private prison facility holdings in the preceding sixty  
20 (60) months, fines for inadequate staff or training, escapes,  
21 excessive assaults, or other fines or other penalties relating to  
22 the operation or security of a facility; license or certification  
23 revoked, rescinded, canceled, terminated, involuntarily suspended,  
24



1 or refused renewal; or if the license or certification was  
2 relinquished voluntarily in lieu of penalty.

3 2. The Director shall refuse to issue a certificate of need to  
4 any applicant except where the applicant overcomes a presumption  
5 against approval with clear and convincing evidence that one of the  
6 following circumstances was not due to the action or inaction of the  
7 applicant or any person with a controlling interest:

8 a. the applicant has had, in any of the applicant's  
9 private prison holdings in the preceding sixty (60)  
10 months, a facility's license or certificate revoked,  
11 rescinded, canceled, terminated, involuntarily  
12 suspended or refused renewal,

13 b. the applicant has a history of noncompliance, as  
14 defined by statute, with the standards for licensure  
15 of private prison facilities of any state in which the  
16 applicant has or has had private prison facilities, or  
17 with federal standards for certification of private  
18 prison facilities,

19 c. the applicant, in all current and prior ownership,  
20 operation and management of private prison facilities,  
21 has not complied with all lawful orders of suspension,  
22 receivership, temporary management, or administrative  
23 penalty issued by the Department or by other  
24

1 authorities with similar responsibilities in other  
2 states or by the federal government, or

3 d. the applicant has been convicted of a felony criminal  
4 offense related to the operation or management of a  
5 private prison facility.

6 3. Other than any of those reasons listed in paragraph 1 or 2  
7 of this subsection, the Director may refuse to issue a certificate  
8 of need to any applicant who has had, in the preceding thirty-six  
9 (36) months, one or more of the following:

10 a. a temporary manager, monitor, or receiver appointed,

11 or

12 b. had a civil money penalty imposed of Thirty-five  
13 Thousand Dollars (\$35,000.00) or more.

14 C. Noncompliance with a final agency order or final order or  
15 judgment of a court of record which has been set aside by a court on  
16 appeal of such final order or judgment shall not be considered a  
17 final order or judgment for the purposes of this section.

18 SECTION 13. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 561.19 of Title 57, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. When the Director of the Department of Corrections makes a  
22 determination to issue or deny a certificate of need, the Director  
23 shall provide written findings to the applicant, other reviewers and  
24 to other persons upon their request. The certificate of need shall

1 establish the maximum capital expenditure for the project. The  
2 Board of Corrections shall adopt rules concerning the time in which  
3 a decision must be made on an application.

4 B. Any person may request a reconsideration of the Director's  
5 determination for good cause shown, the grounds for which shall be  
6 established by the Board by rule. A request for reconsideration  
7 shall be filed within ten (10) days of the Department's  
8 determination. The hearing thereupon shall be conducted within  
9 thirty (30) days following the receipt of request. Written findings  
10 shall be issued within forty-five (45) days of such hearing.

11 C. Any final determination by the Department pursuant to the  
12 Private Prison Certificate of Need Act may be appealed by the  
13 applicant, or any other aggrieved party under the provisions of  
14 Sections 317 and 318 of Article II of the Administrative Procedures  
15 Act; provided, that the venue for such appeal shall be in Oklahoma  
16 County or in the county in which the facility at issue in the  
17 application is located.

18 SECTION 14. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 561.20 of Title 57, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. 1. A certificate of need issued pursuant to the provisions  
22 of the Private Prison Certificate of Need Act for the construction  
23 or establishment of a new private prison facility or the expansion  
24 of an existing facility shall be valid for a period of six (6)

1 months during which time the applicant shall submit to the  
2 Department of Corrections the plans and specifications for the  
3 facility to be constructed; however, the Department may extend such  
4 time by a period not to exceed twelve (12) months for extraordinary  
5 circumstances beyond the control of the applicant.

6 2. If no such plans and specifications are submitted within the  
7 time required by this section, then such certificate shall be null  
8 and void.

9 3. If plans and specifications are submitted, the Department  
10 shall approve or disapprove such plans and specifications within  
11 thirty (30) days of the filing of such plans and specifications  
12 shall be presumed to be approved.

13 4. If the Department disapproves the plans and specifications,  
14 such disapproval shall include a detailed statement of the  
15 corrections needed.

16 5. The Board of Corrections shall provide by rule the review  
17 process and time deadlines not exceeding twelve (12) months for  
18 approval or disapproval and resubmittal of initial, final and  
19 corrected plans and specifications. The applicant's failure to meet  
20 the review process deadlines promulgated by the Board shall render  
21 the certificate of need void.

22 6. The applicant must begin construction of the structure  
23 within twelve (12) months following the approval of the final plans  
24 and specifications and must proceed to complete the structure within

1 | eighteen (18) months of the approval from the beginning of  
2 | construction or the certificate will be canceled.

3 |       However, the Department may extend such completion day by a  
4 | period not to exceed twenty-four (24) months for good cause upon the  
5 | applicant's demonstration that the applicant has made a good faith  
6 | effort to complete the structure or modifications and that the delay  
7 | is unlikely to result in harm to the population to be served by the  
8 | applicant.

9 |       B. A certificate of need issued pursuant to the provisions of  
10 | this act for the acquisition of a private prison facility shall be  
11 | valid for a period of six (6) months by which time the acquisition  
12 | must be finalized, provided that the Department may extend such  
13 | final date by a period not to exceed twelve (12) months for good  
14 | cause.

15 |       C. Pending the appeal of an order granting a certificate of  
16 | need in the district or Supreme Court, the effective dates of  
17 | deadlines for submitting plans, filing reports, completion of the  
18 | project and other requirements related to such project shall  
19 | commence on the date of a final judicial determination of any such  
20 | appeal, and any certificate of need which has been approved by the  
21 | Department shall remain in effect pending such appeal. The  
22 | effective date of the issuance of a certificate of need shall be the  
23 | date of a final judicial determination of any such appeal. The

24 |

1 provisions of this subsection shall have prospective and  
2 retrospective application.

3 SECTION 15. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 561.21 of Title 57, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. The Board of Corrections shall promulgate such rules as are  
7 necessary to implement the provisions of the Private Prison  
8 Certificate of Need Act and meet the requirements of federal  
9 regulations. The Department of Corrections may administer oaths at  
10 any hearing or investigation conducted pursuant to the Private  
11 Prison Certificate of Need Act, and receive federal grant or  
12 contract funds by complying with the requirements therefor.

13 B. The Department shall post on the Department's Internet site  
14 a monthly report which shall include the status of each review  
15 currently being conducted, the reviews completed since the last  
16 report issued, and a general statement of the findings and decisions  
17 made in the course of these reviews.

18 SECTION 16. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 561.22 of Title 57, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. Any person who offers or develops or begins to offer or  
22 develop a private prison facility without having first obtained a  
23 certificate of need, as provided by the Private Prison Certificate  
24 of Need Act, shall be deemed guilty of a misdemeanor, and upon

1 conviction shall be punishable by payment of a fine of not less than  
2 One Thousand Dollars (\$1,000.00) and not more than Five Thousand  
3 Dollars (\$5,000.00).

4 B. If the Department of Corrections, through one of its agents  
5 or representatives, notifies in writing, through certified mail,  
6 return receipt requested, the person who has unlawfully commenced  
7 the offering or development of a private prison facility to cease  
8 and desist, then each day that such person continues such offering  
9 or development shall be a separate offense. If any person continues  
10 to offer or develop a private prison service after the issuance of a  
11 cease and desist order, the Department shall seek an injunction to  
12 prohibit the continued offering or development.

13 SECTION 17. This act shall become effective November 1, 2010.

14 Passed the Senate the 2nd day of March, 2010.

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\_\_\_\_\_  
Presiding Officer of the Senate

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18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

19 2010.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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