

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2224

By: Myers

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6 AS INTRODUCED

7 An Act relating to prisons and reformatories;
8 creating the Private Prison Certificate of Need Act;
9 providing short title; stating purpose of act;
10 defining terms; requiring certificate of need for new
11 private prison facilities; providing for application;
12 stating requirements; stating power and duties of the
13 Director of the Department of Corrections;
14 authorizing exemptions from certificate of need in
15 certain circumstances; requiring certain information
16 from certain persons; requiring certain person to
17 sign certificate of need under oath; providing for
18 review and investigation; stating criteria for
19 certificate of need investigation; providing for
20 notice; authorizing Director to issue or deny
21 certificate of need; stating fees; stating findings;
22 approving capital expenditures in certain
23 circumstances; stating requirements for certificate
24 of need for existing facilities; authorizing the
Director to refuse to issue certificate of need in
certain circumstances; providing for written findings
to certain persons; requiring the Board of
Corrections to promulgate rules; providing for
reconsideration of certain determination; providing
time period for plans and specifications to be
submitted to the Department; providing penalties;
authorizing the Department to seek injunction in
certain circumstances; providing for codification;
and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 561.7 of Title 57, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and cited as the "Private Prison
5 Certificate of Need Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 561.8 of Title 57, unless there
8 is created a duplication in numbering, reads as follows:

9 The Legislature hereby declares that it is the public policy of
10 the State of Oklahoma that the offering and development of private
11 prison services should be made in a planned, orderly and economical
12 manner that it is essential to the realization of this public
13 policy. That the offering and development of private prison
14 services in the state be made in accordance with the needs for such
15 services. It is the purpose of the Legislature in enacting this act
16 to further this public policy by providing for the submittal of
17 plans and applications, and by prohibiting the offering, development
18 or change of existing services prior to the issuance of a
19 certificate of need by the Department of Corrections.

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

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

24 1. "Board" means the Board of Corrections;

1 2. "Director" means the Director of the Department of
2 Corrections;

3 3. "Department" means the Department of Corrections;

4 4. "Private prison" means any correctional facility within this
5 state which houses minimum, medium or maximum security inmates and
6 which is not owned or operated by the State of Oklahoma or the
7 Department of Corrections, whether such facility is operated for
8 profit or not for profit;

9 5. "Disclosure statement" means a written statement by the
10 applicant which contains:

11 a. the full name, business address, and social security
12 number of the applicant, and all persons with
13 controlling interest as defined by the Private Prison
14 Certificate of Need Act,

15 b. the full name and address of any legal entity in which
16 the applicant holds a debt or equity interest of at
17 least five percent (5%), or which is a parent company
18 or subsidiary of the applicant,

19 c. a description of the experience and credentials of the
20 applicant, including any past or present permits,
21 licenses, certifications, or operational

22 authorizations relating to private prison regulation,

23 d. a listing and explanation of any administrative,
24 civil, or criminal legal actions against the applicant

1 or any person with a controlling interest which
2 resulted in a final agency order or final judgment by
3 a court of record including, but not limited to, final
4 orders or judgments on appeal related to private
5 prison operations in the five (5) years immediately
6 preceding the filing of the application. Such actions
7 shall include, without limitation, any permit denial
8 or any sanction imposed by a state or federal
9 regulatory authority, and

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

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

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

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

22 a. controls fifty percent (50%) or more of the common
23 stock of the corporate entity involved or controls
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1 fifty percent (50%) or more of the interest in the
2 partnership involved,

- 3 b. controls a percentage of stock greater than any other
4 stockholder or equal to the other single largest
5 stockholder or controls a percentage of partnership
6 interest greater than any other partner or equal to
7 the other single largest partnership interest, or
8 c. a managing member of a Limited Liability Company
9 (LLC).

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 561.10 of Title 57, unless there
12 is created a duplication in numbering, reads as follows:

13 No private prison facility shall be developed, acquired or
14 offered unless a certificate of need therefor has been issued as
15 provided in the Private Prison Certificate of Need Act. No
16 governmental entity shall approve any grant of funds, issue any
17 debentures or issue or renew any license for the operation of a
18 private prison facility, nor shall any third-party purchasers,
19 licensed or operated by this state, issue reimbursement for services
20 provided to its insurers or clients, unless the certificate of need
21 as provided in the Private Prison Certificate of Need Act has been
22 obtained.

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

4 A. Every entity desiring to establish a new private prison, to
5 expand an existing facility whether through construction or
6 conversion of facilities, or to acquire an existing prison shall
7 make application to the State Department of Corrections for a
8 certificate of need. The application for a certificate of need
9 shall be in such form as the Director of the State Department of
10 Corrections shall prescribe.

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

12 1. Any capital investment or lease of One Million Dollars
13 (\$1,000,000,000) or more, including predevelopment activities such
14 as arrangements and commitments for financing, architectural
15 designs, plans, working drawings specifications, and site
16 acquisition;

17 2. Acquisition of the ownership or operation of a facility
18 whether by purchase, lease, donation, transfer of stock or interest,
19 management contract, corporate merger, assignment, or through
20 foreclosure; and

21 3. An increase in authorized beds, whether through
22 establishment of a new facility or expansion of an existing
23 facility.

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

4 The Director of the Department of Corrections shall have the
5 power and duty to:

6 1. Issue, renew, deny, modify, suspend and revoke certificates
7 of need;

8 2. Establish and enforce standards and requirements for
9 certificates of need;

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

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

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

18 6. Advise, consult and cooperate with other agencies of this
19 state, the federal government, other states and interstate agencies,
20 and with affected groups and political subdivisions to further the
21 purposes of the provisions of the Private Prison Certificate of Need
22 Act;

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1 7. Promulgate and enforce rules subject to the approval of the
2 Board of Corrections to implement the provisions of the Private
3 Prison Certificate of Need Act;

4 8. Investigate, request or otherwise obtain the information
5 necessary to determine the qualifications and background of an
6 applicant for a certificate of need and to determine whether a
7 violation of the Private Prison Certificate of Need Act might have
8 occurred;

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

12 10. Institute and maintain or intervene in any action or
13 proceeding where deemed necessary by the Department pursuant to the
14 Private Prison Certificate of Need Act; and

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

17 Facility occupancy data used in the review of certificate of
18 need applications shall be based upon reports to the Department of
19 Corrections which are submitted by agency facilities and currently
20 operating private prison facilities and which are available to the
21 public upon request.

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

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

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

9 a. the total capital cost of the increase is less than
10 One Million Dollars (\$1,000,000.00), and

11 b. the facility's occupancy rate averaged ninety-three
12 percent (93%) or more during the twelve (12) months
13 preceding the filing of the exemption request;

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

17 a. the project involves no increase in authorized beds,

18 b. the facility shall be constructed no farther than
19 three (3) miles for rural areas and seven and one-half
20 (7 1/2) miles for urban areas, as defined by the
21 Standard Metropolitan Statistical Area (SMSA), from
22 the facility it is replacing or relocating, and
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1 c. a plan for the use of the facility to be replaced or
2 relocated is provided that ensures continuity of
3 services; and

4 3. A management agreement if:

5 a. the management entity discloses all persons with
6 controlling interest in the management entity and
7 discloses all experience in correctional facility
8 management or operation in any state during the
9 preceding thirty-six (36) months,

10 b. the management entity and any person with controlling
11 interest if the management entity has less than
12 thirty-six (36) months experience in management or
13 operation of correctional facilities, does not have a
14 history of noncompliance, and

15 c. the approved entity remains responsible for facility
16 operation, financial performance, staffing and
17 delivery of private prison services.

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

19 1. Any changes of ownership resulting from the operation of
20 law, including but not limited to divorce, probate, reversions and
21 bankruptcy if the transfer of interest is to any already existing
22 stockholder or person or entity listed on the license application
23 disclosure statement. This shall also include cancellations and
24 expirations of leases. Operational law ownership changes shall be

1 reported to the Department within five (5) working days of the
2 change;

3 2. Ownership changes for estate planning purposes, treasury
4 stock purchases, and transfers between existing owners and/or family
5 members; increases in the amount of common stock or partnership
6 interest for any individual who already owns fifty percent (50%) of
7 the common stock or corporate entity involved or controls fifty
8 percent (50%) or more of the interest in the partnership involved;
9 and

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

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

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

20 1. A disclosure statement with their applications unless the
21 applicant is a publicly held company required to file periodic
22 reports under the Securities and Exchange Act of 1934, or a wholly
23 owned subsidiary of a publicly held company. In such case, the
24 applicant shall not be required to submit a disclosure statement,

1 but shall submit the most recent annual and quarterly reports
2 required by the Securities and Exchange Commission, which provide
3 information regarding legal proceedings in which the applicant has
4 been involved; and

5 2. Such other relevant information required by the Department
6 pursuant to the Private Prison Certificate of Need Act that relates
7 to the competency, reliability, or responsibility of the applicant
8 and affiliated persons.

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

11 C. Promptly upon receipt of any such application, the
12 Department shall examine and transmit the application to reviewing
13 bodies selected by the Department to assist the Department in
14 determining whether the application is complete. Once the
15 Department has determined that the application is complete, it shall
16 notify the affected parties and other reviewing bodies and cause a
17 thorough investigation to be made of the need for and
18 appropriateness of the new or any private prison service
19 acquisition, expansion, or establishment of a new facility.

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

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

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

7 3. The availability of sufficient staff to properly operate the
8 proposed acquisition, expansion, or establishment of a new private
9 prison facility;

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

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

14 E. Before making a final determination on an acquisition
15 application, the Director of the Department of Corrections shall
16 cause paid public notices to be published in a newspaper of general
17 circulation near the facility and in a newspaper of general
18 circulation in the area where the application is available for
19 public inspection. The public notices shall offer participating
20 parties an opportunity to submit written comments.

21 F. The Director's decision to approve or deny the proposed
22 acquisition, expansion, or establishment of a new facility shall be
23 made within forty-five (45) days following the deadline for
24 submitting written comments, or the proposed acquisition or

1 establishment shall be automatically approved, unless otherwise
2 prohibited pursuant to the provisions of the Private Prison
3 Certificate of Need Act.

4 G. If the Director finds that a proposed acquisition,
5 expansion, or establishment of a new facility is consistent with the
6 criteria and standards for review of such projects, and is otherwise
7 in compliance with the provision of the Private Prison Certificate
8 of Need Act, then the Director shall issue a certificate of need.

9 If the Director finds that the proposed acquisition, expansion, or
10 establishment of a new facility is not consistent with the criteria
11 and standards, or is otherwise not in compliance with the provisions
12 of the Private Prison Certificate of Need Act, the Director shall
13 deny the certificate of need.

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

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

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

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

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

4 D. If an application for a certificate of need is not approved,
5 the Department of Corrections shall refund the application fee in
6 full.

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

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

14 Except as provided in subsection D of Section 7 of this act, no
15 certificate of need shall be issued by the Department of Corrections
16 unless, after investigation, the Director of the Department of
17 Corrections makes the following findings:

18 1. The proposed action can be economically accomplished and
19 maintained;

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

22 3. The applicant employs or has the resources to adequately
23 staff the facility with trained employees; and
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1 4. The applicant is found to be in compliance with the
2 provisions of Section 12 of this act.

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

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

9 An application for a certificate of need for a capital
10 expenditure to eliminate or prevent imminent safety hazards as
11 defined by federal, state or local fire, building or life safety
12 codes or regulations, or to comply with state licensure standards,
13 or to comply with accreditation standards, shall be approved unless
14 the Department of Corrections finds:

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

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

18 Approval under this section shall cover only the capital
19 expenditure to eliminate or prevent the hazards or to comply with
20 standards described herein.

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

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

4 1. Has financial resources necessary to complete the
5 transaction and to maintain services and staffing; and

6 2. Is found to be in compliance with the provisions of Section
7 10 of this act.

8 B. 1. The Director shall refuse to issue a certificate of need
9 to any applicant who has had, in ten percent (10%) or more of the
10 applicant's private prison facility holdings in the preceding sixty
11 (60) months, fines for inadequate staff or training, escapes,
12 excessive assaults, or other fines or other penalties relating to
13 the operation or security of a facility; license or certification
14 revoked, rescinded, canceled, terminated, involuntarily suspended,
15 or refused renewal; or if the license or certification was
16 relinquished voluntarily in lieu of penalty.

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

22 a. the applicant has had, in any of the applicant's
23 private prison holdings in the preceding sixty (60)
24 months, a facility's license or certificate revoked,

1 rescinded, canceled, terminated, involuntarily
2 suspended or refused renewal,

3 b. the applicant has a history of noncompliance, as
4 defined by statute, with the standards for licensure
5 of private prison facilities of any state in which the
6 applicant has or has had private prison facilities, or
7 with federal standards for certification of private
8 prison facilities,

9 c. the applicant, in all current and prior ownership,
10 operation and management of private prison facilities,
11 has not complied with all lawful orders of suspension,
12 receivership, temporary management, or administrative
13 penalty issued by the Department or by other
14 authorities with similar responsibilities in other
15 states or by the federal government, or

16 d. the applicant has been convicted of a felony criminal
17 offense related to the operation or management of a
18 private prison facility.

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

23 a. a temporary manager, monitor, or receiver appointed,
24 or

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

3 C. Noncompliance with a final agency order or final order or
4 judgment of a court of record which has been set aside by a court on
5 appeal of such final order or judgment shall not be considered a
6 final order or judgment for the purposes of this section.

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

10 A. When the Director of the Department of Corrections makes a
11 determination to issue or deny a certificate of need, the Director
12 shall provide written findings to the applicant, other reviewers and
13 to other persons upon their request. The certificate of need shall
14 establish the maximum capital expenditure for the project. The
15 Board of Corrections shall adopt rules concerning the time in which
16 a decision must be made on an application.

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

1 C. Any final determination by the Department pursuant to the
2 Private Prison Certificate of Need Act may be appealed by the
3 applicant, or any other aggrieved party under the provisions of
4 Sections 317 and 318 of Article II of the Administrative Procedures
5 Act; provided, that the venue for such appeal shall be in Oklahoma
6 County or in the county in which the facility at issue in the
7 application is located.

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

11 A. 1. A certificate of need issued pursuant to the provisions
12 of the Private Prison Certificate of Need Act for the construction
13 or establishment of a new private prison facility or the expansion
14 of an existing facility shall be valid for a period of six (6)
15 months during which time the applicant shall submit to the
16 Department of Corrections the plans and specifications for the
17 facility to be constructed; however, the Department may extend such
18 time by a period not to exceed twelve (12) months for extraordinary
19 circumstances beyond the control of the applicant.

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

23 3. If plans and specifications are submitted, the Department
24 shall approve or disapprove such plans and specifications within

1 thirty (30) days of the filing or such plans and specifications
2 shall be presumed to be approved.

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

6 5. The Board of Corrections shall provide by rule the review
7 process and time deadlines not exceeding twelve (12) months for
8 approval or disapproval and resubmittal of initial, final and
9 corrected plans and specifications. The applicant's failure to meet
10 the review process deadlines promulgated by the Board shall render
11 the certificate of need void.

12 6. The applicant must begin construction of the structure
13 within twelve (12) months following the approval of the final plans
14 and specifications and must proceed to complete the structure within
15 eighteen (18) months of the approval from the beginning of
16 construction or the certificate will be canceled.

17 However, the Department may extend such completion day by a
18 period not to exceed twenty-four (24) months for good cause upon the
19 applicant's demonstration that the applicant has made a good faith
20 effort to complete the structure or modifications and that the delay
21 is unlikely to result in harm to the population to be served by the
22 applicant.

23 B. A certificate of need issued pursuant to the provisions of
24 this act for the acquisition of a private prison facility shall be

1 valid for a period of six (6) months by which time the acquisition
2 must be finalized, provided that the Department may extend such
3 final date by a period not to exceed twelve (12) months for good
4 cause.

5 C. Pending the appeal of an order granting a certificate of
6 need in the district or Supreme Court, the effective dates of
7 deadlines for submitting plans, filing reports, completion of the
8 project and other requirements related to such project shall
9 commence on the date of a final judicial determination of any such
10 appeal, and any certificate of need which has been approved by the
11 Department shall remain in effect pending such appeal. The
12 effective date of the issuance of a certificate of need shall be the
13 date of a final judicial determination of any such appeal. The
14 provisions of this subsection shall have prospective and
15 retrospective application.

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

19 A. The Board of Corrections shall promulgate such rules as are
20 necessary to implement the provisions of the Private Prison
21 Certificate of Need Act and meet the requirements of federal
22 regulations. The Department of Corrections may administer oaths at
23 any hearing or investigation conducted pursuant to the Private
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1 Prison Certificate of Need Act, and receive federal grant or
2 contract funds by complying with the requirements therefor.

3 B. The Department shall post on the Department's Internet site
4 a monthly report which shall include the status of each review
5 currently being conducted, the reviews completed since the last
6 report issued, and a general statement of the findings and decisions
7 made in the course of these reviews.

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

11 A. Any person who offers or develops or begins to offer or
12 develop a private prison facility without having first obtained a
13 certificate of need, as provided by the Private Prison Certificate
14 of Need Act, shall be deemed guilty of a misdemeanor, and upon
15 conviction shall be punishable by payment of a fine of not less than
16 One Thousand Dollars (\$1,000.00) and not more than Five Thousand
17 Dollars (\$5,000.00).

18 B. If the Department of Corrections, through one of its agents
19 or representatives, notifies in writing, through certified mail,
20 return receipt requested, the person who has unlawfully commenced
21 the offering or development of a private prison facility to cease
22 and desist, then each day that such person continues such offering
23 or development shall be a separate offense. If any person continues
24 to offer or develop a private prison service after the issuance of a

1 | cease and desist order, the Department shall seek an injunction to
2 | prohibit the continued offering or development.

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

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