



Legislation Text

File #: 20-028, Version: 1

**DISCUSSION ONLY - AN ACT TO ADOPT AN EMERGENCY MANAGEMENT CODE AND
AUTHORIZE THE ESTABLISHMENT OF AN OFFICE OF EMERGENCY MANAGEMENT
BE IT ENACTED BY THE CHEROKEE NATION:**

Section 1. Title and Codification

This Act shall be codified at Title 63, Chapter 24, Section 101, *et seq.* of the Cherokee Nation Code Annotated and shall be known as the Cherokee Nation Emergency Management Act.

Section 2. Findings

The Council of the Cherokee Nation finds that an emergency exists within the Cherokee Nation and that it is necessary and proper to authorize the establishment of an agency/office of the Cherokee Nation to properly respond to events of extraordinary circumstances, states of emergency and disaster and to ensure the efficient utilization of all Cherokee Nation resources during extraordinary times.

Section 3. Purpose

The purpose of this Act is to amend Title 63 of the Cherokee Nation Code Annotated to authorize the establishment and operation of an agency/office of emergency management to ensure the efficient utilization of all Cherokee Nation resources during events of extraordinary circumstances, states of emergency, and to combat disasters effecting the Cherokee Nation and its citizens.

Section 4. Legislative History

Article VI, Section 7 of the Cherokee Nation Constitution states that the Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation.

Section 5. Substantive Provisions

§ 101. Title and Purpose.

This act shall be known as and may be cited as the Cherokee Nation Emergency Management Act. The purpose of this act is to establish an agency to ensure the efficient utilization of all Cherokee Nation resources during events of extraordinary circumstances, states of emergency, and to combat disasters as provided herein.

§ 102. Establishment of the Cherokee Nation Office of Emergency Management.

The Cherokee Nation Office of Emergency Management (hereinafter the "OEM") is hereby established within the Cherokee Nation Office of the Marshal. The implementation of the OEM shall include promulgation of rules, regulations, policies and/or procedures regarding the OEM as necessary to accomplish its duties and authority set forth herein.

The OEM shall be the coordinating agency for all activity in connection with Emergency Management of the Cherokee Nation. The OEM shall be the instrument through which the Office of the Marshal may exercise the authority and discharge the responsibilities vested in them by the Council during an Event of Extraordinary Circumstances, disasters, and/or a State of Emergency.

This act will not relieve any other Cherokee Nation departments or agencies of responsibilities or authority established by the Constitution of the Cherokee Nation or previously granted under laws of the Cherokee Nation except as expressly set forth herein.

§ 103. Definitions.

The following definitions shall apply in the interpretation of this act:

- (1) "Attack" shall mean any direct or indirect physical assault against the Cherokee Nation, citizens of the Cherokee Nation, Cherokee Nation reservation, trust and/or restricted lands, agencies and/or instrumentalities of the Cherokee Nation government, its environs, or of the United States by the forces of a hostile nation or the agents thereof, including assault by bombing; conventional, nuclear, and chemical or biological warfare; terrorism or sabotage.
- (2) "Council" shall mean the Council of the Cherokee Nation.
- (3) "Disaster" shall mean a flood, storm, epidemic or pandemic, extraordinary accident, chemical spills, an actual or threatened military attack, sabotage, extraordinary fire, other impending or actual calamity, or Events of Extraordinary Circumstances endangering or threatening to endanger health, life or property of the Cherokee Nation or its citizens.
- (4) "Emergency Management" shall mean the basic government functions of maintaining the public peace, health and safety during a Disaster or Events of Extraordinary Circumstances. This term shall include plans and preparations for protection and relief, recovery and rehabilitation from effects of a Disaster or Events of Extraordinary Circumstances as defined herein.
- (5) "Emergency Management Forces" shall mean the employees, equipment and facilities of the OEM, and any agencies and/or instrumentalities of the Cherokee Nation as provided herein; and, in addition, it shall include all volunteer personnel, equipment and facilities contributed by, or obtained from, volunteer persons or agencies.
- (6) "Emergency Management Volunteer" shall mean any person and/or entity duly registered, identified and appointed by the Manager of the OEM and assigned to participate in Emergency Management activities.
- (7) "Event of Extraordinary Circumstances" shall mean an event beyond the control of the Tribal Council, Executive Branch, or any other agency and/or instrumentality of the Cherokee nation, including but not limited to war, strike, riot, criminal unrest, plague, pandemic or an event described by the legal term act of God (tornado, flood, earthquake, volcanic eruption, etc.).
- (8) "Manager" shall mean the Operations Manager of the OEM, appointed as prescribed herein.
- (9) "Regulations" shall mean plans, programs, and other emergency procedures deemed essential to emergency management.
- (10) "Resident" shall mean any person that lives within the physical jurisdiction of the Cherokee Nation, including, but not limited to, any and all reservation, trust, and/or restricted lands of the Cherokee Nation. "Citizen" shall mean any and/or all citizens of the Cherokee Nation as provided under Article IV of the Constitution of the Cherokee Nation.
- (11) "State of Emergency" shall have the meaning set forth in section 110 of this act. A State of

Emergency may be declared by resolution of the Council or proclamation of the Principal Chief as set forth herein.

(12) "Volunteer" or "Volunteering" shall mean contributing a service, equipment or facilities to the OEM without remuneration.

§ 104. Organization of OEM and Employment of the Manager.

(a) The OEM shall consist of the following:

(1) An agency of Emergency Management within the Office of the Marshal under the supervision and direction of the Marshal. The agency head of the OEM shall be known as the Manager. The Manager shall have the responsibility for the day to day operation of the OEM. The Manager shall be authorized to hire such assistants and other employees as funded through budgeting approved by the Council and deemed necessary for the proper functioning of the OEM; and

(2) The employees and resources of any Cherokee Nation departments, agencies and/or instrumentalities of the Executive Branch as provided in this act and/or as may be declared by resolution of the Council. Such departments, agencies and/or instrumentalities shall participate in the Emergency Management activities as directed by the OEM. Duties assigned to these departments, agencies and/or instrumentalities shall be the same as or as similar to the normal duties of the department as possible, but in events of extraordinary circumstances these duties may be expanded as necessary and shall be determined by the OEM; and

(3) Emergency Management Volunteer personnel and agencies offering service to and accepted by the OEM.

(b) The Manager of the OEM shall be a full-time employee of the Cherokee Nation under the supervision of and reporting to the Marshal. The Manager shall be a person well versed and trained in planning operations involving the activities of many different agencies, with experience organizing and/or operating various departments, agencies, and/or instrumentalities to protect the public health, safety and welfare in the event of danger from events of extraordinary circumstances.

(c) The Manager shall select assistants to temporarily assume the emergency duties of the Manager in the event of his or her absence or inability to act.

§ 105. Duties and Responsibilities of the Manager.

(a) The Manager shall be responsible for all duties set forth in this act and any additional duties and responsibilities prescribed by the Marshal. The Manager shall report at least quarterly to the Council with respect to all phases of Emergency Management activity. The Manager shall be responsible for the planning, coordination and operation of the OEM activities within the jurisdiction of the Cherokee Nation. The Manager shall maintain liaison with state and federal authorities and the authorities of nearby political subdivisions so as to ensure the most effective operations of the Emergency Management plans. The Manager's duties and authority shall include, but not be limited to, the following:

(1) Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Cherokee Nation for Emergency Management purposes.

- (2) Development and coordination of emergency management plans, including but not limited to, for the immediate use of all facilities, equipment, manpower and other resources of the Cherokee Nation for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring governmental services and public utilities for the public health, safety and welfare of the Cherokee Nation and citizens of the Cherokee Nation.
- (3) Developing and/or constructing buildings or other property, and/or establishing agreements to provide for use of such buildings or other property, and/or for access to such buildings or other property by the OEM for Emergency Management purposes and designating suitable buildings as public shelters.
- (4) Developing public informational programs, educating the populace as to actions necessary and required for the protection of their persons and property in case of events of extraordinary circumstances or disaster as defined herein, either impending or present.
- (5) Conducting public practice alerts to insure the efficient operation of the Emergency Management Forces and to familiarize Cherokee Nation employees, citizens, and/or residents with OEM regulations, procedures and operations.
- (6) Coordinating the activity of all other public and private agencies engaged in any Emergency Management activities.
- (7) Developing and implementing OEM regulations, procedures and operations.
- (8) Developing and implementing a Comprehensive Emergency Management plan.

§ 106. Emergency Management Plans.

(a) A Comprehensive Emergency Management Plan for the Cherokee Nation (“Comprehensive Plan”) shall be presented by the Manager to the Council for approval by resolution. Such Comprehensive Plan may include various emergency management plans for different areas, departments, agencies, instrumentalities as necessary to implement the comprehensive plan. In the preparation of these emergency management plans, as they pertain to Cherokee Nation departments, agencies, and/or instrumentalities, it is intended that the services, equipment, facilities and personnel of all existing departments and agencies may be utilized to the fullest extent necessary. Upon approval by the Council, this Comprehensive Plan shall become the duty and responsibility of all departments, agencies, and instrumentalities as set forth therein. Each department, agency, and/or instrumentality shall prepare and be able to perform the functions assigned by such Comprehensive Plan and to maintain their assigned duties and/or responsibilities as set forth in the plans in a current state of readiness at all times. These plans shall have the effect of law upon the declaration of a State of Emergency and shall continue until the State of Emergency has ended as provided herein.

(b) The Manager may prescribe in any emergency management plans those positions within the OEM or any Emergency Management Volunteer, or other disaster organization, for which lines of succession are necessary. In each instance, the responsible person will designate and keep on file with the Manager a current list of three persons as successors to their position. The list of successors will be in order of succession and will nearly as possible designate persons best capable of carrying

out all assigned duties and functions.

(c) Amendments to the Comprehensive Plan shall be submitted to the Council for approval.

(e) When a necessary competency or skill for requirement of the Comprehensive Plan is not available within the OEM, and/or the departments, agencies, and/or instrumentalities of the Cherokee Nation, the Manager is authorized to seek assistance from persons/entities outside of the Cherokee Nation. The assignment of duties, when of a supervisory nature, may also include the granting of authority for the persons so assigned to carry out such duties prior to, during and after the occurrence of a disaster, as set forth in the Comprehensive Plan. Such services from persons outside of the Cherokee Nation may be accepted on a volunteer basis. Such persons/entities shall be enrolled and approved by the OEM as Emergency Management volunteers.

§ 107. No Waiver of Sovereign Immunity; No Municipal or Private Liability.

(a) This act is an exercise by the Cherokee Nation of its governmental functions for the protection of the public peace, health and safety, and neither the Cherokee Nation nor agents, representatives, and/or instrumentalities of the same, or any individual, receiver, firm, partnership, corporation, association or trustee, or any of the agents thereof, in good faith carrying out, complying with or attempting to comply with any order, rule or regulation promulgated pursuant to the provisions of this act, shall be liable for any damage sustained to persons or property as the result of said activity. Nothing herein may be construed in any way as a waiver of the sovereign immunity of the Cherokee Nation, its departments, agencies, instrumentalities, agents and/or employees.

(b) Any person owning or controlling real estate, property, buildings or other premises who voluntarily and without compensation grants the Cherokee Nation the right to inspect, designate and use the whole or any part or parts of such real estate, property, buildings or premises for the purpose of sheltering persons during an actual, impending or practice disaster situation shall not be civilly liable for the death of, or injury to, any person on or about such real estate, property, buildings or premises under such license, privilege or other permission; or for loss of, or damage to, the property of such person.

§ 108. Violations, Criminal and Civil Jurisdiction and Punishment.

(a) It shall be a criminal offense and civil violation for any person to violate any of the provisions of this act or emergency management plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the OEM as provided herein or any plan issued hereunder.

(b) Violators subject to the criminal jurisdiction of the Cherokee Nation District Court shall be punished by imprisonment of up to one hundred eighty (180) days and a fine of up to One Thousand Dollars (\$1,000.00) per offense. Violators not subject to criminal jurisdiction in the Cherokee Nation District Court shall be held civilly liable and fined up to five thousand dollars (\$5,000.00) per violation.

§ 109. Conflicting Laws, Orders, Rules, and Regulations Suspended.

Following the declaration of any Event of Extraordinary Circumstances, Disaster, and/or State of

Emergency by proclamation of the Principal Chief or resolution of the Council, all orders, rules and regulations made and promulgated pursuant to this act shall supersede all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

§ 110. State of Emergency; Restrictions Authorized.

(a) A State of Emergency may be declared by a proclamation of the Principal Chief and/or a resolution of the Council during events of extraordinary circumstances, times of public crisis, disaster, rioting, catastrophe, or similar public emergency, and/or for when public safety authorities are unable to maintain public order or afford adequate protection for the lives, safety and/or property of citizens and/or residents of the Cherokee Nation, or whenever the occurrence of any such condition is imminent.

(b) Following the declaration of a State of Emergency that endangers the lives, safety, health and welfare of the citizens and/or residents of the Cherokee Nation or any part thereof, or that threatens damages to or destruction of property within the Cherokee Nation jurisdiction, the Principal Chief may issue any public proclamations as necessary to notify all citizens and/or residents the existence of such a State of Emergency, and, in order to more effectively protect the lives and property of citizens and/or residents of the Cherokee Nation, to place in effect any or all of the restrictions hereinafter authorized, and/or to qualify for any federal funding as may become available.

(c) Following the declaration of a State of Emergency as provided above, the Principal Chief is hereby authorized and empowered to limit by proclamation the application of all or any part of such restrictions to any areas specifically designated or described within the jurisdiction of the Cherokee Nation. Such restrictions may include curfews with specific hours of the day or night; and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, Cherokee Marshals and cross-deputized law enforcement officers, firemen and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities, public health officials and other first-line responders, on-duty military personnel, whether state or federal, on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit, and such other classes of workers as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of people within the jurisdiction of the Cherokee Nation. Such other classes of essential workers may be declared in a proclamation by the Principal Chief.

§ 111. Proclamations by Principal Chief.

(a) Following the declaration of a State of Emergency as provided above, the Principal Chief by proclamation may impose prohibitions and restrictions specified in sections 113 through 119 of this act in the manner described in those sections. The Principal Chief may impose as many of those specified prohibitions and restrictions as the Principal Chief finds are necessary, because of the circumstances that are the basis of the State of Emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property of citizens and residents of the Cherokee Nation. The Principal Chief shall recite all such findings in the proclamation.

(b) Any and all proclamations of the Principal Chief issued hereunder shall be in writing and

delivered to the Council at least twenty-four (24) hours prior to their issuance, or as soon as reasonably possible. The Principal Chief shall take reasonable steps to give notice of the terms of the proclamation to all citizens and residents of the Cherokee Nation and any other that may be affected by it. The Principal Chief shall publicize and post a copy of all such proclamations prior to enforcement and within the headquarters of the Cherokee Nation and within all public buildings/facilities of the Cherokee Nation in clear view of visitors and the general public. The Principal Chief shall send reports of the substance of the proclamation to the mass communications media which serves the affected area and the Cherokee Nation District Court. The Principal Chief shall retain a writing of the proclamation and furnish, upon request, certified copies of said proclamation.

§ 112. Reserved.

§ 113. Curfews.

(a) Any proclamation may impose a curfew prohibiting, in certain areas and during certain periods, the appearance in public of anyone who is not a member of an exempted class as set forth herein. Such proclamation shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The Principal Chief may exempt certain parties from some or all of the curfew restrictions, which shall be in writing and include the specified parties and identify the restrictions from which each is exempted.

(b) Unless otherwise specified in such proclamation, the curfew shall apply during the specified period each day until the Principal Chief by proclamation removes the curfew.

§ 114. Restrictions on Possession, Consumption or Transfer of Alcoholic Beverages.

Any proclamation may prohibit the possession or consumption of any alcoholic beverage, including beer, wine and spirituous liquor other than on one's own premises, and may prohibit the transfer, transportation, sale or purchase of any alcoholic beverage within the jurisdiction of the Cherokee Nation described in the proclamation. This prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of properly licensed retailers as well as by anyone else in the geographical area described.

§ 115. Restrictions on possession, transportation, and transfer of dangerous substances.

(a) Any proclamation may prohibit the transportation or possession off one's own premises, or the sale or purchase of any dangerous substance. The Principal Chief and/or the Marshal may exempt from some or all of the restrictions specified classes of people whose possession, transfer or transportation of certain dangerous substances as necessary to the preservation of the public's health, safety or welfare. The proclamation shall state the exempted classes and the restrictions which each is exempted.

(b) "Dangerous substance" shall mean and be limited to any deadly explosive, incendiary device, radioactive material or device, gasoline or other instrument or substance designed for use that carries a threat of serious bodily injury or destruction of property.

(c) If imposed, the restriction shall apply throughout the jurisdiction of the Cherokee Nation or such part thereof as designated in the proclamation.

(d) A violation of this section shall be punishable by imprisonment of up to one (1) year imprisonment and a fine of up to five thousand dollars (\$5,000.00) for those persons subject to the criminal jurisdiction of the Cherokee Nation District Court. Persons not subject to the criminal jurisdiction of the Cherokee Nation shall be assessed a civil violation and fined up to Ten Thousand Dollars (\$10,000.00).

§ 116. Restrictions on Access to Areas.

(a) Any proclamation may prohibit obtaining access or attempting to obtain access to any area, designated in the manner described in this section, in violation of any order, clearly posted notice or barricade indicating that access is denied or restricted.

(b) Areas to which access is denied or restricted shall be designated by the proclamation and publicized by the Marshal of the Cherokee Nation or other cross-deputized law enforcement officers when directed in the proclamation to do so by the Principal Chief. When acting under this authority, the Marshal of the Cherokee Nation or other cross-deputized law enforcement officers may restrict or deny access to any area, street, highway or location within the jurisdiction of the Cherokee Nation if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

§ 117. Application of Proclamation.

Any proclamation provided herein may prohibit or restrict:

(a) Movement of people in public places;

(b) The operation of offices, business establishments and other places to or from which people may travel or at which they may congregate; and

(c) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the State of Emergency, within the area designated in the proclamation.

§ 118. Removal of Prohibitions and Restrictions; End of Emergency.

The Principal Chief may terminate any proclamation or remove any of the prohibitions and restrictions when the emergency no longer requires them, or when directed to do so by resolution of the Council. A State of Emergency shall be ended by resolution of the Council following the termination and/or end of the circumstances that lead to its declaration.

§ 119. Superseding and Amendatory Proclamations.

The Principal Chief may invoke the restrictions authorized by this act in separate proclamations, and may amend the proclamations by means of a superseding proclamation in accordance with the

procedures set forth in herein.

§ 120. Termination of Proclamation.

Any proclamation issued under this act, not previously terminated by the Principal Chief, shall expire immediately upon the end of the State of Emergency as set forth herein.

§ 121. Absence or Disability of Principal Chief.

Pursuant to Article VII, Section 4 of the Constitution of the Cherokee Nation, in case of absence or disability of the Principal Chief, the Deputy Principal Chief, shall have and exercise all of the powers herein given to the Principal Chief.

§ 122. Repeal of conflicting law.

All statutes, laws, ordinances or resolutions in conflict with the provisions of this act are hereby repealed.

§ 123. Territorial Applicability.

This act shall apply throughout the jurisdiction of the Cherokee Nation, including, but not limited to all reservation, trust, and restricted lands of the Cherokee Nation, and to the extent not limited by federal law and regulation.

Section 6. Provisions as Cumulative

The provisions of this Act shall be cumulative to existing law.

Section 7. Severability

The provisions of this Act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 8. Effective Date/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.