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2010

**COMMITTEE ON NATURAL RESOURCES**

NEBRASKA LEGISLATURE

*LR 481*

**Interim Study Report**

**Interim Study to Examine the Practice of  
Prescribed Burning Such As Controlled Burns  
and the Function of Prescribed Burning in  
Managing Plant and Animal Communities**

***ONE HUNDRED-FIRST LEGISLATURE***

SECOND SESSION

**NATURAL RESOURCES COMMITTEE MEMBERS**

Senator Chris Langemeier, Chairman  
Senator Annette Dubas, Vice-Chairwoman  
Senator Tom Carlson  
Senator Tanya Cook  
Senator Deb Fischer  
Senator Ken Haar  
Senator Beau McCoy  
Senator Ken Schilz

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## **LR 481**

### NATURAL RESOURCES COMMITTEE DECEMBER, 2010

- I. LEGISLATIVE RESOLUTION 481
- II. MEMORANDUM, SENATOR CHRIS LANGEMEIER,  
CHAIRMAN
- III. OCTOBER 29, 2010 HEARING TRANSCRIPT
- IV. NEBRASKA STATUTES  
Nebraska Prescribed Burn Statutes 81-520.01 to 81-520.05
- V. RESOURCES

[www.prairiefirenewspaper.com](http://www.prairiefirenewspaper.com), search "prescribed fire" for May, 2010 article

<http://www.nrcs.usda.gov/technical/efotg/>, search "prescribed burning" for 2008 guide

<http://www.deq.state.ne.us/>, search "open burning for resources

# MEMORANDUM

TO: NATURAL RESOURCES COMMITTEE MEMBERS  
FROM: SEN. CHRIS LANGEMEIER, CHAIRMAN  
DATE: DECEMBER, 2010  
SUBJECT: LR 481

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Sen. Annette Dubas introduced LR 481 to address her concerns with ensuring safety through proper training and liability issues. On October 29, 2010, the Natural Resources Committee held a public hearing on the study resolution which drew a variety of interests and testifiers from the University of Nebraska, Chadron State College, our state agencies, the natural resources districts, Natural Resources Conservation Service, fire chiefs and volunteer fire departments, and landowners. Based on testimony, there is clear support for continuing to allow controlled or prescribed burns as a necessary conservation tool.

## **Training/Safety**

Testimony overall touted the benefits of prescribed burns and, though testifiers expressed a need for continuing burn education and training, the quality with which Nebraskans participate in burn activities was commended. Further, the overall consensus was that the statutes and practices of the organizations (such as burn associations and the National Wildfire Coordinating Group) that participate and oversee burns do not need to be changed, just followed, and that education efforts should be pursued at the local rather than at the state level.

## **Liability**

Whether liability should be assigned to those who issue permits, fire departments, or landowners was touched on in the course of this study, and some interest was shown in making a statutory clarification. The issue of liability was a component of this study, and though it was not significantly addressed at the public hearing, some testifiers indicated that the landowner is liable for harm caused by an uncontrolled burn and that the statutes should be more clear about that. Even further, some testified that fire chiefs and volunteer firefighters should be statutorily immune from liability related to burns. Information on Nebraska's "Fireman's Rule" can be found in case law: *Syracuse Rural Fire Dist. v. Pletan*, 254 Neb. 393, 577 N.W.2d 527 (Neb. 1998).

Testimony submitted for the record is attached. Additional resources can be found through various natural resources districts' offices (particularly the Central Platte Natural Resources District), the Central Nebraska Prescribed Burn Association, the Nebraska Forest Service, State Fire Marshal's office, the Nebraska Department of Environmental Quality, and the Natural Resources Conservation Service.

October 27, 2010

Senator Chris Langemeier  
Room #1210  
P.O. Box 94604  
Lincoln, NE 68509

Members of the Natural Resources Committee and Fellow Nebraskans:

Please allow me to introduce myself and inform you of my background. I am Dr. Chuck Butterfield, Professor of Agriculture and Rangeland Management at Chadron State College and a Certified Professional in Rangeland Management through the Society for Range Management. For the last 22 years I have been involved in applying prescribed fire to the rangelands of Nebraska either through the direct application of fire or through educating natural resource managers. Currently I am involved in educating land managers in applying fire in the pine ridge region of Nebraska, in the last month I have been involved in the application of prescribed fire to over 100 acres in the region, with plans to fire manage another 300 acres of pine forest and grassland by next summer. Based on this background I would like to submit my written testimony regarding LR 481.

With the evolution of North American vegetation types there have been numerous driving forces that have exerted their influence over hundreds of thousands of years, one of the most dominant of these evolutionary forces has been periodic fire. The vegetation of the west, and especially of Nebraska have evolved under drought, grazing and fire regimes, working separately and together, thus our systems are very well adapted to these forces. Drought is a given factor and uncontrollable. No one argues the necessity of continuing to graze our native systems to maintain their health. However, fire is often quickly removed due to our fear and misunderstanding of it. Removing fire from this system is as unnatural as removing grazing, as these systems naturally require both.

Humans have used fire on this landscape for over 10,000 years. The Native Americans understood the necessity and value of fire, and thus employed it. It has only been in the last 130 years that we have actively pulled fire out of the ecological equation. This has led to the build up of excessive fuel loads resulting in stand replacing fires such as the 2006 Dawes and Sioux County Complex fires which I helped to fight and now use as a living laboratory for my classes. And yes grasslands can suffer from excessive fuel loads as well.

Despite our advances in getting some prescribed fire as a management tool in Nebraska through burn groups, NGO's and state agencies we lag significantly behind other states, most notably Texas, Oklahoma, Kansas, Arizona and Florida. In fact some of the first prescribed fire research came out of Kansas in the early 1950's showing you could improve steer weight gains with the use of prescribed fire. Prescribed fire is now widely employed in Kansas as a land management tool. Currently in Nebraska prescribed fire is utilized to reduce excessive fuel loads, to turn over standing vegetation on grasslands and rangelands, maintain native and re-established prairies, combat exotic

invasive plants such as smooth brome, combat native invasive species such as eastern red cedar, improve livestock forage quality and quantity, improve wildlife habitat, and here on the pine ridge remove ladder fuels and downed woody debris. These are all well researched and scientifically established land management practices. The value of fire as a management tool and as part of the ecosystem is an established scientific fact.

It is well established that prescribed fire needs to be applied by trained and experienced individuals. In the efforts by land managers here in Nebraska to empower landowners and land stewards, education has been a large part of the effort. Burn groups, NGO's, NRD's, University of Nebraska Lincoln and Omaha, federal agencies, Nebraska Forest Service, and Chadron State College have all hosted and/or taught prescribed fire educational opportunities. Educational opportunities exist. Most of these opportunities are aimed at educating participants about fire behavior, safety, legal aspects and ignition techniques. Many of these are often followed by live fire field applied educational opportunities conducted by trained individuals. Thus, numerous educational opportunities conducted by qualified personnel exist.

While these opportunities exist, there is an overall lack of education regarding prescribed fire by many. The press often erroneously lump an escaped rubbish fire conducted illegally, and under unsafe conditions with a well planned, legally and properly conducted prescribed fire under the heading of a "controlled burn." This misleads the public into thinking all prescribed fires are poorly conducted and lead to escapes. I believe that 81-520 adequately addresses the definition of these burns and efforts should be made to work with the press and the public to address this error. Also, many of the volunteer fire departments, while very well trained in structure fire suppression, are minimally trained in dealing with the application of prescribed fire and its necessity. Personally I have witnessed what working with a VFD to provide training opportunities in conducting a prescribed fire can do to improve collaborations and education on both sides of the issue. Too often it is perceived that being Red Carded will lead to a well qualified burn crew, this is not the case, Red Card training does no training in planning or ignitions. A similar but broader training needs to be considered and accepted. Thus, a little collaboration and joint training could solve a lot of the perceived problems, such as who should issue permits and who is qualified to conduct a burn.

In conclusion the current law, 81-520, adequately addresses the concerns of defining different types of burns and who should issue permits to lift the burn ban. The necessity of fire in the native ecosystem and it's value as a management tool has been well established scientifically and environmentally. Yes, a need for further education exists and will always exist. This educational need exists in all segments of the issue. Issues regarding liability and oversight also exist and will continue. To this end the people of Nebraska need to look to what has been done and learned in other states where prescribed fire is now a common and accepted land management practice. Then adapt these lessons to our state. We have made strong advances in Nebraska in the application of

prescribed fire, let's not lose the progress that has been made to date, let's learn from others, continue to educate ourselves, and become the leader in prescribed fire land management.

I regret that I cannot personally present this material and directly answer questions. It just is not feasible for me to give up three days of classes to attend and is hard to justify the energy expenditures. However, I would be willing to answer any questions via e-mail [cbutterfield@csc.edu](mailto:cbutterfield@csc.edu) or by phone 308.430.4062.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles H. Butterfield". The signature is fluid and cursive, with a large initial "C" and "H".

Charles H. Butterfield PhD, CPRM

Professor and Chair, Agriculture and Rangeland Management