

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 953

Introduced by Cavanaugh, J., 9; Gragert, 40; Hughes, 44.

Read first time January 10, 2022

Committee:

- 1 A BILL FOR AN ACT relating to the State Fire Marshal; to amend sections
- 2 81-520.01 and 81-520.03, Reissue Revised Statutes of Nebraska; to
- 3 change open burning permit provisions; to redefine a term; to
- 4 provide limitations on liability and nuisance relating to land-
- 5 management burning; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-520.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-520.01 (1) There shall be a statewide open burning ban on all
4 bonfires, outdoor rubbish fires, and fires for the purpose of clearing
5 land.

6 (2) The fire chief of a local fire department may waive an open
7 burning ban under subsection (1) of this section for an area under the
8 local fire department's jurisdiction by issuing an open burning permit to
9 a person requesting permission to conduct open burning. The permit issued
10 by the fire chief to a person desiring to conduct open burning shall be
11 in written or electronic form and writing, signed by the fire chief by
12 electronic or other means, and on or in a form approved ~~prescribed~~ by the
13 State Fire Marshal. The State Fire Marshal shall provide local fire
14 departments with such forms.

15 (3) The fire chief of a local fire department may waive the open
16 burning ban in the local fire department's jurisdiction when conditions
17 are acceptable to the chief. Anyone intending to burn in such
18 jurisdiction when the open burning ban has been waived shall notify the
19 fire chief of his or her intention to burn prior to starting the burn.

20 (4) The fire chief of a local fire department may adopt standards
21 listing the conditions acceptable for issuing a permit to conduct open
22 burning under subsection (2) of this section.

23 (5) The local fire department may charge a fee, not to exceed ten
24 dollars, for each such permit issued. This fee shall be remitted to the
25 governing body for inclusion in the general funds allocated to the fire
26 department. Such funds shall not reduce the tax requirements for the fire
27 department. No such fee shall be collected from any state or political
28 subdivision to which such a permit is issued to conduct open burning
29 under subsection (2) of this section in the course of such state's or
30 political subdivision's official duties.

31 Sec. 2. Section 81-520.03, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-520.03 (1) For purposes of sections 81-520.01 to 81-520.05 and
3 section 3 of this act, the fire chief of a local fire department may
4 designate a member of the local fire department to share the powers and
5 duties of the fire chief under such sections, except adopting standards
6 pursuant to subsection (4) of section 81-520.01.

7 (2) For purposes of sections 81-520.04, ~~and~~ 81-520.05, and section 3
8 of this act, land-management burn or burning means the controlled
9 application of fire to existing vegetative matter on land utilized for
10 grazing, pasture, forests, or grassland to control weeds, pests, insects,
11 and disease, prevent wildland fires, manage watersheds, care for
12 windbreaks, and conduct scientific research.

13 Sec. 3. (1)(a) No landowner, tenant, or other landowner's agent of
14 the land where land-management burning occurs shall be personally liable
15 for damages caused by land-management burning conducted in accordance
16 with section 81-520.05 except in cases of willful misconduct or gross
17 negligence. Evidence that a fire from a land-management burn has spread
18 outside of the authorized burn area on the day of the land-management
19 burn or continued to smolder resulting in a subsequent wildfire does not,
20 without further evidence, constitute gross negligence under this section.

21 (b) A fire chief of a local department or such chief's designee
22 shall not be liable for damages caused by a land-management burning
23 simply for issuing such land-management burning permit or assisting with
24 a properly permitted land-management burning for training purposes.

25 (2) A land-management burning shall be considered in the public
26 interest and shall not be considered a nuisance if conducted in
27 accordance with section 81-520.05 and any applicable state or local air
28 pollution law, rule, or regulation.

29 Sec. 4. Original sections 81-520.01 and 81-520.03, Reissue Revised
30 Statutes of Nebraska, are repealed.