

SIXTH DAY - NOVEMBER 12, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SPECIAL SESSION****SIXTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, November 12, 2009

PRAYER

The prayer was offered by Senator Harms.

ROLL CALL

Pursuant to adjournment, the Legislature met at 1:30 p.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Cornett and Haar who were excused; and Senator Dierks who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifth day was approved.

COMMITTEE REPORTS

Education

LEGISLATIVE BILL 5. Placed on General File with amendment.
AM7

- 1 1. Strike section 9 and insert the following new section:
- 2 Sec. 9. Section 79-1007.23, Revised Statutes Supplement,
- 3 2009, is amended to read:
- 4 79-1007.23 For state aid calculated for school fiscal
- 5 year 2009-10 and each school fiscal year thereafter:
- 6 (1) The department shall calculate an instructional time
- 7 allowance for each district equal to the product of the formula
- 8 students of such district multiplied by the instructional time
- 9 factor for such district multiplied by eighty-five percent of the
- 10 statewide average general fund operating expenditures per formula
- 11 student;
- 12 (2) The instructional time factor shall equal the
- 13 difference of the ratio of the district's average hours of
- 14 instruction for each full-time student during the regular school
- 15 year for the most recently available complete data year divided by:

16 (a) For state aid calculated for school fiscal year 2009-10, the
 17 comparison group average hours of instruction for each full-time
 18 student during the regular school year for the most recently
 19 available complete data year minus one; or (b) for state aid
 20 calculated for school fiscal year 2010-11 and each school fiscal
 21 year thereafter, the statewide average hours of instruction for
 22 each full-time student during the regular school year for the most
 23 recently available complete data year minus one, except that if
 1 the result is less than zero, the instructional time factor shall
 2 equal zero; ~~and~~

3 (3) ~~The~~ For school fiscal years 2009-10 and 2010-11,
 4 the comparison group average hours of instruction for each
 5 full-time student shall be an average of the averages for all
 6 school districts in the comparison group. The average hours of
 7 instruction shall be defined by the department and shall not
 8 include extracurricular activities outside of the regular school
 9 day or time designated for students to eat lunch. The statewide
 10 average hours of instruction for each full-time student shall be an
 11 average of the averages for all school districts; and-

12 (4) For school fiscal year 2011-12 and each school
 13 fiscal year thereafter, the average hours of instruction shall be
 14 defined by the department and shall be based on scheduled time for
 15 courses and the number of students participating in such courses as
 16 reported to the department for the most recently available complete
 17 data year. Hours of instruction shall not include extracurricular
 18 activities outside of the regular school day or time designated for
 19 students to eat lunch. The statewide average hours of instruction
 20 for each student shall be an average of the averages for all school
 21 districts.

22 2. On page 3, line 12, strike "one-half" and insert
 23 "twenty-five hundredths".

24 3. On page 5, line 1, strike "year 2010-11" and insert
 25 "years 2010-11 through 2012-13"; strike beginning with "(f)" in
 26 line 11 through the underscored comma in line 20; and in line 20
 27 strike "(g)" and insert "(f)".

1 4. On page 6, line 3; and page 25, lines 7 and
 2 22, reinstate the stricken "instructional time" and after the
 3 reinstated "time" insert "allowance".

4 5. On page 28, lines 21 and 22; page 29, line 1; and page
 5 30, lines 5, 6, 13, and 16, after "elementary" insert "site".

6 6. On page 29, line 25, strike "grades offered in the
 7 elementary attendance site," show as stricken, and insert "site
 8 grades".

9 7. On page 30, lines 1 and 2, strike "grades offered
 10 in the elementary attendance site," show as stricken, and insert
 11 "elementary site grades"; and in line 10 after "elementary" insert
 12 "site".

13 8. On page 36, line 11, strike "one-half" and insert
 14 "seventy-five hundredths".

(Signed) Greg Adams, Chairperson

Government, Military and Veterans Affairs

LEGISLATIVE RESOLUTION 4. Reported to the Legislature for further consideration.

(Signed) Bill Avery, Chairperson

Nebraska Retirement Systems

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

John Dinkel - Nebraska Investment Council

Aye: 5 Senators Karpisek, Loudon, Mello, Nordquist, Pankonin. Nay: 0.
Absent: 1 Senator Heidemann.

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Jeffrey W. States, State Investment Officer - Nebraska Investment Council

Aye: 5 Senators Karpisek, Loudon, Mello, Nordquist, Pankonin. Nay: 0.
Absent: 1 Senator Heidemann.

(Signed) Dave Pankonin, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 11. Introduced by Hadley, 37.

WHEREAS, the University of Nebraska at Kearney volleyball team has had an exemplary regular season; and

WHEREAS, the Lopers finished the regular season undefeated in the Rocky Mountain Athletic Conference; and

WHEREAS, the Lopers are currently ranked third in the NCAA Division II polls; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates the University of Nebraska at Kearney volleyball team for its exemplary regular season.

2. That a copy of this resolution be sent to the Lopers and their head coach, Rick Squiers.

Laid over.

LEGISLATIVE RESOLUTION 12. Introduced by Hadley, 37.

WHEREAS, the University of Nebraska at Kearney football team has won the Rocky Mountain Athletic Conference title; and

WHEREAS, the Lopers have won ten games for the first time in school history; and

WHEREAS, the Lopers have made the NCAA Division II playoffs; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates the University of Nebraska at Kearney for a fantastic season.

2. That a copy of this resolution be sent to the Lopers and their head coach, Darrell Morris.

Laid over.

LEGISLATIVE RESOLUTION 13. Introduced by Sullivan, 41.

WHEREAS, Belinda Wright of Scotia, Nebraska, was named Miss Nebraska USA for 2010; and

WHEREAS, Ms. Wright, a senior Dean's List student at the University of Nebraska, took home the crown after competing with seventeen other women; and

WHEREAS, Ms. Wright will represent Nebraska at the Miss USA Pageant in Las Vegas in April 2010; and

WHEREAS, the Legislature recognizes the achievements of the citizens of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates Ms. Belinda Wright for being crowned Miss Nebraska USA for 2010.

2. That a copy of this resolution be sent to Ms. Belinda Wright.

Laid over.

ATTORNEY GENERAL'S OPINIONOpinion 09012

DATE: November 12, 2009

SUBJECT: Whether A Proposed Amendment To Neb. Rev. Stat. § 84-612 (Supp. 2009) Is Within The Scope Of The Governor's Call For The First Special Session Of The One-Hundred-First Nebraska Legislature.

REQUESTED BY: Senator Lavon Heidemann
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

This is the third in a series of opinions we have prepared in connection with the scope of the Governor's call for the First Special Session of the One-Hundred-First Nebraska Legislature which began on November 4, 2009. See Op. Att'y Gen. No. 09011 (November 9, 2009) and Op. Att'y Gen. No. 090010 (November 6, 2009). This opinion pertains to proposed changes in Neb. Rev. Stat. § 84-612 (Supp. 2009), a statute which creates the State's Cash Reserve Fund.

GOVERNOR'S CALL

The Governor called the Legislature into special session to consider and enact legislation on the following subjects:

1. To reduce or eliminate appropriations and reappropriations approved by the 101st Nebraska Legislature;
2. To reduce or eliminate certain transfers from the State General Fund;
3. To authorize, increase, or make certain transfers to the State General Fund or to certain cash funds;
4. To modify or eliminate intent language and earmarks accompanying appropriations approved by the 101st Legislature;
5. To adopt statutory modifications necessary to reduce state aid appropriations and make formula adjustments contained in the Tax Equity and Educational Opportunities Support Act; and
6. To appropriate funds for the necessary expenses of the extraordinary session herein called.

APPLICABLE LAW

As we have done for previous opinions during this special session, we will refer you to our Op. Att'y Gen. No. 090010 (November 6, 2009), which contains an analysis of the applicable law relating to special sessions of the Legislature and the Governor's call.

ANALYSIS

Section 84-612 creates a fund within the state treasury to be known as the Cash Reserve Fund. That section also sets out a number of transfers to be made to various other state funds from the Cash Reserve Fund, including the following transfers to the Roads Operations Cash Fund:

(14) On July 7, 2010, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(15) On July 7, 2011, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

In your opinion request, you cite the transfers to the Roads Operations Cash Fund noted above, and you state that:

The Appropriations Committee is discussing an amendment to 84-612 to require the \$10 million of transfers to be made from the Cash Reserve Fund to the General Fund during the current fiscal year and eliminating the reference as to the use of such funds.

You requested our opinion as to whether that "action would be within the Governor's call for the current special session."

In our Opinion No. 090010, we characterized the purpose for which the present special session was convened as "generating additional monies for the State's General Fund by reducing appropriations, eliminating transfers from the General Fund, authorizing and making transfers to the General Fund, and reducing state aid appropriations." Op. Att'y Gen. No. 090010 at 4 (November 6, 2009). It seems to us that the amendment to § 84-612 described above is clearly germane to and related to the purpose for the current special session. Moreover, such an amendment to § 84-612 appears to fall squarely within the third subject of the Governor's call, i.e., "to authorize, increase, or make certain transfers to the State General Fund or to certain cash funds." For those reasons, we believe that the amendment

described in your opinion request does fall within the scope of the Governor's call for the current special session of the Nebraska Legislature.

Sincerely,
 JON BRUNING
 Attorney General
 (Signed) Dale A. Comer
 Assistant Attorney General

pc: Patrick J. O'Donnell
 Clerk of the Nebraska Legislature

05-163-20

ANNOUNCEMENT

The Chair announced today is Senator McCoy's birthday.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 1, 2, 3, and 5 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 1, 2, 3, and 5.

SENATOR LANGEMEIER PRESIDING

MOTIONS - Approve Appointments

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 53:

Department of Health and Human Services
 Jodi Fenner, Director of the Division of Developmental Disabilities
 Kerry T. Winterer, Chief Executive Officer

Voting in the affirmative, 40:

Adams	Cook	Gloor	Lautenbaugh	Pirsch
Ashford	Council	Hadley	Louden	Price
Avery	Dubas	Hansen	McCoy	Rogert
Campbell	Fischer	Howard	McGill	Schilz
Carlson	Flood	Janssen	Nelson	Stuthman
Christensen	Fulton	Karpisek	Nordquist	Sullivan
Coash	Gay	Krist	Pahls	Utter
Conrad	Giese	Langemeier	Pankonin	Wallman

Voting in the negative, 0.

Present and not voting, 6:

Harms	Lathrop	White
Heidemann	Mello	Wightman

Excused and not voting, 3:

Cornett	Dierks	Haar
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The appointments were confirmed with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 54:

Commission for the Blind and Visually Impaired
Michael Hansen

Voting in the affirmative, 36:

Ashford	Fischer	Howard	Nelson	Stuthman
Avery	Flood	Janssen	Nordquist	Sullivan
Campbell	Fulton	Karpisek	Pahls	Utter
Carlson	Gay	Krist	Pankonin	Wallman
Christensen	Giese	Langemeier	Pirsch	
Conrad	Gloor	Lautenbaugh	Price	
Cook	Hadley	Louden	Rogert	
Council	Hansen	McCoy	Schilz	

Voting in the negative, 0.

Present and not voting, 10:

Adams	Dubas	Heidemann	McGill	White
Coash	Harms	Lathrop	Mello	Wightman

Excused and not voting, 3:

Cornett	Dierks	Haar
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The appointment was confirmed with 36 ayes, 0 nays, 10 present and not voting, and 3 excused and not voting.

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 54:

State Board of Health

Russell Hopp
 Kenneth Kester
 Rich Robinson
 Gary Westerman

Voting in the affirmative, 35:

Adams	Council	Howard	Louden	Rogert
Ashford	Dubas	Janssen	McCoy	Schilz
Campbell	Fischer	Karpisek	Nelson	Stuthman
Carlson	Gay	Krist	Pahls	Sullivan
Christensen	Giese	Langemeier	Pankonin	Utter
Conrad	Gloor	Lathrop	Pirsch	Wallman
Cook	Hansen	Lautenbaugh	Price	White

Voting in the negative, 0.

Present and not voting, 10:

Avery	Flood	Harms	McGill	Nordquist
Coash	Hadley	Heidemann	Mello	Wightman

Excused and not voting, 4:

Cornett	Dierks	Fulton	Haar
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The appointments were confirmed with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 54:

Nebraska Rural Health Advisory Commission
 Margaret Ann "Peggy" Rogers
 Rebecca Schroeder
 Michael Sitorius
 Roger Wells

Voting in the affirmative, 35:

Adams	Council	Hadley	Lautenbaugh	Pirsch
Ashford	Dubas	Hansen	Louden	Price
Campbell	Fischer	Howard	McCoy	Rogert
Carlson	Flood	Janssen	Nelson	Schilz
Christensen	Gay	Karpisek	Nordquist	Sullivan
Conrad	Giese	Krist	Pahls	Wallman
Cook	Gloor	Langemeier	Pankonin	White

Voting in the negative, 0.

Present and not voting, 10:

Avery	Harms	Lathrop	Mello	Utter
Coash	Heidemann	McGill	Stuthman	Wightman

Excused and not voting, 4:

Cornett	Dierks	Fulton	Haar
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The appointments were confirmed with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 54:

Nebraska Rural Health Advisory Commission

Mark Goodman

Suzanne Minarick Greenquist

Shawn Kralik

Voting in the affirmative, 41:

Adams	Council	Janssen	Mello	Stuthman
Ashford	Dubas	Karpisek	Nelson	Sullivan
Avery	Fischer	Krist	Nordquist	Utter
Campbell	Flood	Langemeier	Pahls	Wallman
Carlson	Gay	Lathrop	Pankonin	White
Christensen	Giese	Lautenbaugh	Pirsch	
Coash	Gloor	Louden	Price	
Conrad	Hansen	McCoy	Rogert	
Cook	Howard	McGill	Schilz	

Voting in the negative, 0.

Present and not voting, 4:

Hadley	Harms	Heidemann	Wightman
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Excused and not voting, 4:

Cornett	Dierks	Fulton	Haar
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The appointments were confirmed with 41 ayes, 0 nays, 4 present and not voting, and 4 excused and not voting.

Senator Gay moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 54:

State Board of Health
Edward Discoe
Luisa Rounds

Voting in the affirmative, 38:

Ashford	Council	Howard	McGill	Schilz
Avery	Fischer	Janssen	Mello	Stuthman
Campbell	Flood	Karpisek	Nelson	Sullivan
Carlson	Gay	Krist	Nordquist	Utter
Christensen	Giese	Langemeier	Pahls	Wallman
Coash	Gloor	Lautenbaugh	Pankonin	White
Conrad	Hadley	Louden	Pirsch	
Cook	Hansen	McCoy	Regert	

Voting in the negative, 0.

Present and not voting, 7:

Adams	Harms	Lathrop	Wightman
Dubas	Heidemann	Price	

Excused and not voting, 4:

Cornett	Dierks	Fulton	Haar
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The appointments were confirmed with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

ANNOUNCEMENT

The Chair announced November 11 was Senator Lautenbaugh's birthday.

MOTIONS - Approve Appointments

Senator Ashford moved the adoption of the Judiciary Committee report for the confirmation of the following appointment(s) found on page 65:

Community Corrections Council

Joe Kelly
Robert Lindemeier
Dallas Massey
Travis Parker
Frank Peak

Voting in the affirmative, 38:

Adams	Council	Janssen	Mello	Schilz
Ashford	Fischer	Karpisek	Nelson	Stuthman
Avery	Flood	Krist	Nordquist	Sullivan
Campbell	Gay	Langemeier	Pahls	Utter
Carlson	Giese	Lautenbaugh	Pankonin	Wallman
Christensen	Hadley	Louden	Pirsch	White
Conrad	Hansen	McCoy	Price	
Cook	Howard	McGill	Rogert	

Voting in the negative, 0.

Present and not voting, 7:

Coash	Gloor	Heidemann	Wightman
Dubas	Harms	Lathrop	

Excused and not voting, 4:

Cornett	Dierks	Fulton	Haar
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The appointments were confirmed with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

Senator Ashford moved the adoption of the Judiciary Committee report for the confirmation of the following appointment(s) found on page 66:

Crime Victim's Reparations Committee
 G. Randall "Rand" Hansen
 Michael McLarney

Voting in the affirmative, 41:

Adams	Council	Howard	McGill	Stuthman
Ashford	Dubas	Janssen	Mello	Sullivan
Avery	Fischer	Karpisek	Nelson	Utter
Campbell	Flood	Krist	Pahls	Wallman
Carlson	Gay	Langemeier	Pankonin	White
Christensen	Giese	Lathrop	Pirsch	
Coash	Gloor	Lautenbaugh	Price	
Conrad	Hadley	Louden	Rogert	
Cook	Hansen	McCoy	Schilz	

Voting in the negative, 0.

Present and not voting, 4:

Harms	Heidemann	Nordquist	Wightman
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Excused and not voting, 4:

Cornett Dierks Fulton Haar

The appointments were confirmed with 41 ayes, 0 nays, 4 present and not voting, and 4 excused and not voting.

COMMITTEE REPORT
Business and Labor

LEGISLATIVE BILL 8. Placed on General File.

(Signed) Steve Lathrop, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 14. Introduced by Karpisek, 32.

WHEREAS, Austin Steven Seyfert, of Troop 101 in Wilber, Nebraska, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest rank in scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks of Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle Scout. Throughout his scouting experience, Austin has learned, been tested on, and been recognized for various scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council. Austin earned thirty merit badges, and for his Eagle Scout community service project he made a number of improvements at his church, including putting up new railings for the safety of the elderly, renovating the church marquee, and landscaping the grounds; and

WHEREAS, Austin also served his troop in a variety of leadership roles, including senior patrol leader, assistant senior patrol leader, and scribe; and

WHEREAS, only five percent of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, Austin, through his hard work and perseverance, has joined other high achievers who are Eagle Scouts, such as astronauts, political and industry leaders, artists, scientists, and athletes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates Austin Steven Seyfert on achieving the rank of Eagle Scout.

2. That a copy of this resolution be sent to Austin Steven Seyfert.

Laid over.

LEGISLATIVE RESOLUTION 15. Introduced by Karpisek, 32.

WHEREAS, the Friend High School girls' softball team won the 2009 Class C State Softball Championship; and

WHEREAS, the Lady Bulldogs defeated Wayne High School 3-1 in the championship game; and

WHEREAS, the Lady Bulldogs and their coach achieved this exceptional accomplishment through their hard work, resolve, and team play; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates the Friend High School girls' softball team on winning the 2009 Class C State Softball Championship.

2. That a copy of this resolution be sent to the Lady Bulldogs and their coach, Mike Moore.

Laid over.

LEGISLATIVE RESOLUTION 16. Introduced by McCoy, 39.

WHEREAS, Father Stephen Plank, the chairman of the language department at Mount Michael Benedictine High School in Elkhorn, Nebraska, has been named Nebraska's Outstanding World Language Teacher for 2009; and

WHEREAS, the award is given to a world language educator who demonstrates creativity in teaching and who promotes the study of world language outside the classroom; and

WHEREAS, Father Plank was honored for the award at the Nebraska International Languages Association's fall conference and was recognized for his work with struggling French students and for his ability to instill students with a love of classic French cinema; and

WHEREAS, Father Plank has also been named Nebraska's French teacher of the year in 2007 and has been awarded the State Department of Education STAR Award for world languages.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates Father Stephen Plank for being named Nebraska's Outstanding World Language Teacher for 2009.

2. That a copy of this resolution be sent to Father Stephen Plank.

Laid over.

UNANIMOUS CONSENT - Add Cointroducers

Senators Campbell, Giese, Lathrop, Pankonin, and White asked unanimous consent to add their names as cointroducers to LB16. No objections. So ordered.

VISITORS

Visitors to the Chamber were Chris Smith and Malcolm Williams from Omaha.

ADJOURNMENT

At 2:05 p.m., on a motion by Senator Coash, the Legislature adjourned until 9:00 a.m., Friday, November 13, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

