

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the North Shore Community College Assistance Corporation. .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	10th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1178 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE NORTH SHORE COMMUNITY COLLEGE ASSISTANCE CORPORATION. .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby found and declared that the North Shore Community College is a critical element
2 of the commonwealth's higher education system and fulfilling the mission of North Shore Community
3 College to provide educational resources to the citizens of the commonwealth is essential to providing
4 students with skills and opportunities necessary to a full and productive life. It is further declared that
5 providing physical and financial resources necessary to meet the needs of the North Shore Community
6 College now and in the future is critical to the ability of North Shore Community College to fulfill its
7 mission including providing the workforce with skills necessary to allow for the maintenance and
8 expansion of the business, industrial, technological and manufacturing sectors of the commonwealth's
9 economy. It is further found and declared that creation of a nonprofit assistance corporation with
10 certain statutory authority will provide a vehicle with the necessary flexibility to prudently pursue
11 opportunities for the benefit of North Shore Community College, its present and future students and the
12 commonwealth. It is therefore expressly declared that the provisions of this act constitute a needed
13 program in the public interest in furtherance of an essential governmental function and serve a
14 necessary and valid public purpose for which public money may be expended or invested.

15 SECTION 2. As used in this act the following terms shall, unless otherwise required, have the following
16 meanings:

17 “Board of directors”, the board of directors of the North Shore Community Assistance Corporation
18 created by this act;

19 “Board of higher education”, the board of higher education established pursuant to section 4 of
20 chapter 15A of the General Laws;

21 “Board of trustees”, the board of trustees of the North Shore Community College;

22 “College”, the North Shore Community College or, should the North Shore Community College be
23 dissolved or fail to qualify either as a political subdivision of the commonwealth or an educational
24 institution exempt from federal income tax under Section 501(c)(3) of the Code, then such other
25 educational institution of higher learning established and operating in the commonwealth as shall be
26 designated by the board of higher education, which is either such a political subdivision or such an
27 exempt organization;

28 “Code”, the Internal Revenue Code of 1986, as the same may, from time to time, be amended;

29 “Corporation”, the North Shore Community College Assistance Corporation created by this act;

30 “Educational institution”, an educational organization within the meaning of section 170(b) (1)(A)(ii) of
31 the Code.

32

33 SECTION 3. (a) There shall be a body politic and corporate to be known as the North Shore Community
34 College Assistance Corporation. The corporation is not and shall not be deemed a public agency or state
35 agency within the meaning of such terms in chapter 7 of the General Laws for any purposes.

36 The corporation shall be governed by a board of directors consisting of the following 15 members:
37 the chairman of the board of trustees of the college, the president of the college, the mayor of the city
38 of Lynn, the president of the Lynn City Council, the director of the Lynn Economic Development
39 Industrial Corporation, or successor thereto, 3 members appointed by the governor, 1 member
40 appointed by the Lynn Chamber of Commerce, or successor thereto, and 6 members appointed by the

41 president of the college. Of the 3 members appointed by the governor at least 1 shall be a person
42 experienced in the financial aspects of real estate development and management, and 1 shall be a
43 person experienced in planning. Of the 6 members appointed by the president of the college, at least 2
44 shall be persons experienced in higher education administration.

45 (b) The appointed members of the board of directors shall serve 3-year terms. Of those initially
46 appointed by the governor, 1 shall be appointed for 1 year, 1 for 2 years, and 1 for 3 years. Of those
47 initially appointed by the president of the college, 2 shall be appointed for 1 year, 2 shall be appointed
48 for 2 years, and 3 shall be appointed for 3 years. The individual initially appointed by the Lynn Chamber
49 of Commerce shall be appointed for 2 years. Vacancies arising from other than the expiration of the
50 term shall be filled by the party responsible for the initial appointment. Directors shall serve without
51 compensation but may be reimbursed for expenses necessarily incurred in the performance of their
52 duties.

53 (c) The board of directors from time to time shall elect from among themselves a chairman, a vice
54 chairman and a secretary. The secretary shall be the custodian of all books, documents and papers of
55 the corporation and its minute book and seal. Unless otherwise provided in by-laws adopted by the
56 board of directors, the number of directors required to constitute a quorum shall be a majority of the
57 directors then in office. If a quorum is present, a majority of the directors may take any action on behalf
58 of the board of directors except to the extent that a larger number is required by this act, or other
59 applicable laws or by-laws adopted by the board of directors.

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61 SECTION 4. The purposes of the corporation shall be to (i) promote the orderly growth and
62 development of the college; and (ii) to assist the college in securing physical and financial resources
63 necessary for the acquisition and development of sites for use by the college. In furtherance of such
64 purpose the corporation shall, subject only to the restrictions and limitations hereinafter contained,
65 have the following powers:

66 (a) to make and execute contracts and any other instruments necessary or convenient for the
67 exercise of its powers or the discharge of its duties and incur liabilities for any other purposes of
68 the corporation;

- 69 (b) to have a corporate seal which it may alter at its pleasure;
- 70 (c) to adopt by-laws for the regulation of its affairs;
- 71 (d) to accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange,
72 lease, transfer, judicial order or decree or otherwise, for any of its objects and purposes, any
73 property both real and personal reasonably related to the acquisition and development of sites
74 for use by the college, and to develop such sites, including, but not limited to, the construction,
75 renovation, operation and maintenance of buildings thereon;
- 76 (e) to sue or be sued, provided, however, a director or officer of the corporation shall not be liable
77 for the performance of his duties if he acts in compliance with section 6C of chapter 180 of the
78 General Laws;
- 79 (f) to sell, convey, mortgage, lease, transfer, exchange or otherwise dispose of any such property,
80 both real and personal, as the objects and purposes of the corporation may require;
- 81 (g) to borrow money, and from time to time, to make, accept, endorse, execute, and issue
82 promissory notes, bills of exchange, and other obligations of the corporation for monies
83 borrowed or in payment for property acquired or for any of the other purposes of the
84 corporation, and to secure the payment of any such obligation by mortgage, pledge, deed,
85 agreement, or other instrument of trust, or other lien upon, assignment of, or agreement in
86 regard to all or any part of the property rights or privileges of the corporation, whether now
87 owned or hereafter to be acquired;
- 88 (h) to receive stocks, bonds, donations, gifts and to otherwise raise money for the corporation's
89 purposes;
- 90 (i) to elect, appoint and employ officers, agents and employees; to fix their compensation and
91 define their duties and obligations and to indemnify corporate personnel;
- 92 (j) to enter into agreements for other transactions with any person, including, without limitation,
93 any governmental instrumentalities or agencies in connection with any of its powers or duties

94 and any governmental agency is hereby authorized to enter into such agreements or
95 transactions with the corporation; and

96 (k) to do all acts and things necessary or convenient to the exercise of any power or the discharge of
97 any duty provided for by this section.

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99 SECTION 5. The corporation is hereby deemed to be an “institution for higher education” solely for the
100 purposes such term is used in chapter 614 of the acts of 1968. Any acquisition of property by purchase,
101 lease, or other method by the corporation shall be deemed a “project” as such term is used in chapter
102 614 of the acts of 1968. The corporation shall be fully eligible to receive any and all assistance from the
103 Massachusetts Health and Education Facilities Authority created by chapter 614 of the acts of 1968 in
104 the same manner as any institution for higher education.

105 SECTION 6. (a) The corporation shall assess the space needs of the college on a regular basis and may
106 acquire sites for use by the college. The corporation may lease or rent land or space in any facility under
107 the control of the corporation to any entities other than the college only after making a determination
108 that the college does not have a foreseeable need for such space or land for the term of the lease or
109 rental agreement.

110 (b) In no event shall the corporation sell, convey, transfer, exchange or otherwise dispose of any real
111 property without notifying in writing and consulting with the board of trustees and the board of higher
112 education, and after such consultation making a determination that such sale, conveyance, transfer or
113 exchange is in the best interests of the college. Any such sale, conveyance, transfer or exchange shall
114 require a vote of two-thirds of the members of the board of directors.

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116 SECTION 7. The college or any state agency or entity acting on the college’s behalf, may enter into an
117 agreement to rent, lease or otherwise utilize any facility owned by, or under the control of the
118 corporation. The corporation shall be paid rent and costs for such facilities at a rate agreed to by the
119 corporation and college or state agency or entity entering into an agreement on the college’s behalf,
120 provided that such amount may not exceed the fair market value for the use of such facilities at the time

121 the agreement is made. Subject to this limitation, the college's determination to rent, lease or
122 otherwise utilize any facility owned or under the control of the corporation and any agreement related
123 thereto shall not be subject to chapter 7 of the General Laws.

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125 SECTION 8. (a) The corporation shall not have the authority to engage in any activities which are not in
126 furtherance of its corporate purposes or to support or benefit any organization other than the college,
127 and all of the powers granted under this act to the corporation shall be exercised in a manner consistent
128 therewith.

129 (b) Notwithstanding any other provision herein contained, neither the directors and officers of the
130 corporation nor the corporation shall participate in any "prohibited transaction" within the meaning of
131 Section 503 of the Code, nor shall the corporation be operated at any time for the primary purpose of
132 carrying on a trade or business for profit.

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134 SECTION 9. Subject to the other provisions of this act, the corporation shall use or distribute all property
135 from time to time held by the corporation solely in the furtherance of its corporate purposes in such
136 manner as the board of directors shall determine. No part of the assets or net earnings, if any, of the
137 corporation shall inure to the benefit of, or be distributable to, its directors, its officers or any private
138 individual, except that the corporation shall be authorized and empowered to pay reasonable
139 compensation for services rendered and to make payments and distributions in furtherance of its
140 corporate purposes. The corporation shall not directly or indirectly participate in or intervene in,
141 including the publishing or distributing of statements, any political campaign on behalf of or in
142 opposition to any candidate for public office. No substantial part of the activities of the corporation
143 shall be carrying on of propaganda, or otherwise attempting to influence legislation, except to the
144 extent the corporation makes expenditures for purposes of influencing legislation in conformity with the
145 requirements of Section 501(h) of the Code. If the corporation is deemed to be a private foundation as
146 defined in Section 509 of the Code, the provisions of chapter 68 A of the General Laws shall apply to it.

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148 SECTION 10. (a) The operation and maintenance of projects by the corporation shall constitute the
149 performance of an essential governmental function, and the corporation shall not be required to pay
150 any taxes or special, betterment or other assessments within the commonwealth, including, without
151 limitation, taxes on real or personal property and any ad valorem taxes, upon any property owned,
152 constructed, acquired, leased or used by it under the provisions of this section. The corporation shall
153 not be subject to any taxes based upon or measured by income which may be enacted by the
154 commonwealth. Obligations issued by the corporation under this act, and any income derived
155 therefrom, including any sale, exchange or transfer of such obligation, shall at all times be free from
156 taxation within the commonwealth.

157 (b) Land, buildings and tangible personal property of the corporation if leased to the extent
158 permitted under this act for any activity or transaction entered into by the lessee for financial profit or
159 gain, shall be taxed or assessed by the city or town in which such land, buildings and tangible personal
160 property may be situated to the lessees thereof respectively, in the same manner as such land, buildings
161 and tangible personal property would be taxed or assessed to such lessees if they were owners thereof,
162 except as follows:

163 (1) the payment of the tax or assessment shall not be enforced by any lien upon or sale of such land
164 or buildings, but for the purpose of enforcing the payment of such taxes or assessments by such lessees
165 to the city or town in which such land or buildings are situated, a sale of the leasehold interest in therein
166 may be made by the collection of the city or town in the manner provided by law for selling real estate
167 for the nonpayment of real estate taxes;

168 (2) such land, buildings and tangible personal property leased to any political subdivision of the
169 commonwealth or to any public charity described in section 8 of chapter 12 of the General Laws for its
170 charitable purposes shall not be taxed or assessed to any such lessees;

171 (3) that in lieu of taxes, and any betterment or special assessments, the city of Lynn may determine a
172 sum to be paid to it annually in any year or period or years, such sum to be in any year equal to or less
173 than the amount that would be levied at the then current tax rate upon the then current assessed value
174 of such real estate, including buildings and other structures, the valuation for each year being reduced
175 by all abatements thereon. In no event however, shall any amount be due prior to the first year in
176 which the corporation has leased some portion of the real property to a third party and has received

177 rental payments for fees in return therefore and any amount so due shall be prorated based upon the
178 percentage of the property for which rental payments or fees have been received;

179 (4) if any such lessee is subject to the excise levied under the provisions of sections 30 to 42 B,
180 inclusive, of chapter 63 of the General Laws, such tangible personal property shall be treated as though
181 it were owned by such lessee for the purposes of such excise, and it shall be valued at eight times its
182 annual rental rate, unless and to the extent that such property is treated by the lessee as owned by it for
183 federal income tax purposes, in which case its value shall be its adjusted basis, as defined in the
184 applicable provisions of the Code; and

185 (5) all tangible property, real or personal, so leased shall be considered tangible property owned or
186 rented and used in the commonwealth by such lessee for the purposes of section 38 of chapter 63 of
187 the General Laws.

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189 SECTION 11. (a) The corporation shall not exercise any of the following powers, duties, actions,
190 responsibilities or authorities in the absence of review and comment by the inspector general of the
191 commonwealth, which review and comment shall be provided within 2 weeks of submission by the
192 corporation of a plan setting forth the power, duty, action, responsibility or authority proposed to be
193 taken:

194 (1) entering into a contract requiring an annual expenditure in excess of \$100,000 by the
195 corporation; provided, however, that the corporation is authorized to enter into those contracts
196 necessary to acquire sites, without further review by the inspector general, but pursuant to a
197 memorandum of understanding with the secretary of administration and finance with respect to
198 the acquisition, renovation, operation, and potential disposition of sites;

199 (2) borrowing monies such that the outstanding amount of monies borrowed by the corporation
200 exceed \$100,000;

201 (3) entering into a contract requiring the sale of any asset of the corporation purchased with monies
202 appropriated by the commonwealth; and

203 (4) entering into a contract requiring the sale of all or substantially all of the assets of the
204 corporation.

205 (b) The inspector general in carrying out the provisions of this act shall have access to all the
206 corporation's records, reports, audits, reviews, papers, books, documents, recommendations,
207 correspondence, including information relative to the purchase of services or anticipated purchase of
208 services from any contractor by the corporation, and any other data and material that is maintained by
209 or available to the corporation which in any way relates to the programs and operations with respect to
210 which the inspector general has duties and responsibilities under this act, except records to which the
211 provisions of section 18 of chapter 66 of the General Laws apply.

212 The inspector general may request such information, cooperation and assistance from the
213 corporation as may be necessary for carrying out his duties and responsibilities under this act. Upon
214 receipt of such request the person in charge of the corporation's governing body shall furnish to the
215 inspector general or his authorized agent or representative such information, cooperation and
216 assistance, including information relative to the purchase of services or anticipated purchase of services
217 from any contractor by the corporation except records to which the provisions of said section 18 of said
218 chapter 66 apply. He may make such investigation, audits and reports relating to the administration of
219 the programs and operations of the corporation as are in the judgment of the inspector general
220 necessary and may conduct an examination of any documents of the corporation to prevent or detect
221 fraud, waste and abuse in the expenditure of public funds. The inspector general shall have direct and
222 prompt access to the head of the corporation when necessary for any purpose pertaining to the
223 performance of his duties and responsibilities under this act. He may request the production, on a
224 voluntary basis, of testimony or documents from any individual firm or non-governmental entity which
225 relate to his duties and responsibilities under this act.

226 (c) The inspector general may require by summons, the production of all records, reports, audits,
227 reviews, papers, books, documents, recommendations, correspondence and any other data and
228 material relevant to any matter under audit or investigation pursuant to the provisions of this act,
229 except records to which the provisions of said section 18 of said chapter 66 apply. Such summons shall
230 be served in the same manner as a summons for the production of documents in civil cases issued on
231 behalf of the commonwealth, and all provisions of law relative to said summons shall apply to a
232 summons issued pursuant to this act. Any justice or the superior court department in the trial court

233 may, upon application by the inspector general, issue an order to compel the production of records,
234 reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other
235 data and material as aforesaid. Any failure to obey such order may be punished by said court as
236 contempt. Any summons issued pursuant to this act shall not be made public by the inspector general
237 or any officer or employee of his department, nor shall any documents provided pursuant to this act be
238 made public until such time as it is necessary for the inspector general to do so in the performance of his
239 duties under this act. The production of such books and papers pursuant to summons shall be governed
240 by the same provisions with reference to secrecy which govern proceedings of a grand jury. Disclosure
241 of such production, attendance and testimony may be made to such members of the staff of the
242 inspector general as is deemed necessary by the inspector general to assist him in the performance of
243 his duties and responsibilities under this act and such members of the staff may be present at the
244 production of records.

245 (d) The corporation shall submit annually an audited financial statement to the house and senate
246 committees on ways and means, and the joint committee on higher education.

247 SECTION 12. Upon dissolution of the corporation after payment of all of the liabilities of the corporation
248 or due provision therefore, all of the assets of the corporation shall be distributed to the board of higher
249 education, to be held in trust for the benefit and purposes of the college, and shall not inure to the
250 benefit of or be distributed to any private individual.

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