

HOUSE No. 1163

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
Bruce E. Tarr	First Essex and Middlesex

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

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

36 The corporation shall be governed by a board of directors consisting of the following 15 members: the
37 chairman of the board of trustees of the college, the president of the college, the mayor of the city of
38 Lynn, the president of the Lynn City Council, the director of the Lynn Economic Development Industrial
39 Corporation, or successor thereto, 3 members appointed by the governor, 1 member appointed by the
40 Lynn Chamber of Commerce, or successor thereto, and 6 members appointed by the president of the
41 college. Of the 3 members appointed by the governor at least 1 shall be a person experienced in the
42 financial aspects of real estate development and management, and 1 shall be a person experienced in
43 planning. Of the 6 members appointed by the president of the college, at least 2 shall be persons
44 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 for
48 2 years, and 3 shall be appointed for 3 years. The individual initially appointed by the Lynn Chamber of
49 Commerce shall be appointed for 2 years. Vacancies arising from other than the expiration of the term
50 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 duties.

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

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

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

67 (b) to have a corporate seal which it may alter at its pleasure;

68 (c) to adopt by-laws for the regulation of its affairs;

69 (d) to accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange,
70 lease, transfer, judicial order or decree or otherwise, for any of its objects and purposes, any
71 property both real and personal reasonably related to the acquisition and development of sites for
72 use by the college, and to develop such sites, including, but not limited to, the construction,
73 renovation, operation and maintenance of buildings thereon;

74 (e) to sue or be sued, provided, however, a director or officer of the corporation shall not be liable for
75 the performance of his duties if he acts in compliance with section 6C of chapter 180 of the
76 General Laws;

77 (f) to sell, convey, mortgage, lease, transfer, exchange or otherwise dispose of any such property,
78 both real and personal, as the objects and purposes of the corporation may require;

79 (g) to borrow money, and from time to time, to make, accept, endorse, execute, and issue promissory
80 notes, bills of exchange, and other obligations of the corporation for monies borrowed or in
81 payment for property acquired or for any of the other purposes of the corporation, and to secure
82 the payment of any such obligation by mortgage, pledge, deed, agreement, or other instrument of
83 trust, or other lien upon, assignment of, or agreement in regard to all or any part of the property
84 rights or privileges of the corporation, whether now owned or hereafter to be acquired;

85 (h) to receive stocks, bonds, donations, gifts and to otherwise raise money for the corporation's
86 purposes;

87 (i) to elect, appoint and employ officers, agents and employees; to fix their compensation and define
88 their duties and obligations and to indemnify corporate personnel;

89 (j) to enter into agreements for other transactions with any person, including, without limitation, any
90 governmental instrumentalities or agencies in connection with any of its powers or duties and any
91 governmental agency is hereby authorized to enter into such agreements or transactions with the
92 corporation; and

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

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

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

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

111 SECTION 7. The college or any state agency or entity acting on the college's behalf, may enter into an
112 agreement to rent, lease or otherwise utilize any facility owned by, or under the control of the
113 corporation. The corporation shall be paid rent and costs for such facilities at a rate agreed to by the
114 corporation and college or state agency or entity entering into an agreement on the college's behalf,
115 provided that such amount may not exceed the fair market value for the use of such facilities at the time
116 the agreement is made. Subject to this limitation, the college's determination to rent, lease or otherwise
117 utilize any facility owned or under the control of the corporation and any agreement related thereto shall
118 not be subject to chapter 7 of the General Laws.

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

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

127 SECTION 9. Subject to the other provisions of this act, the corporation shall use or distribute all property
128 from time to time held by the corporation solely in the furtherance of its corporate purposes in such
129 manner as the board of directors shall determine. No part of the assets or net earnings, if any, of the
130 corporation shall inure to the benefit of, or be distributable to, its directors, its officers or any private

131 individual, except that the corporation shall be authorized and empowered to pay reasonable
132 compensation for services rendered and to make payments and distributions in furtherance of its corporate
133 purposes. The corporation shall not directly or indirectly participate in or intervene in, including the
134 publishing or distributing of statements, any political campaign on behalf of or in opposition to any
135 candidate for public office. No substantial part of the activities of the corporation shall be carrying on of
136 propaganda, or otherwise attempting to influence legislation, except to the extent the corporation makes
137 expenditures for purposes of influencing legislation in conformity with the requirements of Section
138 501(h) of the Code. If the corporation is deemed to be a private foundation as defined in Section 509 of
139 the Code, the provisions of chapter 68 A of the General Laws shall apply to it.

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

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

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

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

162 (3) that in lieu of taxes, and any betterment or special assessments, the city of Lynn may determine a
163 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
164 than the amount that would be levied at the then current tax rate upon the then current assessed value of
165 such real estate, including buildings and other structures, the valuation for each year being reduced by all
166 abatements thereon. In no event however, shall any amount be due prior to the first year in which the
167 corporation has leased some portion of the real property to a third party and has received rental payments
168 for fees in return therefore and any amount so due shall be prorated based upon the percentage of the
169 property for which rental payments or fees have been received;

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

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

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

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

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

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

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

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

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

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

222 by the inspector general, issue an order to compel the production of records, reports, audits, reviews,
223 papers, books, documents, recommendations, correspondence and any other data and material as
224 aforesaid. Any failure to obey such order may be punished by said court as contempt. Any summons
225 issued pursuant to this act shall not be made public by the inspector general or any officer or employee of
226 his department, nor shall any documents provided pursuant to this act be made public until such time as it
227 is necessary for the inspector general to do so in the performance of his duties under this act. The
228 production of such books and papers pursuant to summons shall be governed by the same provisions with
229 reference to secrecy which govern proceedings of a grand jury. Disclosure of such production, attendance
230 and testimony may be made to such members of the staff of the inspector general as is deemed necessary
231 by the inspector general to assist him in the performance of his duties and responsibilities under this act
232 and such members of the staff may be present at the production of records.

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

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