HOUSE DOCKET, NO. 2079 FILED ON: 1/20/2011

HOUSE . . . . . No. 3325

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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Robert F. Fennell	*10th Essex*	*1/20/2011*

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HOUSE . . . . . No. 3325

By Mr. Fennell of Lynn, a petition (accompanied by bill, House, No. 3225) of Robert F. Fennell for legislation to establish the North Shore Community College Assistance Corporation. Higher Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1163* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. It is hereby found and declared that the North Shore Community College is a critical element of the commonwealth's higher education system and fulfilling the mission of North Shore Community College to provide educational resources to the citizens of the commonwealth is essential to providing students with skills and opportunities necessary to a full and productive life. It is further declared that providing physical and financial resources necessary to meet the needs of the North Shore Community College now and in the future is critical to the ability of North Shore Community College to fulfill its mission including providing the workforce with skills necessary to allow for the maintenance and expansion of the business, industrial, technological and manufacturing sectors of the commonwealth's economy. It is further found and declared that creation of a nonprofit assistance corporation with certain statutory authority will provide a vehicle with the necessary flexibility to prudently pursue

opportunities for the benefit of North Shore Community College, its present and future students and the commonwealth. It is therefore expressly declared that the provisions of this act constitute a needed program in the public interest in furtherance of an essential governmental function and serve a necessary and valid public purpose for which public money may be expended or invested.

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

"Board of directors", the board of directors of the North Shore Community Assistance Corporation created by this act;

"Board of higher education", the board of higher education established pursuant to section 4 of chapter 15A of the General Laws;

"Board of trustees", the board of trustees of the North Shore Community College;

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

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

"Corporation", the North Shore Community College Assistance Corporation created by this act;

"Educational institution", an educational organization within the meaning of section 170(b) (I)(A)(ii) of the Code.

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

The corporation shall be governed by a board of directors consisting of the following 15 members: the chairman of the board of trustees of the college, the president of the college, the mayor of the city of Lynn, the president of the Lynn City Council, the director of the Lynn Economic Development Industrial Corporation, or successor thereto, 3 members appointed by the governor, 1 member appointed by the Lynn Chamber of Commerce, or successor thereto, and 6 members appointed by the president of the college. Of the 3 members appointed by the governor at least 1 shall be a person experienced in the financial aspects of real estate development and management, and 1 shall be a person experienced in planning. Of the 6 members appointed by the president of the college, at least 2 shall be persons experienced in higher education administration.

(b) The appointed members of the board of directors shall serve 3-year terms. Of those initially appointed by the governor, 1 shall be appointed for 1 year, 1 for 2 years, and 1 for 3 years. Of those initially appointed by the president of the college, 2 shall be appointed for 1 year, 2 shall be appointed for 2 years, and 3 shall be appointed for 3 years. The individual

initially appointed by the Lynn Chamber of Commerce shall be appointed for 2 years. Vacancies arising from other than the expiration of the term shall be filled by the party responsible for the initial appointment. Directors shall serve without compensation but may be reimbursed for expenses necessarily incurred in the performance of their duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In no event shall the corporation sell, convey, transfer, exchange or otherwise dispose of any real property without notifying in writing and consulting with the board of trustees and the board of higher education, and after such consultation making a determination that such sale, conveyance, transfer or exchange is in the best interests of the college. Any such

sale, conveyance, transfer or exchange shall require a vote of two-thirds of the members of the board of directors.

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

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

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

SECTION 9. Subject to the other provisions of this act, the corporation shall use or distribute all property from time to time held by the corporation solely in the furtherance of its corporate purposes in such manner as the board of directors shall determine. No part of the

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

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

(b) Land, buildings and tangible personal property of the corporation if leased to the extent permitted under this act for any activity or transaction entered into by the lessee for financial profit or gain, shall be taxed or assessed by the city of town in which such land,

buildings and tangible personal property may be situated to the lessees thereof respectively, in the same manner as such land, buildings and tangible personal property would be taxed or assessed to such lessees if they were owners thereof, except as follows:

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

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

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

(4) if any such lessee is subject to the excise levied under the provisions of sections 30 to 42 B, inclusive, of chapter 63 of the General Laws, such tangible personal property shall be

treated as though it were owned by such lessee for the purposes of such excise, and it shall be valued at eight times its annual rental rate, unless and to the extent that such property is treated by the lessee as owned by it for federal income tax purposes, in which case its value shall be its adjusted basis, as defined in the applicable provisions of the Code; and

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

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

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

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

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

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

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

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

testimony or documents from any individual firm or non-governmental entity which relate to his duties and responsibilities under this act.

(c) The inspector general may require by summons, the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under audit or investigation pursuant to the provisions of this act, except records to which the provisions of said section 18 of said chapter 66 apply. Such summons shall be served in the same manner as a summons for the production of documents in civil cases issued on behalf of the commonwealth, and all provisions of law relative to said summons shall apply to a summons issued pursuant to this act. Any justice or the superior court department in the trial court may, upon application by the inspector general, issue an order to compel the production of records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material as aforesaid. Any failure to obey such order may be punished by said court as contempt. Any summons issued pursuant to this act shall not be made public by the inspector general or any officer or employee of his department, nor shall any documents provided pursuant to this act be made public until such time as it is necessary for the inspector general to do so in the performance of his duties under this act. The production of such books and papers pursuant to summons shall be governed by the same provisions with reference to secrecy which govern proceedings of a grand jury. Disclosure of such production, attendance and testimony may be made to such members of the staff of the inspector general as is deemed necessary by the inspector general to assist him in the performance of his duties and responsibilities under this act and such members of the staff may be present at the production of records.

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

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

THE FOLLOWING TEXT WHICH CONTAINS THE MEMORANDUM OF THE SECRETARY IS NOT PART OF THE TEXT OF THE BILL:

MEMORANDUM OF THE MASSACHUSETTS SECRETARY OF THE COMMONWEALTH

IN RESPECT TO THE PETITION OF

ROBERT F. FENNELL

FOR LEGISLATION TO ESTABLISH THE

NORTH SHORE COMMUNITY COLLEGE ASSISTANCE CORPORATION

March 29, 2011

To the Honorable Senate and

House of Representatives:

On March 29, 2011 the Clerk of the House transmitted the above-referenced petition and bill to me with a request for a memorandum pursuant to the provisions of General Laws Chapter 3 § 7.

The bill before you seeks to establish the North Shore Community College Assistance Corporation, a non-profit corporation and a body corporate and politic. The purpose of the corporation is to promote the orderly growth and development of the North Shore Community College and to assist it in securing physical and financial resources necessary for the acquisition and development of sites for use by the college.

The corporation is not to be considered a public agency or a state agency, though in certain instances, it is subject to oversight by the Board of Higher Education and the Inspector General. It is not subject to taxation within the Commonwealth. Upon dissolution of the corporation, all of the assets of the corporation remaining after payment of all liabilities are to be distributed to the Board of Higher Education.

Special legislation is necessary to create this corporation. This office has no opinion on the merits of the bill. No fee is required to be paid the Commonwealth by a corporation of this type.

Respectfully submitted,

William Francis Galvin

Secretary of the Commonwealth

WFG/lf