

**HOUSE . . . . . No. 03325**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Robert F. Fennell***

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*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

□.

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PETITION OF:

NAME:

*Robert F. Fennell*

DISTRICT/ADDRESS:

*10th Essex*

# HOUSE . . . . . No. 03325

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

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**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:*

1 SECTION 1. It is hereby found and declared that the North Shore Community College is a  
2 critical element of the commonwealth's higher education system and fulfilling the mission of  
3 North Shore Community College to provide educational resources to the citizens of the  
4 commonwealth is essential to providing students with skills and opportunities necessary to a full  
5 and productive life. It is further declared that providing physical and financial resources  
6 necessary to meet the needs of the North Shore Community College now and in the future is  
7 critical to the ability of North Shore Community College to fulfill its mission including providing  
8 the workforce with skills necessary to allow for the maintenance and expansion of the business,

9 industrial, technological and manufacturing sectors of the commonwealth's economy. It is  
10 further found and declared that creation of a nonprofit assistance corporation with certain  
11 statutory authority will provide a vehicle with the necessary flexibility to prudently pursue  
12 opportunities for the benefit of North Shore Community College, its present and future students  
13 and the commonwealth. It is therefore expressly declared that the provisions of this act  
14 constitute a needed program in the public interest in furtherance of an essential governmental  
15 function and serve a necessary and valid public purpose for which public money may be  
16 expended or invested.

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

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

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

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

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

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

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

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

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

39 The corporation shall be governed by a board of directors consisting of the following 15  
40 members: the chairman of the board of trustees of the college, the president of the college, the  
41 mayor of the city of Lynn, the president of the Lynn City Council, the director of the Lynn  
42 Economic Development Industrial Corporation, or successor thereto, 3 members appointed by  
43 the governor, 1 member appointed by the Lynn Chamber of Commerce, or successor thereto, and  
44 6 members appointed by the president of the college. Of the 3 members appointed by the  
45 governor at least 1 shall be a person experienced in the financial aspects of real estate  
46 development and management, and 1 shall be a person experienced in planning. Of the 6  
47 members appointed by the president of the college, at least 2 shall be persons experienced in  
48 higher education administration.

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

52 year, 2 shall be appointed for 2 years, and 3 shall be appointed for 3 years. The individual  
53 initially appointed by the Lynn Chamber of Commerce shall be appointed for 2 years. Vacancies  
54 arising from other than the expiration of the term shall be filled by the party responsible for the  
55 initial appointment. Directors shall serve without compensation but may be reimbursed for  
56 expenses necessarily incurred in the performance of their duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

258 MEMORANDUM OF THE MASSACHUSETTS SECRETARY OF THE COMMONWEALTH

259 IN RESPECT TO THE PETITION OF

260 ROBERT F. FENNEL

261 FOR LEGISLATION TO ESTABLISH THE

262 NORTH SHORE COMMUNITY COLLEGE ASSISTANCE CORPORATION

263 March 29, 2011

264 To the Honorable Senate and

265 House of Representatives:

266 On March 29, 2011 the Clerk of the House transmitted the above-referenced petition and  
267 bill to me with a request for a memorandum pursuant to the provisions of General Laws Chapter  
268 3 § 7.

