

SENATE No. 00560

The Commonwealth of Massachusetts

PRESENTED BY:

Frederick E. Berry

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:

Frederick E. Berry

DISTRICT/ADDRESS:

Second Essex

SENATE No. 00560

By Mr. Berry, petition (accompanied by bill, Senate, No. 560) of Berry for legislation relative to the North Shore Community College Assistance Coproration [Joint Committee on Higher Education].

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:

1 SECTION 1. It is hereby found and declared that the North Shore Community College is
2 a 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 necessar y 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 expan sion 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 requi red,
18 have the following meanings:

19 “Board of directors”, the board of directors of the North Shore Community Assistance
20 Corporation created by this act; “Board of higher education”, the board of higher education
21 established pursuant to section 4 of chapter 15A of the General Laws;

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

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

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

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

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

35 SECTION 3. (a) There shall be a body politic and corporate to be known as the North
36 Shore Community College Assistance Corporation. The corporation is not and shall not be
37 deemed a public agency or state agency within the meaning of such terms in chapter 7 of the
38 General Laws 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.
54 Vacancies arising from other than the expiration of the term shall be filled by the party

55 responsible for the initial appointment. Directors shall serve without compensation but may be
56 reimbursed for 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
58 chairman, a vice chairman and a secretary. The secretary shall be the custodian of all books,
59 documents and papers of the corporation and its minute book and seal. Unless otherwise
60 provided in by-laws adopted by the board of directors, the number of directors required to
61 constitute a quorum shall be a majority of the directors then in office. If a quorum is present, a
62 majority of the directors may take any action on behalf of the board of directors except to the
63 extent that a larger number is required by this act, or other applicable laws or by-laws adopted by
64 the board of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

162 (b) Land, buildings and tangible personal property of the corporation if leased to the
163 extent permitted under this act for any activity or transaction entered into by the lessee for

164 financial profit or gain, shall be taxed or assessed by the city of town in which such land,
165 buildings and tangible personal property may be situated to the lessees thereof respectively, in
166 the same manner as such land, buildings and tangible personal property would be taxed or
167 assessed to such lessees if they were owners thereof, except as follows:

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

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

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

185 (4) if any such lessee is subject to the excise levied under the provisions of sections 30 to
186 42 B, inclusive, of chapter 63 of the General Laws, such tangible personal property shall be
187 treated as though it were owned by such lessee for the purposes of such excise, and it shall be
188 valued at eight times its annual rental rate, unless and to the extent that such property is treated
189 by the lessee as owned by it for federal income tax purposes, in which case its value shall be its
190 adjusted basis, as defined in the applicable provisions of the Code; and

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

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

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

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

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

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

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

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

228 the expenditure of public funds. The inspector general shall have direct and prompt access to
229 the head of the corporation when necessary for any purpose pertaining to the performance of his
230 duties and responsibilities under this act. He may request the production, on a voluntary basis,
231 of testimony or documents from any individual firm or non-governmental entity which relate to
232 his duties and responsibilities under this act.

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

251 assist him in the performance of his duties and responsibilities under this act and such members
252 of the staff may be present at the production of records.

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

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