

SENATE No. 279

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 to encourage the development and operation of Public-Private Partnerships for Social Infrastructure.

PETITION OF:

NAME:

Bruce E. Tarr

DISTRICT/ADDRESS:

First Essex and Middlesex

SENATE No. 279

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 279) of Bruce E. Tarr for legislation to encourage the development and operation of Public-Private Partnerships for Social Infrastructure. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to encourage the development and operation of Public-Private Partnerships for Social Infrastructure.

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. Definitions

2 “Affected Jurisdiction” means any county, municipality, city, town, or special district in
3 which all or a portion of a qualifying project is located.

4 “Develop” means to plan, design, develop, finance, lease, acquire, install, construct, or
5 expand a qualifying project.

6 “Comprehensive Agreement” means an agreement between one or more private partners
7 and one or more responsible public entities contractually providing for the responsibilities of all
8 parties in developing or operating a qualifying project in a public-private partnership.

9 “Concession” means any lease, license, franchise, easement, or other binding agreement
10 transferring rights for the use or control, in whole or in part, of a qualifying project by a

11 responsible public entity for a definite term during which the private partner will provide
12 services in return for the right to receive all or a portion of the revenues of the qualifying project.

13 “Fees” means rates, fees, or other charges imposed by the private partner or responsible
14 public entity for use of all or a portion of a qualifying project pursuant to a comprehensive
15 agreement.

16 “Material Default” means any default by private partners in the performance of its duties
17 as outlined in a comprehensive agreement that jeopardizes adequate service to the public from a
18 qualifying project and is not remedied following notice and a reasonable cure period.

19 “Office” means the office of public facility investment created pursuant to this act.

20 “Operate” means to finance, maintain, improve, equip, modify, repair, or operate a
21 qualifying project.

22 “Private Partner” means any natural person, corporation, general partnership, limited
23 liability company, limited partnership, joint venture, business trust, public benefit corporation,
24 nonprofit entity, other private business entity or combination thereof.

25 “Proposal” means a plan for a qualifying project submitted by a private partner with
26 detail beyond a conceptual level for which all terms determined to be necessary by the
27 responsible public entity, including costs, payment schedules, financing, deliverables, and
28 project schedule, are defined.

29 “Public-Private Partnership” means an arrangement under which a responsible public
30 entity and a private partner execute a comprehensive agreement pursuant to which the private
31 partner obtains a concession to develop a qualifying project.

32 “Qualifying Project” means any public facility or infrastructure or improvement to any
33 public facility or social infrastructure that is used or will be used by the public at large or in
34 support of a public purpose or activity including, but not limited to: water and sewer facilities;
35 water or sewer facilities, wastewater facilities; courthouses; civic or education facilities; public
36 transit systems and facilities; ferry and port facilities; housing; airports and intermodal systems;
37 cultural or recreational facilities; medical and health care facilities; utility facilities; and
38 telecommunications facilities.

39 “Responsible Public Entity” means the state or any agency or authority thereof; a county,
40 municipality, school board, or any other political subdivision of the state or combination of
41 entities; a public body corporate and politic; or a regional entity that serves a public purpose and
42 is authorized to develop or operate a qualifying project.

43 “Revenues” means all revenues including income; earnings; dedicated tax revenues; fees;
44 lease payments; federal, state, and local appropriations or the appropriations of other funds
45 available to any political subdivision, authority, or instrumentality thereof; bond proceeds; equity
46 investments, service payments, or any combinations thereof arising out of or in connection with
47 supporting the development or operation of a qualifying project, including money received as
48 grants or otherwise from the United States of America, from any public entity, or from any
49 agency or instrumentality of the foregoing in aid of such a qualifying project.

50 Section 2. Office of Public Facility Investment

51 A. There shall be established an Office of Public Facility Investment which shall be a
52 part of the executive office of the governor but shall not be subject to the supervision or control
53 of said executive office, or of any board, bureau, department or other entity of the

54 commonwealth, except as specifically provided in this act. The office shall be headed by an
55 executive director, appointed by the governor for a fixed term of five years, who shall have
56 demonstrated knowledge, training, or experience in one or more of the following areas: public
57 facility development or operation; capital markets and finance, including municipal finance; law;
58 public-sector planning; or procurement.

59 B. The office shall:

60 1. Assist each affected jurisdiction and responsible public entity with identifying
61 projects, including opportunities for project aggregation and the combination of one or more
62 qualifying projects, for which a public-private partnership may be appropriate;

63 2. Provide technical assistance and expertise to each affected jurisdiction and
64 responsible public entity on using public-private partnerships to develop or operate qualifying
65 projects, including analyzing their benefits, revenues, and costs and the innovative financing
66 options available to support them;

67 3. Supply template, form, and sample contracts;

68 4. Track proposed, ongoing, and completed private-public partnerships elsewhere in
69 the United States of America and the world for the purpose of staying current with the best
70 practice associated with public-private partnerships and providing advice with respect to such
71 best practice as a public-private partnership center of excellence;

72 5. Identify methods of encouraging competition for the development or operation of
73 qualifying projects;

74 6. Serve as a liaison to the federal government and state and local public officials
75 charged with undertaking qualifying projects and promoting public-private partnerships;

76 7. Conduct public and stakeholder engagement and outreach, including efforts to
77 encourage transparency and information-sharing regarding public-private partnerships;

78 8. Create a process for updating, as necessary, the recommendations made by the
79 task force created pursuant to this act;

80 9. Consult, as necessary, with the task force, the office of the inspector general, the
81 office of the attorney general, the executive office for administration and finance, the
82 Massachusetts school building authority, and such other agencies of the commonwealth and
83 other public entities as may be appropriate in carrying out the requirements and authority of this
84 act;

85 10. Promote best practices, including standardized methodologies and processes and
86 adopt and issue policies with respect to public-private partnerships consistent with this act; and

87 11. Attract private investment in public facilities, infrastructure, and qualifying
88 projects in the commonwealth.

89 C. The executive director shall file with the Joint Committee on State Administration
90 and Regulatory Oversight and shall post online a report annually not later than August 1 of each
91 calendar year that:

92 1. Lists those responsible public entities that—

93 a. are expected to be soliciting proposals for public-private partnerships within the
94 next fiscal year;

95 b. have solicited proposals for public-private partnerships within the fiscal year just
96 ended,

97 c. have executed a comprehensive agreement and are undertaking a public-private
98 partnership;

99 d. have completed a public-private partnership; or

100 d. considered, but withdrew from consideration a public-private partnership during
101 the fiscal year just ended; and

102 2. Identifies trends and other best practices in public-private partnerships developed,
103 initiated or otherwise undertaken during the fiscal year just ended and recommendations of
104 opportunities for public-private partnerships in the commonwealth; and

105 3. Summarizes actions taken by the office to fulfill its duties pursuant to this act
106 during the fiscal year just ended.

107 D. The executive director, within three months of appointment by the governor, shall
108 convene a public-private partnership task force, which is directed to:

109 1. Make recommendations within one year of its first meeting, and following a
110 period of public review, to advise responsible public entities on a uniform process for the review,
111 solicitation, evaluation, award, and delivery of public-private partnerships and the development
112 of qualifying projects including:

113 a. A process for acceptance of solicited and unsolicited proposals by a responsible
114 public entity;

115 b. A specific schedule for review of solicited and unsolicited proposals by
116 responsible public entities that shall include public solicitation of additional proposals prior to
117 entering into a comprehensive agreement;

118 c. Timeframes and requirements for public outreach prior to entering into a
119 comprehensive agreement on a selected proposal, whether solicited or unsolicited. Such
120 timeframes and requirements shall provide for a reasonable period of public review and
121 comment;

122 d. Recommendations as to the process to be undertaken to determine the value
123 provided by proposed qualifying projects estimated to cost in excess of a minimum financial
124 threshold through a value for money analysis;

125 2. Determine a cost threshold for qualifying projects, depending on type of project
126 and type of responsible public entity, to merit standardized screening and an independent audit
127 pursuant to this act;

128 3. Make any recommendations to the general court and the governor on any changes
129 to this act deemed necessary to carry out the purposes set forth herein; and

130 Following public release of the final report required under this subsection, the task force
131 shall continue to meet periodically as determined by the co-chairs to serve as an oversight panel
132 for the actions taken in accordance with the authority set forth in this act, provided that the co-
133 chairs shall be authorized to terminate the task force at any time following the public release of
134 the final report.

135 E. The task force shall be composed of nine members, as follows:

136 1. The secretaries of the executive office for administration and finance and
137 executive office of energy and environmental affairs, or their designees, who shall serve ex-
138 officio as co-chairs of the task force; and

139 2. Seven members appointed by the governor having expertise, knowledge, or
140 experience in infrastructure development or operation, capital markets and finance, public-sector
141 planning, law, or procurement

142 3. Not more than five members of the task force shall be members of the same
143 political party. Members of the task force shall represent geographically diverse regions of the
144 commonwealth.

145 F. A responsible public entity shall follow the final recommendations of the task
146 force with regard to any public-private partnership undertaken in accordance with the authority
147 set forth in this act, except that a responsible public entity may adopt guidelines for public-
148 private partnerships that are inconsistent with the recommendations of the task force so long as
149 such guidelines are not inconsistent with this act.

150 G. The office and the task force shall coordinate their activities and
151 recommendations on the matters authorized and provided for in this act with the public-private
152 partnership infrastructure oversight commission created pursuant to section 73 of chapter 6C.

153 H. The office shall coordinate with responsible public entities on environmental
154 reviews and permitting for all qualifying projects subject to this act. As soon as practicable, and
155 not later than the execution of a comprehensive agreement, the responsible public entity shall
156 identify all commonwealth permits and other approvals necessary for each qualifying project,
157 and in consultation with the office and relevant state offices and departments, shall create a

158 timeline for review and issuance of such permits. The office shall maintain on its website a
159 listing of projects under this section for which commonwealth permits or other approvals are
160 delayed more than 90 days past the deadline specified in the timeline and post an official
161 explanation for the delay which shall come from the office in charge of approving the permit, or
162 link to public websites containing such information.

163 I. For qualifying projects with an estimated cost meeting the threshold determined
164 by the task force pursuant to this section, the office, in coordination with the responsible public
165 entity, shall independently assess whether a public-private partnership is expected to provide a
166 greater value to the public than would be available through a traditional procurement process.

167 Section 3. Government Agreements

168 Each responsible public entity may, either separately or in combination with any other
169 public entities, enter into working agreements, coordination or cooperation agreements, or
170 similar implementation agreements, including the formation of agreements with any federal,
171 state or local agency or other responsible public entity to develop or operate a qualifying project
172 subject to the requirements of this act. Each such agreement shall otherwise be subject to
173 applicable law.

174 Section 4. Project Delivery Methods

175 A. Subject to the requirements of this act, and notwithstanding any general or special
176 law to the contrary, each responsible public entity may solicit proposals to utilize any project
177 delivery method or agreement or combination of methods or agreements to develop or operate a
178 qualifying project, including but not limited to: a design-build agreement; a design-build-
179 maintain agreement; a design-build-finance-operate agreement; a design-build-finance-operate-

180 maintain agreement; a construction manager at risk agreement that includes provisions pertaining
181 to a private partner's obligation to finance, develop and or operate a qualifying project, and a
182 concession providing for the private partner to develop ,design, build, operate, finance, manage,
183 and or lease a qualifying project.

184 B. Each such procurement and agreement shall be subject to compliance with the
185 applicable requirements of federal, state and local law, including the prevailing wage
186 requirements at sections 26 to 27H, inclusive, of chapter 149, but shall not be subject to the
187 competitive bid requirements set forth in sections 38A1/2 to 38O, inclusive, section 39M of
188 chapter 30, or sections 44A to 44M, inclusive, of chapter 149 or the requirements of chapter 30B.

189 C. Prior to solicitation of any proposal pursuant to the authority set forth in this act,
190 each responsible public entity shall establish, post online, and shall file with the Joint Committee
191 on State Administration and Regulatory Oversight and Joint Committee on Transportation and
192 the Office of the Inspector General detailed procedures to be used in carrying out its duties and
193 responsibilities set forth in this act.

194 Section 5. Procurement Process; Solicited and Unsolicited Proposals

195 A. The responsible public entity may request proposals from private partners to
196 develop a qualifying project under one or more of the project delivery methods set forth in this
197 act. The responsible public entity shall not charge a fee to cover the costs of processing,
198 reviewing, and evaluating proposals received in response to such a request. Prior to soliciting
199 any request for proposals for any qualifying project, a responsible public entity shall complete a
200 value for money analysis evaluating and documenting the expected costs, benefits, advantages
201 and disadvantages of each qualifying project. A copy of the value for money analysis shall be

202 posted on the the website of the responsible public entity, and copies shall be provided to the
203 office, the task force, the office of the inspector general, the office of the attorney general, and
204 the secretary for administration and finance.

205 B. Each request for proposals issued by any responsible public entity shall include
206 design requirements and other information pertaining to the qualifying project as the responsible
207 public entity may determine appropriate, the proposed form of comprehensive agreement to be
208 executed between the private partner and the responsible public entity upon award, and shall
209 solicit proposal development documents appropriate for the qualifying project. The proposed
210 form of comprehensive agreement proposed by the responsible public entity shall contain
211 minimum participation requirements for minority and women-owned businesses as then are
212 required by the division of capital asset management and maintenance, and a requirement that
213 the successful private partner shall perform not less than fifty per cent of the work related to the
214 qualifying project. Requests for proposals may, if the responsible public entity determines that
215 the cost of preparing proposals is high, considering the size, estimated price and complexity of
216 the procurement:

217 1. prequalify offerors by issuing a request for qualifications in advance of the
218 request for proposals;

219 2. develop a short list of responsible offerors prior to discussions and evaluations, if
220 the number of proposals that will be short-listed is stated in the request for proposals and prompt
221 public notice is provided to all offerors as to which proposals have been short-listed; or

222 3. pay stipends to unsuccessful offerors; provided, however, that the amount of such
223 stipends and the terms under which such stipends shall be paid shall be included in the request
224 for proposals.

225 C. Responsible public entities shall provide adequate public notice of the request for
226 proposals and shall, when appropriate, provide interested persons, affected jurisdictions, and
227 members of the public with an opportunity for public comment prior to the publication of the
228 final request for proposals. Prior to or simultaneously with the release of each request for
229 proposals, each responsible public entity shall forward a copy of the request for proposals to the
230 office, the task force, the office of the inspector general, the office of the attorney general, and
231 the secretary for administration and finance.

232 D. A private entity may request a review, prior to submission of a solicited proposal,
233 of information that the private partner has identified as confidential or proprietary to determine
234 whether such information is subject to disclosure under section 10 of chapter 66 or clause
235 twenty-sixth of section 7 of chapter 4

236 E. The evaluation criteria established by a responsible public entity for each request
237 for proposal shall state the relative importance of price of the concession and, at a minimum, the
238 following evaluation factors: (1) demonstrated compliance with the design requirements; (2)
239 offeror qualifications; (3) financial capacity; (4) project schedule; (5) elimination of existing
240 public debt with respect to the facility; (6) lowest user charges or price over the term of the
241 comprehensive agreement; and (7) other factors, if any, and shall not include, as an evaluation
242 factor in the award of the concession, the amount, if any, paid by a contractor to the responsible
243 public entity.

244 F. Responses to each request for proposals shall be opened so as to avoid the
245 disclosure of contents to competing offerors during the process of negotiation. A register of
246 proposals shall be prepared by the responsible public entity and shall be open for public
247 inspection after contract award.

248 G. On the condition that the process is disclosed in the request for proposals,
249 discussions may be conducted with prospective private partners which submit proposals
250 determined to be reasonably susceptible of being selected for award of the concession for the
251 purpose of clarification of the proposal or to assure full understanding of, and responsiveness to,
252 the solicitation requirements as detailed in the request for proposals. Prospective private partners
253 shall be accorded fair and equal treatment with respect to any opportunity for discussion and
254 revision of proposals, and such revisions may be permitted after submissions and prior to award
255 for the purpose of obtaining best and final offers. In conducting discussions, there shall be no
256 disclosure of any information derived from proposals submitted by competing prospective
257 private partners.

258 H. Each responsible public entity shall award the concession and shall execute the
259 comprehensive agreement with the private partner whose proposal best conforms to the
260 solicitation and is determined in writing to be the most advantageous to the responsible public
261 entity, taking into consideration the price and the evaluation factors set forth in the request for
262 proposals consistent with the requirements of this act. The contract file shall contain the basis
263 upon which the award was made. Written notice of the award of a concession to the successful
264 private partner shall be promptly provided to all offerors.

265 I. Each responsible public entity may provide debriefings that furnish the basis for
266 the source selection decision and award of the concession.

267 J. In addition to formal request for proposals authorized in accordance with this act,
268 a private partner may request approval by a responsible public entity of an unsolicited proposal
269 using one or more of the project delivery methods authorized in this act consistent with
270 recommendations made by the task force or any alternative guidelines adopted by a responsible
271 public entity. A responsible public entity may charge a reasonable fee to cover its costs to
272 process and review unsolicited proposals. Any such alternative guidelines shall be filed with the
273 office, the task force, the office of the inspector general, the office of the attorney general, and
274 the secretary for administration and finance

275 K. Upon submitting any proposal to a responsible public entity, a private partner
276 shall identify those portions of a proposal that the private partner considers to be a trade secret or
277 confidential commercial, financial, or proprietary information and provide any justification as to
278 why these materials, upon request, should not be disclosed by the responsible public entity. A
279 private partner shall fully comply with any applicable state laws for such materials to be exempt
280 from disclosure. Projects under federal jurisdiction or using federal funds must conform to
281 federal regulations under the Freedom of Information Act.

282 L. Except to the extent it adopts alternative guidelines pursuant to this act, for any
283 selected proposal for a qualifying project with an estimated cost meeting the financial threshold
284 determined by the task force, the responsible public entity shall obtain an independent audit of
285 the proposed private-public partnership, including an assessment of projected revenues, usage
286 and public costs, before the comprehensive agreement is executed. The analysis shall be

287 disclosed to the public prior to execution of a comprehensive agreement, subject to the
288 limitations described in this act.

289 E. The responsible public entity may apply for local, state, or federal credit
290 assistance, or endorse such applications submitted by private partners, for qualifying projects to
291 be developed or operated pursuant to a comprehensive agreement and may engage such
292 consultants and other experts at any point to assist in the evaluation, negotiation, development or
293 operation of qualifying projects as it determines to be in the public interest.

294 Section 5. Finding of Public Interest

295 A. The responsible public entity may enter into a comprehensive agreement for the
296 development or operation of a qualifying project only after the applicable governing body or
297 other duly authorized officer of the responsible public entity makes a finding of public interest
298 which shall, at a minimum, consider the following:

299 1. Benefits to the public;

300 2. Advantages or disadvantages of developing or operating the qualifying project as
301 a public-private partnership versus a traditional procurement, including the anticipated cost over
302 the project life-cycle, adjusted for risk and risk transfers;

303 3. Sources of funding and financing for the qualifying project;

304 4. General reputation, qualifications, industry experience and financial capacity of
305 the private partners;

306 5. The compatibility of the proposal with commonwealth. Regional and local policy
307 and commonwealth, regional and local plans; and

308 6. Other criteria that the responsible public entity deems appropriate.

309 B. The responsible public entity shall publicly disclose all findings of public interest
310 and commonwealth, regional and local compatibility made pursuant to the requirements of this
311 section in a public report, which shall include a detailed discussion of all considerations on
312 which the findings are based. Copies of such report shall be provided to the office, the task
313 force, the office of the inspector general, the office of the attorney general, and the secretary for
314 administration and finance

315 Section 6. Notice to Affected Jurisdictions Regarding Unsolicited Proposals

316 A. Prior to entering into a comprehensive agreement resulting from an unsolicited
317 proposal, the responsible public entity shall notify affected jurisdiction(s) by furnishing a copy of
318 the proposal to each affected jurisdiction.

319 B. Each affected jurisdiction that is not the responsible public entity may, within
320 sixty days after receiving the notice, submit in writing any comments on the project's potential
321 impact or compatibility with local and regional budgets and infrastructure plans to the
322 responsible public entity.

323 C. The responsible public entity shall consider the comments of the affected
324 jurisdictions before entering into a comprehensive agreement with a private partner.

325 Section 7. Public-Private Partnership Agreements

326 A. Interim Agreements. Before or in connection with the negotiation of a
327 comprehensive agreement, the responsible public entity may enter into an interim agreement
328 with the private partner that submitted the selected proposal. An interim agreement shall not

329 obligate the responsible public entity to enter into a comprehensive agreement. The interim
330 agreement is discretionary with the parties and is not required on a qualifying project for which
331 the parties may proceed directly to a comprehensive agreement without the need for an interim
332 agreement. An interim agreement shall only:

333 1. Authorize the private partner to commence activities for which it may be
334 compensated related to the proposed qualifying project, including, but not limited to, project
335 planning, advance right-of-way acquisition, design and engineering, environmental analysis and
336 mitigation and ascertaining the availability of financing for the proposed facility; and

337 2. Establish the process and timing of the negotiation of the comprehensive
338 agreement.

339 B. A responsible public entity may enter into an interim agreement with multiple
340 private partners if the responsible public entity determines in writing that is it in the public
341 interest to do so.

342 C. Comprehensive Agreements. Prior to developing or operating a qualifying
343 project, the private partner that submitted the selected proposal shall enter into a comprehensive
344 agreement with the responsible public entity. Comprehensive agreements, in addition to other
345 contract terms stipulating the obligations of the parties, must include:

346 1. Descriptions of which party will assume responsibility for specific project
347 elements and when;

348 2. How the parties will share management of the risks of the project;

349 3. How the parties will share costs of development or operation of the project;

- 350 4. How the parties will allocate financial responsibility for cost overruns provided,
351 however, that in no event shall the responsible public entity be responsible for cost overruns
352 except to the extent the responsible public entity requests a change to the qualifying project;
- 353 5. Any safeguards to mitigate additional costs or service disruptions to the public in
354 the event of material default or cancellation of the agreement;
- 355 6. Performance standards and any damages for nonperformance and details on what
356 constitutes a material default by each party to the comprehensive agreement;
- 357 7. Any performance incentives;
- 358 8. Accounting and auditing standards to be used to evaluate work on the project;
- 359 9. The responsibility for reconstruction or renovations required for a qualifying
360 project to meet all applicable government standards upon termination of the comprehensive
361 agreement; and
- 362 10. Such other terms and conditions agreed to mutually by the responsible public
363 entity and the private partner.

364 D. The comprehensive agreement shall provide for such fees as may be established
365 by agreement of the parties.

366 E. The comprehensive agreement shall contain a provision by which a private
367 partner expressly agrees that it is prohibited from seeking injunctive or other equitable relief to
368 delay, prevent or otherwise hinder the responsible public entity or any jurisdiction from
369 developing or operating any project that was planned and that may impact the revenue that the
370 private partner may derive from the qualifying project under a public-private partnership, except

371 that the comprehensive agreement may provide for reasonable compensation to the private
372 partner for the adverse effect on revenues resulting from an unplanned revenue that impacts the
373 qualifying project.

374 Section 9. Eligible Funding and Financing; Property Acquisition

375 A. Any financing of a qualifying project may be in such amounts and upon such
376 terms and conditions as may be determined by the parties to the interim or comprehensive
377 agreement. The private partner and responsible public entity may utilize any and all revenues
378 that may be available to them for the purposes of this act and may, to the fullest extent permitted
379 by applicable law:

- 380 1. Issue debt, equity, or other securities or obligations;
- 381 2. Enter into leases, concessions, and grant and loan agreements;
- 382 3. Access any designated state funds;
- 383 4. Borrow or accept grants from any state infrastructure bank;
- 384 5. Apply for, obtain, issue and use private activity bonds or other financing or
385 funding available under any federal law or program; and
- 386 6. Secure any other financing with a pledge of, security interest in, or lien on any or
387 all of its property, including all of its property interests in the qualifying project.

388 B. Any bond or note issued under this act section shall constitute the corporate
389 obligation of the responsible public entity, shall not constitute a debt of the commonwealth

390 within the meaning or application of the constitution of the commonwealth; and shall be payable
391 solely as to both principal and interest from:

392 1. The revenues from a lease to the responsible public entity, if any;

393 2. Proceeds of bonds or notes, if any;

394 3. Investment earnings on the proceeds of bonds or notes; or

395 4. Other funds available to the responsible public entity for such purpose.

396 C. The responsible public entity may take any action to obtain federal, state, and/or
397 local assistance for a qualifying project that serves the purpose of this act and may enter into
398 contracts required to receive such assistance. To the fullest extent allowed by law, federal, state,
399 and local monies and revenues may be combined with any private sector monies and revenues
400 for any project purposes. Nothing in this section shall limit a local government or any agency or
401 authority of the commonwealth to issue bonds for qualifying projects.

402 D. Each responsible public entity is authorized to acquire right-of-way for any
403 qualifying project by any means permitted under applicable law.