

# HOUSE . . . . . No. 3365

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to safe transportation 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. Subsection (a) of Section 39M1/2 of Chapter 30 of the General Laws is  
2 hereby amended by striking out after the words “major contract” the words “a contract by which  
3 the commonwealth or any of its public agencies is to procure the construction of a highway,  
4 railway, bridge, tunnel or aviation facility or any component thereof and for which the certified  
5 estimate of cost exceeds \$50,000,000” and inserting in place thereof the following words:

6           a contract by which the commonwealth or any of its public agencies or authorities is to  
7 procure the construction, repair or rehabilitation of a publicly owned highway, railway, bridge,  
8 tunnel, building platform or aviation facility or any component thereof and for which the  
9 certified estimate of cost exceeds \$50,000,000 or a contract or lease by which the commonwealth  
10 or any of its public agencies or authorities is to procure directly or indirectly the construction,  
11 repair or rehabilitation of a privately owned and publicly used highway, railway, bridge, tunnel,  
12 building platform or aviation facility or any component thereof.

13           SECTION 2. Section 15 of Chapter 81A of the General Laws, as appearing in the 2006  
14 General Edition, is hereby amended by adding the following paragraph:

Notwithstanding any general or special law to the contrary, the owner, licensee, permittee or holder of an easement, contract or other right, in this section called the air rights user, of or with respect to any structure, including bridges, located above the established grade line of the turnpike, the Ted Williams tunnel, the central artery north area and the central artery, as those terms are defined in this chapter, are hereby required to maintain, repair, restore, reconstruct, rehabilitate, or improve air rights structures and air space at such air rights user's expense in accordance with the requirements of the authority's policy directive entitled "Tunnel Inspection and Testing Protocol for Roadways Covered by Air Rights Developments," effective as of December 14, 2007, as the same may be modified and/or amended by the authority from time to time, and with any directives issued by the authority in connection with such policy. Without limiting the generality of its other powers, the authority may do all things necessary, convenient or desirable to enforce this paragraph, to maintain, repair, restore, reconstruct, rehabilitate or improve air rights structures and air space at the air rights user's expense, to enter upon the property of an air rights user to exercise any of the foregoing powers and such entry shall not be deemed trespass nor shall an entry for such purposes be deemed an entry for condemnation proceedings which may be then pending, to impose a civil penalty in an amount of up to \$5,000 per day on an air rights users for failure to comply with this paragraph, which penalty may be recovered only after notice and hearing conducted by the authority or its designee and subject to judicial review and enforcement pursuant to chapter 30A of the General Laws or such other civil proceedings as may be authorized by state or federal law. The full amount of any civil penalty shall be paid to the authority. Nothing in this paragraph shall abrogate any private right created by contract or otherwise.