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## AFFIRMATIVE DEFENSE FOR AIR POLLUTION EMISSIONS

**House Bill 5839**

**Sponsor: Rep. Patricia Birkholtz**

**Committee: Conservation and Outdoor  
Recreation**

**Complete to 5-24-00**

### A SUMMARY OF HOUSE BILL 5839 AS INTRODUCED 5-24-00

Currently under the air pollution part (Part 55) of the Natural Resources and Environmental Protection Act (NREPA), it is an affirmative defense to an action brought for noncompliance with a (“technology-based”) emission limitation contained in an operating permit issued under the section governing operating permits in this part of the NREPA if an “emergency” is demonstrated through certain specified evidence. As used in this section of the NREPA, an “emergency” is defined to mean “a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person was not the proximate cause, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued” [under Section 5506, which governs operating permits].

The bill would amend the NREPA to add this same defense for noncompliance with a permit to install or to operate that was issued under the section regulating the installation of a “process” or “process equipment,” and to add these permits to the current definition of “emergency” in this part of the NREPA. That is, it would be an affirmative defense to a (“technology-based”) emission limitation contained not only in an operating permit issued under Section 5506 of the NREPA, but also a permit to install or permit to operate issued under Section 5505 of the NREPA if the emergency were properly demonstrated.

(The air pollution part of the NREPA defines “process” to mean “an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.” “Process equipment” means all equipment, devices, and auxiliary components – including air pollution control equipment, stacks, and other emission points – used in a “process.”)

MCL 324.5527

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