



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
Norman Pointe II
5600 West American Boulevard, Suite 500
Bloomington, Minnesota 55437

IN REPLY REFER TO:
Tribal Operations

AUG 10 2018

Honorable Warren C. Swartz, Jr.
President, Keweenaw Bay Indian
Community
16429 Bear Town Road
Baraga, Michigan 49908-9210

Dear President Swartz:

We received the results of the Secretarial election held on July 17, 2018, by the qualified voters of the Keweenaw Bay Indian Community (Community). The election was called in accordance with an order issued on April 27, 2018, by my office, authorizing the qualified voters of the Community to vote on the adoption or rejection of one proposed amendment.

By memorandum of July 25, 2018, the Chairman of the Secretarial Election Board transmitted the documents pertaining to the Secretarial election to this office pursuant to 25 C.F.R. § 81.44. Our review of the election material, including the official mailout ballot shows that the official ballot mailed to registered voters did not contain the required text nor the signature of the Chairman of the Secretarial Election Board (25 C.F.R. § 81.34). The regulations at 25 C.F.R. § 81.45 only allow me to take action to call for a new Secretarial election if a challenge was filed alleging errors; and I may only disapprove the election results if the proposed language is contrary to Federal law.

According to the record, the election results were posted on July 17, 2018, and no challenges were filed. As evidenced by the Certificate of Results of Election, proposed Amendment "A" was adopted by a vote of 101 for; 82 against; and 0 cast ballots found separated or spoiled in an election in which 274 members entitled to vote, cast their ballots. Therefore, by the authority delegated to me, as Regional Director, by 3 IAM 4, I hereby approve proposed Amendment "A" which is designated as "Amendment Number IV" to the Constitution and By-Laws of the Keweenaw Bay Indian Community to become effective on this date. This decision is final for the Department.

Enclosed is the text of Amendment IV, the Certificate of Approval, and a copy of the Certificate of Results of Election for your records. If you have any questions, please contact the Tribal Operations office at (612) 725-4554.

Sincerely,


Regional Director

Enclosures

cc: Superintendent, Michigan Agency

CERTIFICATE OF APPROVAL

I, **Timothy LaPointe**, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and further delegated to me by 3 IAM 4, do hereby approve the foregoing **Proposed Amendment A**, and designate it as **Amendment IV** to the Constitution and By-Laws of the Keweenaw Bay Indian Community. This amendment is effective as of this date, PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

A handwritten signature in black ink, appearing to read "Timothy LaPointe". The signature is written in a cursive, flowing style.

Regional Director

Date: 8-10-2018

**AMENDMENT IV
TO THE
CONSTITUTION AND BY-LAWS
OF THE
KEWEENAW BAY INDIAN COMMUNITY**

The Constitution shall be amended by adding a new Article IX – Judicial Branch. Article IX – Judicial Branch, shall read as follows:

ARTICLE IX – JUDICIAL BRANCH

Section 1.

The purpose of this article is to provide a separate branch of government free from political interference and conflicts of interest for the development and enhancement for the fair administration of justice.

Section 2.

The judicial power of the Keweenaw Bay Indian Community will be vested in a Tribal Court system. The Tribal Court System will be composed of a court of general jurisdiction referred to as the “Tribal Court”, an appellate court referred to as the “Appellate Court” and such lower courts as the Tribal Council may establish upon written recommendation from the Tribal Court.

Section 3.

The judicial power will extend to all cases arising under this Constitution, ordinances, resolutions, regulations, or judicial decisions of the Keweenaw Bay Indian Community and will be exercised to the fullest extent consistent with self-determination and the sovereign powers of the Tribe. This jurisdiction is based on the Tribe’s inherent sovereignty, traditional custom, and Federal law.

Section 4.

The Tribal Court will consist of two Judges, one of whom will be the Chief Judge and one of whom will be the Associate Judge.

The Chief Judge will be the presiding Judge of the Tribal Court and will be the Chief administrator of the Court.

Section 5.

Any enrolled member of the Keweenaw Bay Indian Community that has resided within the territorial jurisdiction for at least one (1) year immediately preceding his nomination and has attained the age of twenty-five (25) years or older on or before the date when their term is to commence will be eligible for election as the Chief or Associate Judge and will have graduated from high school or attained an equivalency degree. No

person can serve as Chief Judge or Associate Judge within five (5) years after completion of a sentence or probation upon being convicted of a felony or crime of fraud, unless such conviction has been vacated or overturned. No person will serve as the Chief Judge or Associate Judge who is presently a Tribal Council member or running to become a Tribal Council member.

Section 6

Both the Chief and Associate Judges of the Tribal Court will be elected to Tribal Court office for staggered terms, which will be arranged so as to expire during different years. The Chief Judge and Associate Judge will be elected to hold office for a period of three (3) years. There will be no limitation on the number of terms a Judge may be elected to hold office.

Upon approval of this Article, the staggered terms of the current Chief Judge and Associate Judge will remain and future elections will coincide with the popular election.

Tribal Court Judges will otherwise be elected in accordance with the rules and regulations governing elections.

Section 7

If a Judge on the Tribal Court dies, is removed, resigns, is permanently incapacitated or actually unable to carry out their office or permanently leaves the reservation, the Tribal Council will declare that position vacant and will within thirty (30) days appoint a qualified successor residing within the territorial jurisdiction to fill the office until the next popular election when a successor will be elected for the unexpired term. In such instances where the Chief Judge position is the one vacated, the Associate Judge will assume the specific duties and powers assigned to the Chief Judge until such time as a successor Chief Judge is elected in the popular election and the Associate Judge position will be filled as described herein.

Section 8.

If both Judges of the Tribal Court anticipate becoming deceased, are temporarily unable to act, or disqualified from acting, then the Chief Judge, if able, will have the power and authority to appoint a Judge first from a Tribal Court of another federally recognized Indian Tribe or an attorney licensed to practice within the Keweenaw Bay Tribal Court to preside over the judicial business of the Keweenaw Bay Tribal Court to the extent, and for the period of time required. If the Chief Judge, or the Associate Judge assuming the Chief Judge's duties, is unable, then the Tribal Council will have the power and authority to appoint a Judge first from a Tribal Court of another federally recognized Indian Tribe or an attorney licensed to practice within the Keweenaw Bay Tribal Court to preside over the judicial business of the Keweenaw Bay Tribal Court to the extent, and for the period of time required.

If neither the Chief nor Associate Judge meets the qualifications to hear a case to maintain jurisdiction or allows for maximum prosecution to occur, a temporary appointment of a judge from another federally recognized Indian Tribe or an attorney licensed to practice within the Keweenaw Bay Tribal Court by the Chief Judge of the Tribal Court may occur so that the case may be heard in Tribal Court.

Section 9.

The Tribal Court System may remove any Judge or Justice by an affirmative vote of a majority of all other Judges and Justices of the Tribal Court System for:

- (a) Unethical conduct, as defined by the General Provisions Ordinance that governs Tribal Court;
- (b) Physical or mental disability which prevent the performance of judicial duties;
- (c) Persistent failure to perform duties;
- (d) Gross misconduct that is clearly prejudicial to the administration of justice; or
- (e) Ineligibility, under Section 5 of this Article for a Judge and Section 12 for a Justice, to serve as a member of the Tribal Judiciary.

Section 10.

The Appellate Court will have the jurisdiction to hear and decide appeals, both final and interlocutory, from any order, sentence or judgment, whether civil or criminal in nature, of the Tribal Court. The Appellate Court will be the Supreme Court of the Keweenaw Bay Indian Community and its decisions will be final in any matter of interpretation of the Tribal Constitution, interpretation of the provisions of Tribal ordinances, resolutions, regulations, or the rules governing judicial proceedings.

Any party to an action or suit will have the right to appeal a final order, sentence, or judgment of the Tribal Court. All other appeals may be taken by leave of the Appellate Court.

Section 11.

A Justice of the Appellate Court must be a citizen or legal resident of the United States, who has attained the age of thirty (30) years or older, and must not have been convicted of a felony. The following persons are eligible to serve as Justices of the Appellate Court:

- (a) Any former Judge of the Tribal Court, or
- (b) Any lawyer, who is in good standing and admitted to practice in the highest court of any federally recognized Indian Tribe, any State, or any territory of the United States.

Section 12.

- (a) The Appellate Court will consist of one (1) Chief Justice and two (2) Associate Justices.
- (b) A person qualified to serve as a Justice of the Appellate Court may be appointed to serve as a Justice of the Appellate Court by the President, subject to the approval of the appointment by the majority of the Tribal Council.
- (c) The Justices of the Appellate Court will be appointed to the Appellate Court office for staggered terms, which will be arranged so as to expire during different years. The Justices will be appointed to hold office for a period of three (3) years. There will be no limitation on the number of terms a Justice may serve.

Upon approval of this Article, the staggered terms of the current Justices will remain.

Upon death, removal, or resignation of a Justice, the next Justice appointed to the Appellate Court by the President, and approved by the Tribal Council, will serve out the remainder of the term of the Justice.

- (d) A Chief Justice will be selected by majority vote of the Justices for a one year term. In the event of a tie, the Justices will vote again. In the event of a second tie, the Tribal Council will select the Chief Justice by majority vote.
- (e) In the event that the Appellate Court notifies the President that a Justice is not able to participate in a decision on any particular case or cases on appeal due to illness, temporary disability or disqualification, the President will appoint, subject to the approval of the Tribal Council, a person qualified to serve as a Justice to the Appellate Court, to serve as a substitute Justice of the Appellate Court for the purposes of hearing such cases as may be necessary due to such illness, temporary disability or disqualification.

Section 13.

The Tribal Council will have the power and responsibility to establish reasonable levels of compensation for all Judges and Justices, the amount of which will not be reduced during such persons' term of office.

Having been duly adopted and approved, **Proposed Amendment A** is hereby designated as **Amendment Number IV** to the Constitution and By-Laws of the Keweenaw Bay Indian Community.

CERTIFICATE OF RESULTS OF ELECTION

Under a secretarial election authorized by Timothy LaPointe, acting Midwest Regional Director, on April 26, 2018, the attached **Proposed Amendment A** was submitted to the registered voters of the Keweenaw Bay Indian Community and on July 17, 2018 duly (adopted / rejected] by a vote of 101 for, and 82 against, and 0 cast ballots found spoiled in an election in which at least 30 percent of the 274 registered voters cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) (25 U.S.C. § 5123), as amended.


Secretarial Election Board Chairman


Member, Election Board


Member, Election Board


Member, Election Board


Member, Election Board

Date: 7/17/18