

**SUBSTITUTE FOR
SENATE RESOLUTION NO. 49**

1 A resolution to oppose the Keweenaw Bay Indian Community's
2 application to regulate water quality on the L'Anse Reservation
3 under section 401 of the federal Clean Water Act and to receive
4 certain privileges under the federal Clean Air Act.

5 Whereas, The Keweenaw Bay Indian Community is seeking federal
6 approval to set water quality standards within the L'Anse
7 Reservation and to regulate activities impacting water quality
8 through the water quality certification process under the federal
9 Clean Water Act. The community is also seeking eligibility under
10 the federal Clean Air Act to receive air pollution control program
11 grants with a reduced match requirement and to receive notification
12 of state-issued Title V air operating permits within 50 miles of
13 the reservation; and

14 Whereas, Approving these requests for treatment as a state



1 could be a stepping stone to more stringent regulation. Concerns
2 exist that approval—particularly approval of the water quality
3 request—would inevitably lead to unreasonable consequences, create
4 a patchwork of regulations, and be inappropriate for non-tribal
5 property owners within and outside of the reservation borders. This
6 is a significant concern given that the reservation boundaries
7 encompass approximately 59,071 acres of land, of which only 35
8 percent (20,427 acres) are tribal lands; and

9 Whereas, The state of Michigan already has in place strong
10 water quality standards to protect state waters. The state has
11 designated that all state waters should be safe for fishing,
12 swimming, and other uses and support native aquatic life and
13 wildlife. The state has established—and the United States
14 Environmental Protection Agency (EPA) has approved—scientifically
15 based water quality criteria that ensure these uses are preserved;
16 and

17 Whereas, The state of Michigan has administered for decades
18 permit programs that protect the air and water for all Michigan
19 residents. Under state law, Michigan has been addressing air
20 pollution since at least 1965. Under state law, Michigan has
21 administered permit programs that prevent discharges into state
22 waters that would impair designated uses since 1972 and that
23 protect wetlands since 1980. The EPA delegated authority to
24 administer permit programs under the federal Clean Water Act to the
25 state in 1973 and 1984 based on these laws. Michigan is one of only
26 two states with delegated authority for both programs, making our
27 state unique compared to other states where the EPA has granted
28 treatment as a state status to tribes; and

29 Whereas, This request by the Keweenaw Bay Indian Community



1 raises questions and concerns on how future permits issued by the
2 state could be impacted, including wetland permits, permits for
3 discharges into state waters, and hydropower licenses; and

4 Whereas, Approving the Keweenaw Bay Indian Community requests
5 would not improve water quality but would create an unnecessary
6 layer of government bureaucracy and increase the regulatory burden
7 on businesses, property owners, and the state. Regardless of
8 whether the requests are approved, the state of Michigan will
9 continue to regulate activities impacting state waters within the
10 reservation under state law. Michigan's programs are sufficient to
11 protect residents and wildlife from pollution; and

12 Whereas, Approving the Keweenaw Bay Indian Community requests
13 would lead to jurisdictional conflicts between the community and
14 the state related to control of activities on state-owned land
15 within the reservation boundaries. These conflicts would involve
16 complicated and not easily resolved legal questions regarding state
17 versus tribal sovereignty. It would also raise questions regarding
18 potential impacts to state-owned mineral rights within the
19 reservation; and

20 Whereas, Approving the Keweenaw Bay Indian Community requests
21 would subject non-tribal property owners within reservation
22 boundaries to the decision-making of a tribal government in which
23 they have no representation. Only around one-third of the people
24 living within the reservation boundaries are tribal members, unlike
25 other states where the EPA has granted treatment as a state status
26 to tribes. Our nation was founded on the democratic concept that
27 people should have a say and be represented in the government that
28 impacts their lives; now, therefore, be it

29 Resolved by the Senate, That we oppose the Keweenaw Bay Indian



1 Community Lake Superior Band of Chippewa requests for treatment as
2 a state under the federal Clean Water Act and the federal Clean Air
3 Act for the reasons stated, including, but not limited to, the
4 unique Michigan and local circumstances; and be it further

5 Resolved, That copies of this resolution be transmitted to the
6 Administrator of the United States Environmental Protection Agency
7 and the members of the Michigan congressional delegation.

