



Policy and Procedure Manual

Chapter: Tribal Consultation

Section: 8.008

Persons Affected: All Michigan Gaming Control Board (MGCB) Employees

Effective Date: October 23, 2024

1.0 Purpose

The State of Michigan is home to 12 federally recognized tribes. Federally recognized tribes are sovereign governmental entities that possess the right to self-governance and self-determination and the authority to exercise jurisdiction over their respective lands and citizens. The State of Michigan is bound under federal law to respect the sovereignty and rights of the federally recognized tribes within its borders.

On October 28, 2002, the State of Michigan entered into a Government-to-Government Accord with several of the federally recognized tribes located in Michigan, acknowledging each tribe's sovereign rights and establishing a commitment to consultation with the tribes to minimize and avoid disputes. Executive Directive 2004-5, issued May 12, 2004, affirmed the State's commitment to that Accord and its full implementation. On October 31, 2019, the Governor signed Executive Directive 2019-17 reaffirming and extending Michigan's commitment to recognizing the sovereignty and rights of Michigan's federally recognized tribes and engaging in tribal consultation.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken and to implement programs in a collaborative manner. The Michigan Gaming Control Board (MGCB) is committed to such government-to-government relations with the federally recognized tribal governments of Michigan. Mutually beneficial cooperation and the appropriate resolution of occasional disagreements or misunderstandings can best be achieved if there is a commitment to regular consultation on certain high-level matters of mutual concern.

Under the federal Indian Gaming Regulatory Act of 1988, Class III gaming activities are lawful on tribal lands only if conducted in conformance with a Tribal-State Class III Gaming Compact (Compact). The State of Michigan has entered into Compacts with each of the 12 federally recognized tribes located within its borders. The Compacts provide that the regulation of tribal casino gaming is the responsibility of the tribes and,

therefore, Michigan has no regulatory authority over Class III gaming conducted on tribal lands. Although the State of Michigan does not regulate tribal casino gaming, the State is authorized to oversee tribal compliance with the provisions of the Compacts and related consent judgments. The Governor has designated MGCB as the State's authorized representative to conduct inspections of tribal Class III gaming facilities and records pursuant to and in accordance with the Compacts.

The Lawful Internet Gaming Act (LIGA), Lawful Sports Betting Act (LSBA), and Fantasy Contests Consumer Protection Act (FCCPA) were enacted into law in Michigan in December 2019. Tribes are eligible to obtain an operator's license under LIGA and LSBA and are eligible to conduct fantasy contests under FCCPA. MGCB is tasked with licensing and regulating tribal internet gaming, sports betting, and fantasy contest operations as set forth in the acts.

This policy formalizes the process and expectations for MGCB employees to implement a government-to-government relationship with tribes and to seek consultation with and participation of representatives of tribal governments on matters deemed appropriate for consultation.

2.0 Revision History – Policy issued October 23, 2024.

3.0 Policy

MGCB will diligently seek to maintain an ongoing and meaningful process for consultation with federally recognized tribes on matters deemed appropriate for consultation. This is a government-to-government policy, and nothing herein shall be construed to apply to any MGCB activities or matters other than those deemed appropriate for consultation. Further, this policy is intended to supplement, not supplant, existing effective relationships with tribal governments and ongoing cooperative efforts and lines of communication between MGCB and Michigan's federally recognized tribes.

4.0 Definitions

Class III Gaming – All forms of gaming authorized by the Tribal-State Compacts, which are neither Class I nor Class II gaming, as such terms are defined in § 2703(6) and (7) of the Indian Gaming Regulatory Act of 1988.

Compact – A written contract between a tribe and the State that authorizes and governs Class III gaming on tribal lands and establishes the permitted regulatory or oversight authority of the State. Without a valid Compact, a tribe generally cannot operate Class III games.

Employee – Any person who is employed by MGCB as a State employee.

Federally Recognized Tribe – A tribe, band, or community that the Secretary of the United States Department of Interior has acknowledged as a tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.

Matter Deemed Appropriate for Consultation – An action, decision, or other activity that MGCB has determined may affect tribal interests such that consultation is appropriate. Matters deemed appropriate for consultation are as follows:

1. Legislation proposed or requested by MGCB that involves or impacts gaming in Michigan. This does not include appropriations legislation or other legislation that only has an administrative impact on MGCB or other State departments or agencies.
2. Promulgation, amendment, or rescission of administrative rules by MGCB.
3. A matter identified by a federally recognized tribe that MGCB agrees is appropriate for consultation.
4. Other high-level matters of mutual concern that have substantial implications to tribal governments and are deemed appropriate for consultation by MGCB.

Unless otherwise determined by MGCB, the following matters are not deemed appropriate for consultation:

1. Actions, decisions, or other activities arising from or otherwise pertaining to MGCB's regulator-to-licensee or regulator-to-operator relationship with the tribes for purposes of the licensing and regulation of internet gaming, internet sports betting, and fantasy contests.
2. Actions, decisions, or other activities arising from or otherwise pertaining to MGCB's routine exercise of State oversight functions authorized in the Compacts and related consent judgments.

Tribal Liaison – MGCB employee responsible for overseeing MGCB's government-to-government consultation with federally recognized tribes on matters deemed appropriate for consultation.

5.0 Procedures

- A. MGCB will recognize and effectuate through its policies and practices, to the extent practicable, the following fundamental principles concerning federally recognized tribes:
 1. Federally recognized tribes are sovereign governmental entities.
 2. Federally recognized tribes possess inherent authority to exercise jurisdiction over their respective lands and citizens.
 3. Federally recognized tribes possess the right to self-governance and self-determination.
 4. The United States has a unique trust relationship with federally recognized tribes as set forth in the United States Constitution, treaties, statutes, executive orders, court decisions, and the general course of dealings of the United States with the tribal nations.
 5. The State of Michigan has a unique government-to-government relationship with each of the federally recognized tribes located within its borders, and that

relationship is shaped by accords, compacts, statutes, court opinions, and a multitude of intergovernmental interactions. The State has an obligation to meet the responsibilities that arise from that relationship and to ensure that its laws and regulations are applied in a manner that does not conflict with federal laws and regulations designed to protect and assist tribal governments and tribal members.

B. Tribal liaison (or designee) will:

1. Perform timely consultation with the tribes on matters deemed appropriate for consultation in a manner that ensures meaningful and mutually beneficial communication and collaboration occurs between the tribes and MGCB on a government-to-government basis as follows:
 - a. MGCB's tribal liaison or designee shall identify actions, decisions, or other activities that constitute matters appropriate for consultation in accordance with this policy. Consultation is a government-to-government function, and nothing herein shall be construed to apply to any MGCB activities or matters other than those deemed appropriate for consultation.
 - b. MGCB's tribal liaison or designee shall promptly notify the tribe(s) potentially affected of any identified matters that may be appropriate for consultation. The notification shall include information that is sufficient to allow each potentially affected tribe to make an informed decision as to if and how the tribe shall proceed with consultation. MGCB's tribal liaison will strive to honor tribal preferences regarding the specific method of notification, subject to applicable time and resource constraints. MGCB shall provide each tribal government with adequate time (60 calendar days unless circumstances dictate a shorter response time is warranted) to respond in a meaningful manner to the notification.
 - c. MGCB's tribal liaison or designee shall carefully review and consider each tribe's input before taking any action on a matter deemed appropriate for consultation. MGCB's tribal liaison will coordinate with participating tribes throughout the consultation process to ensure that each tribe: (1) receives all information necessary to provide MGCB with meaningful input; (2) is afforded due opportunity to discuss that input with MGCB; (3) is apprised of any significant changes to the matter subject to consultation, or any other issues that may arise as to it, over the course of the consultation process; and (4) is afforded due opportunity to provide to and discuss with MGCB any additional input the tribe may have regarding any changed circumstances.
 - d. MGCB's tribal liaison or designee shall provide written feedback to each tribe involved in the consultation to explain how their input was considered in the final decision or action taken by MGCB. Where practicable, MGCB shall provide preliminary feedback to tribes before making a final decision or taking action. MGCB may aggregate all feedback and explanations provided to satisfy this requirement.

2. Report annually on MGCB's government-to-government consultations with federally recognized tribes to the Governor's Advisor on Tribal-State Affairs or any subsequent designee with similar responsibilities.
 3. Meet on a regular and rotational basis with each tribal government leader to obtain feedback on matters that may require consultation, explore ways to improve the consultation process, and obtain feedback on MGCB interactions with tribal government representatives. MGCB's tribal liaison or designee shall be responsible for scheduling meetings at a time and location that is mutually agreeable between MGCB and the tribe(s).
 4. Perform any other duties assigned to the tribal liaison under Executive Directive 2019-17.
- C. MGCB employees shall be provided regular training on tribal-state relations. The training materials will be provided by the Governor's Advisor on Tribal-State Affairs.

Contact Person – Director of External Affairs & Legislative Liaison