

## Comments on Intervenor Grant Program Straw Poll

<https://www.mass.gov/doc/2024-ca-isgf-proposal/download>

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### INITIAL OBSERVATIONS

1. The proposed grant application questions for an intervenor grant while reasonable are likely not practicable for those applying for a grant. Community groups and smaller municipalities, whose voices are intended to be included in these proceedings through the creation of an intervenor grant program, are most certainly low-capacity and therefore will need to hire a consultant to assist with the answering some of these questions. Therefore, since the EFSB recognizes that the statute “authorizes the Director to make conditional grant awards to grant applicants provided that the grant is not awarded until intervenor status is granted”, I would suggest that the EFSB create new smaller grant opportunity for low-capacity applicants - an “Application Assistance Grant”. This would enable these applicants to get enough money to secure the services of a consultant that can provide professional support in completing the application. Otherwise, EFSB should be aware that the application process itself could be a barrier to participation for those the law seeks to assist. As any municipality and elected representative of these municipalities can attest, currently for many competitive grant opportunities in the Commonwealth, smaller municipalities miss out simply because they do not have the capacity to apply despite the clear benefits and likely eligibility/need. This would similarly apply to small community groups.

2. It seems that although “*a group of individuals that may be specifically and substantially affected by a proceeding*” can be an intervenor, these groups cannot receive a grant given the statement that “*Individuals are not eligible to receive grant funding*”. Since abutters and other community members will certainly end up being intervenors over time, this is an important point to clarify - the difference between “an individual” and a “group of individuals”.

If there is a way of providing grants to a group of individuals, I would argue this is consistent with the intent of the law. For small rural communities, for example, there are no community groups that can represent them and municipalities may not want to take on the responsibility of this role for a subset of its residents. The prohibition of providing grants to individuals therefore leaves the voices and perspectives of affected individuals out of the proceedings.

### QUESTIONS

**1. What additional eligibility criteria should be considered, if any, to determine allocation of funding to prospective grantees? How should an applicant’s prior history of intervening in proceedings influence eligibility for funding through the Program?**

I don't see a reason why prior history of intervening should be a factor. I would suggest that, generally speaking, no one wants to be an intervenor but situations may require it, and the need to intervene is seen as necessary. As we know from practical experience, communities can face multiple development proposals, at the same time or over time, and if the entity should be deemed eligible, regardless of whether they have intervened previously or not.

**2. What criteria should be applied to determine if intervenors can share costs through collaboration with other parties in a proceeding to encourage cost efficiency and minimize redundancy?**

One would assume that the Commonwealth would support and encourage efficient use of public funds and in many ways the Commonwealth incentivizes collaboration in other sectors (i.e. regionalization of services). So I do not think that the EFSB needs to or should impose criteria on the collaboration of eligible parties regarding funds. What should be limited is having an eligible party serve as a shell or front organization for a non-eligible entity. In this situation, the vast majority of grant funds would be used by the non-eligible party and that would be inappropriate. However, most definitely, a granted entity should be allowed to distribute funds in a modest amount to solicit input or expertise or participation from non-eligible parties.

**3. When should a fund-supported intervenor be able to obtain funding that exceeds the maximum funding threshold of \$150,000 for a proceeding? What circumstances could qualify as "new, novel or complex issues" that may warrant additional funding?**

I think it would be rare to have the maximum amount exceeded but then again, I am not aware of standard legal fees and expenses for experts that may be needed. What comes to mind is if there is a collaboration of grant-eligible intervenors. Specifically, I could imagine if several intervenors that bring different perspectives or constituencies and are therefore eligible, agree to collaborate for efficiencies. Rather than EFSB paying multiple groups, the payment could be bundled, thereby exceeding the maximum. Similarly, there might also be situations where there are multiple projects with a common developer and a common intervenor. Rather than providing separate grants, one larger grant might make sense.

Lastly, there could be a project that is so complex that the analysis and evidence needed by expertise costs more, either for the volume of research/evidence needed or to pay for the level of expert needed to gather this evidence. This would certainly be determined on a case by case basis.

**4. Are there other ineligible uses of funding that should be considered?**

I don't think there are additional ineligible expenses but some further clarification might be helpful. For example, if a community group was intervening, they might need to rent a car to participate in proceedings - this is not a lease of equipment but worth clarifying that travel-related expenses are eligible.

Another clarification in regards to eligible expenses: If EFSB accepts my suggestion for allowing an "Application Assistance Grant" the primary cost would be for hiring of a consultant related to proceeding participation. This is already designated as eligible but it would be worth calling out specifically.

#### **5. What documentation should DPP require applicants to submit to demonstrate financial hardship?**

Assuming a group of individuals cannot receive a grant, then all the eligible entities are either organizations, governmental bodies or tribes. All of these should have formal budgets that can be shared with EFSB. I would therefore suggest that a copy of an annual budget and perhaps a balance sheet, if available, to show financial hardship.

EFSB might need to be responsible for estimating a range of legal/expert and other associated costs for intervenor activities since EFSB will have more experience than an intervenor in these matters; this is especially true for any intervenor seeking grant assistance. This would establish the baseline for which financial hardship can be compared. If when comparing the cost estimate range provided by EFSB and the annual budget/balance sheet, there is a notable gap, this should demonstrate financial hardship. In all likelihood, this might be as simple as a grant applicant demonstrating that no or insufficient funds are allocated for legal expenses or engagement of experts is in the budget nor are there adequate unrestricted funds shown on the balance sheet.

#### **6. What is the best way to publicize that intervenor funding will be available?**

In terms of outreach regarding the Intervenor Support Grant Program, I would suggest that standard language with a web link be required and reasonably visible in any communication about the project. This would include EFSB-generated and applicant-generated materials such as abutter mailings, public presentations presentations, meeting notices, and webpages. As with my suggestions regarding public engagement, this should begin as soon as public information about the project is made available since the process of deciding to intervene, understand what is involved, and then applying for a grant, takes time, especially for entities that are not regularly involved in this process.

#### **7. What informational resources should be available on the Division website for those applying for intervenor funding?**

There should be an evolving FAQ for parties looking to understand the grant making process. This is standard practice for both public and private grantmaking. This would include basics - what the steps are, who the grant program contact is (with phone number since email exchanges might not be sufficient), estimated timeline, etc. More involved information would include how to document financial hardship, what types of usual expenses an intervenor may encounter, and what are eligible and ineligible expenses.

EFSB needs to assume that people looking for information for a grant are doing this for the first time and are not familiar with these systems and procedures. Likely nothing is too basic to explain. Just like the grant process is intended to open the door to the voices of interested parties that are usually excluded from the process, the information provided should be designed to make inclusion into the process as user-friendly as possible.

**8. Should there be a maximum amount of the grant award (e.g., 75%) that can be provided upfront for those with financial hardship, or should this be determined on a case-by-case Basis?**

I think EFSB has to look at what the usual process is for disbursement of funds in relation to necessary services for effective participation. This would inform the design.

What the EFSB should want to avoid is for a situation when the grant-funded intervenor is unable to secure legal services and/or the services of experts in a timely manner. I would assume that a financial payment will be needed to secure an initial contract and to pay for initial work of professionals. If EFSB artificially limits the amount of money that can be paid in advance, it may create a situation where the grant-funded intervenor cannot pay for the work it needs to; this would mean the program is not being effective.

I would suggest that the grant funds, once approved, be available by draw down from an account up to 100%. This definitely should not be a cost-reimbursement situation since the grant-funded party, by definition, does not have the funds. EFSB will likely require receipts and/or documentation regarding the use of funds after the fact, so ultimately this will ensure the accountability that is needed by the Commonwealth.