

Memo

Date: May 22, 2023

To: Mark Johnson, Executive Director, Lessard-Sams Outdoor Heritage Council

From: Mary Robison, Chief Financial Officer, Department of Natural Resources

RE: OHF Impacts from Build America, Buy America Act

The [Build America, Buy America Act \(BABA\)](#) requires federally-funded infrastructure projects to use iron, steel, manufactured products, and construction materials produced in the United States. If federal funds are used for a project, the entire project is subject to BABA, including any non-federal funds used as match. This memo describes potential budget, scope, and timeline impacts of BABA on Outdoor Heritage Fund projects.

BABA overview

BABA applies to “articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.” It does not apply to tools and supplies brought to the construction site and removed before project completion. BABA applies to infrastructure projects involving new construction, alteration, maintenance, or repairs. The following are categories of infrastructure subject to BABA that could be relevant to OHF projects:

- Structures, facilities, and equipment for roads, highways, and bridges
- Dams, water control structures, culverts
- Parking lots, fences, gates
- Buildings and real property

Impacts to DNR’s OHF projects

Funds from all federal agencies are affected, meaning there are implications for OHF funded projects that leverage federal funds. The DNR anticipates a number of impacts; many of these are likely to apply to other OHF grantees as well.

BABA applies to an entire infrastructure project, including federal funds and any non-federal match funding. For example, if DNR uses \$25,000 of OHF funds and \$75,000 of federal funds in a water control structure, all funds must meet BABA. The DNR is implementing substantial procedural changes to track federal and matching funds, including monitoring and documenting contractor and sub-grantee compliance. BABA requirements will likely increase personnel costs and extend project timelines, including for procurement.

BABA requirements can be waived by federal agencies due to public interest, non-availability of materials, or unreasonable cost. However, each federal agency decides the extent and scope of waivers, and they are product specific and approved at the project level. Most federal agencies have or are considering small project and de minimus waivers for their programs; however, the applicability of these is uncertain.

Current estimates are that BABA requirements may increase the cost of projects by at least 25%. Projects funded by older appropriations may be the most impacted, as budgets are several years old. Pending direction from the Council, DNR and other grantees could mitigate impacts through the following:

- The number of projects in an appropriation may need to be reduced
- Projects may need to be downsized
- Projects may need to be paid from multiple appropriations
- Accomplishments may be less than originally planned

Finally, DNR may decide to fund projects with only OHF dollars, and not apply for federal funds. This would affect the leverage planned in previously submitted proposals, or that LSOHC is looking for new proposals and using as a scoring criteria. Smaller organizations may be especially impacted.

Impacts to pass-through grants

Pass-through appropriations where partners are using federal match funds may experience similar impacts. Partners usually use OHF funding only for non-infrastructure portions of a project. However, delays or downsizing of the federal portions of a project could in turn impact completion of OHF-funded activities.

Next steps

The purpose of this memo is to build early awareness around the potential impacts of BABA. The DNR and other recipients of federal funds will learn more in the coming months as the requirements begin to impact more projects. The DNR will maintain regular communication with LSOHC to further describe and quantify these impacts. DNR staff are also willing to provide educational materials or presentations as more is learned.

Cc:

Bob Meier, Assistant Commissioner, DNR

Dave Olfelt, Fish and Wildlife Division Director, DNR

Kelly Wilder, Policy and Planning Supervisor, DNR

Katherine Sherman-Hoehn, Grants Manager, DNR