

(Aug. 6, 1956, ch. 972, § 2, 70 Stat. 1044; Pub. L. 89-553, § 1(1), Sept. 2, 1966, 80 Stat. 376; Pub. L. 92-167, § 1(1), Nov. 24, 1971, 85 Stat. 488; Pub. L. 94-181, § 1(a), (b), Dec. 27, 1975, 89 Stat. 1049.)

#### Editorial Notes

##### REFERENCES IN TEXT

Act of June 17, 1902, referred to in par. (b), is popularly known as the Reclamation Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

##### AMENDMENTS

1975—Subsec. (d). Pub. L. 94-181, § 1(a), substituted provisions limiting the estimated cost of the project described in cls. (i), (ii), (iii), (iv), and (v) to the maximum allowable estimated total project cost as determined by subsection (f) of this section, for provisions limiting the estimated cost of such projects to \$15,000,000, and inserted proviso relating to a project described in cl. (i), (ii), or (iii).

Subsec. (f). Pub. L. 94-181, § 1(b), added subsec. (f).

1971—Subsec. (d). Pub. L. 92-167 redefined the size and character of projects which are eligible for approval under the program, increasing money limitation from \$1,000,000 to \$15,000,000 and making projects eligible, without being only for irrigation, for single purpose irrigation, single purpose drainage, multiple purpose, a distinct unit of the foregoing, or rehabilitation of any of the foregoing.

1966—Subsec. (d). Pub. L. 89-553 raised from \$5,000,000 to \$6,500,000 the maximum amount for a loan or grant for a particular project.

#### Statutory Notes and Related Subsidiaries

##### RETROACTIVE EFFECT OF 1966 AMENDMENT

Pub. L. 89-553, § 2, Sept. 2, 1966, 80 Stat. 377, provided that: "Nothing contained in this Act [amending this section and sections 422d, 422e, 422h, and 422j of this title] shall be applicable to or affect in any way the terms on which any loan or grant has been made prior to the effective date of this Act [Sept. 2, 1966]."

#### § 422c. Proposals; submission; payment for cost of examination

Any organization desiring to avail itself of the benefits provided in this subchapter shall submit a proposal therefor to the Secretary in such form and manner as he shall prescribe. Each such proposal shall be accompanied by a payment of \$5,000 to defray, in part, the cost of examining the proposal.

(Aug. 6, 1956, ch. 972, § 3, 70 Stat. 1044; Pub. L. 99-546, title III, § 303, Oct. 27, 1986, 100 Stat. 3053.)

#### Editorial Notes

##### AMENDMENTS

1986—Pub. L. 99-546 substituted "\$5,000" for "\$1,000".

#### § 422d. Contents of proposals

##### (a) Plans and estimates; review by States; allocation of capital costs

Any proposal with respect to the construction of a project which has not theretofore been authorized for construction under the Federal reclamation laws shall set forth, among other things, a plan and estimated cost in detail comparable to those included in preauthorization reports required for a Federal reclamation project;

shall have been submitted for review by the States of the drainage basin in which the project is located in like manner as provided in section 701-1(c) of title 33, except that the review may be limited to the State or States in which the project is located if the proposal is one solely for rehabilitation and betterment of an existing project; and shall include a proposed allocation of capital costs to functions such that costs for facilities used for a single purpose shall be allocated to that purpose and costs for facilities used for more than one purpose shall be so allocated among the purposes served that each purpose will share equitably in the costs of such joint facilities. The costs of means and measures to prevent loss of and damage to fish and wildlife resources shall be considered as project costs and allocated as may be appropriate among project functions.

##### (b) Lands and water rights; ownership; financing

(1) Every such proposal shall include a showing that the organization already holds or can acquire all lands and interests in land (except public and other lands and interests in land owned by the United States which are within the administrative jurisdiction of the Secretary and subject to disposition by him) and rights, pursuant to applicable State law, to the use of water necessary for the successful construction, operation, and maintenance of the project and that it is ready, able, and willing to finance otherwise than by loan and grant of Federal funds such portion of the cost of the project (which portion shall include all costs of acquiring lands, interests in land, and rights to the use of water), except as provided in section 422e(b)(2) of this title as the Secretary shall have advised is proper in the circumstances.

(2) The Secretary shall require each organization to contribute toward the cost of the project (other than by loan and/or grant of Federal funds) an amount equal to 25 percent or more of the allowable estimated cost of the project: *Provided*, That the Secretary, at his discretion, may reduce the amount of such contribution to the extent that he determines that the organization is unable to secure financing from other sources under reasonable terms and conditions, and shall include letters from lenders or other written evidence in support of any funding of an applicant's inability to secure such financing in any project proposal transmitted to the Congress: *Provided further*, That under no circumstances shall the Secretary reduce the amount of such contribution to less than 10 percent of the allowable estimated total project costs. In determining the amount of the contribution as required by this paragraph, the Secretary shall credit toward that amount the cost of investigations, surveys, engineering, and other services necessary to the preparation of proposals and plans for the project as required by the Secretary, and the costs of lands and rights-of-way required for the project, and the \$5,000 fee described in section 422c of this title. In determining the allowable estimated cost of the project, the Secretary shall not include the amount of grants accorded to the organization under section 422e(b) of this title.

**(c) Transmittal of findings and approval to Congress; certification of soil survey; reservation of land**

At such time as a project is found by the Secretary and the Governor of the State in which it is located (or an appropriate State agency designated by him) to be financially feasible, is determined by the Secretary to constitute a reasonable risk under the provisions of this subchapter, and is approved by the Secretary, such findings and approval shall be transmitted to the Congress. Each project proposal transmitted by the Secretary to the Congress shall include a certification by the Secretary that an adequate soil survey and land classification has been made, or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows. The Secretary, at the time of submitting the project proposal to Congress or at the time of his determination that the requested project constitutes a reasonable risk under the provisions of this subchapter, may reserve from use or disposition inimical to the project any lands and interests in land owned by the United States which are within his administrative jurisdiction and subject to disposition by him and which are required for use by the project. Any such reservation shall expire at the end of two years unless the contract provided for in section 422e of this title shall have been executed.

**(d) Amount of loan and/or grant; increase by Secretary**

At the time of his submitting the project proposal to the Congress, or at any subsequent time prior to completion of construction of the project, including projects heretofore approved, the Secretary may increase the amount of the requested loan and/or grant to an amount within the maximum allowed by section 422e(a) of this title, as amended by Pub. L. 94-181, to compensate for increases in construction costs due to price escalation.

**(e) Appropriation; nonapplicability**

No appropriation shall be made for financial participation in any such project prior to sixty calendar days (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Secretary's findings and approval are submitted to the Congress and then only if, within said sixty days, neither the Committee on Natural Resources of the House of Representatives nor the Committee on Energy and Natural Resources of the Senate disapproves the project proposal by committee resolution. The provisions of this subsection (e) shall not be applicable to proposals made under section 422f of this title.

**(f) Consideration of financial feasibility, emergency, or urgent need; jurisdiction and control of project works and facilities**

The Secretary shall give due consideration to financial feasibility, emergency, or urgent need

for the project. All project works and facilities constructed under this subchapter shall remain under the jurisdiction and control of the local contracting organization subject to the terms of the repayment contract.

(Aug. 6, 1956, ch. 972, §4, 70 Stat. 1044; Pub. L. 85-47, §1(a), (b), June 5, 1957, 71 Stat. 48; Pub. L. 89-553, §1(2), (3), Sept. 2, 1966, 80 Stat. 376; Pub. L. 92-167, §1(2), Nov. 24, 1971, 85 Stat. 488; Pub. L. 94-181, §1(c)-(e), Dec. 27, 1975, 89 Stat. 1049, 1050; Pub. L. 99-546, title III, §§304, 305, Oct. 27, 1986, 100 Stat. 3053, 3054; Pub. L. 103-437, §16(b), Nov. 2, 1994, 108 Stat. 4594.)

**Editorial Notes**

REFERENCES IN TEXT

The Federal reclamation laws, referred to in subsec. (a), are defined in section 422b of this title.

For the amendment of section 422e(a) of this title by Pub. L. 94-181, referred to in subsec. (d), see 1975 Amendment note set out under section 422e of this title.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-437 substituted "Committee on Natural Resources of the House of Representatives nor the Committee on Energy and Natural Resources of the Senate" for "House nor the Senate Interior and Insular Affairs Committee".

1986—Subsec. (b)(1). Pub. L. 99-546, §304(a), designated existing provisions as par. (1) and substituted "grant of Federal funds" for "grant under this subchapter".

Subsec. (b)(2). Pub. L. 99-546, §304(b), added par. (2).

Subsec. (c). Pub. L. 99-546, §305, inserted provisions which required certification by Secretary relating to soil survey, land classification, or successful irrigability, and investigation of soil for toxic or hazardous irrigation return flows.

1975—Subsec. (d). Pub. L. 94-181, §1(c), (d), added subsec. (d). Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 94-181, §1(d), (e), redesignated former subsec. (d) as (e), substituted "(e)" for "(d)", and redesignated former subsec. (e) as (f).

1971—Subsec. (e). Pub. L. 92-167 substituted in first sentence "project" for "project, whether the proposal involves furnishing supplemental irrigation water for an existing irrigation project, whether the proposal involves rehabilitation of existing irrigation project works, and whether the proposed project is primarily for irrigation".

1966—Subsec. (a). Pub. L. 89-553, §1(2), extended project costs to include the cost of means and measures to prevent loss of and damage to fish and wildlife resources and authorized allocation of such costs as may be appropriate among project functions.

Subsec. (b). Pub. L. 89-553, §1(3), substituted "cost of the project" for "cost of construction" in provision requiring that the organization be ready, able, and willing to finance by other than loan or grant whatever costs the Secretary advises, inserted reference to section 422e(b)(2) of this title as an exception to the costs which the organization must be able to finance other than by loan or grant, and struck out proviso that the contribution by the applicant organization shall not be required in excess of 25 per centum of the costs of the project which, if it were being constructed as a Federal reclamation project, would be properly allocable to reimbursable functions under general provisions of law applicable to such projects.

1957—Subsec. (c). Pub. L. 85-47, §1(a), changed language generally, and struck out provisions which authorized Secretary to negotiate a contract as provided in section 422e of this title, with the provision that no such contract be executed by him prior to sixty days from date project proposal was submitted to both branches of Congress for committee consideration, and

then only if neither committee disapproved proposal within the period, but that if both committees approved he could execute contract, and that if either committee disapproved, he could not proceed unless Congress approved.

Subsecs. (d), (e). Pub. L. 85-47, §1(b), added subsec. (d) and redesignated former subsec. (d) as (e).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 304(a) and 305 of Pub. L. 99-546 applicable to all proposals for which final applications are received by Secretary after Jan. 1, 1986, and amendment by section 304(b) of Pub. L. 99-546 applicable to all proposals for which draft applications are received by Secretary after Aug. 15, 1986, see section 310 of Pub. L. 99-546, set out as a note under section 422a of this title.

##### RETROACTIVE EFFECT OF 1966 AMENDMENT

Amendment by Pub. L. 89-553 not to be applicable to or affect in any way the terms on which any loan or grant was made prior to the effective date of Pub. L. 89-553, Sept. 2, 1966, see section 2 of Pub. L. 89-553, set out as a note under section 422b of this title.

#### § 422e. Contract requirements

Upon approval of any project proposal by the Secretary under the provisions of section 422d of this title, he may negotiate a contract which shall set out, among other things—

(a) the maximum amount of any loan to be made to the organization and the time and method of making the same available to the organization. Said loan shall not exceed the lesser of (1) two-thirds of the maximum allowable estimated total project cost as determined by section 422b(f) of this title, or (2) the estimated total cost of the project minus the contribution of the local organization as provided in section 422d(b) of this title and the amount of the grant approved;

(b) the maximum amount of any grant to be accorded the organization. Said grant shall not exceed the sum of the following: (1) the costs of investigations, surveys, and engineering and other services necessary to the preparation of proposals and plans for the project allocable to fish and wildlife enhancement or public recreation; (2) one-half the costs of acquiring lands or interests therein to serve exclusively the purposes of fish and wildlife enhancement or public recreation, plus the costs of acquiring joint use lands and interests therein properly allocable to fish and wildlife enhancement and public recreation; (3) one-half the costs of basic public outdoor recreation facilities or facilities serving fish and wildlife enhancement purposes exclusively; (4) one-half the costs of construction of joint use facilities properly allocable to fish and wildlife enhancement or public recreation; (5) that portion of the estimated cost of constructing the project which, if it were constructed as a Federal reclamation project, would be properly allocable to functions, other than recreation and fish and wildlife enhancement and flood control, which are nonreimbursable under general provisions of law applicable to such projects; and (6) that portion of the estimated cost of constructing the project which is allocable to flood control and which would

be nonreimbursable under general provisions of law applicable to projects constructed by the Secretary of the Army.<sup>1</sup>

(c) a plan of repayment by the organization of (1) the sums lent to it in not more than forty years from the date when the principal benefits of the project first become available; (2) interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent on the unamortized balance of any portion of the loan—

(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 390bb of this title, in excess of three hundred and twenty irrigable acres; or,

(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement, or public recreation except that portion of such allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest.<sup>1</sup>

(d) provision for operation of the project, if a grant predicated upon its performance of nonreimbursable functions is made, in accordance with regulations with respect thereto prescribed by the head of the Federal department or agency primarily concerned with those functions and, in the event of non-compliance with such regulations, for operation by the United States or for repayment to the United States of the amount of any such grant;

(e) such provisions as the Secretary shall deem necessary or proper to provide assurance of and security for prompt repayment of the loan and interest as aforesaid. The liability of the United States under any contract entered into pursuant to this subchapter shall be contingent upon the availability of appropriations to carry out the same, and every such contract shall so recite; and

(f) provisions conforming to the preference requirements contained in the proviso to section 485h(c) of this title, if the project produces electric power for sale.

(Aug. 6, 1956, ch. 972, §5, 70 Stat. 1046; Pub. L. 85-47, §1(c), June 5, 1957, 71 Stat. 49; Pub. L. 89-553, §1(4), Sept. 2, 1966, 80 Stat. 376; Pub. L. 92-167, §1(3)-(6), Nov. 24, 1971, 85 Stat. 488; Pub. L. 94-181, §1(f), Dec. 27, 1975, 89 Stat. 1050; Pub. L. 96-336, §8(b), Sept. 4, 1980, 94 Stat. 1065; Pub. L. 97-293, title II, §223, Oct. 12, 1982, 96 Stat. 1272; Pub. L. 99-546, title III, §§306, 307, Oct. 27, 1986, 100 Stat. 3054.)

<sup>1</sup> So in original. The period probably should be a semicolon.