

# EDUCATION DEPARTMENT[281]

## Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 96  
“Statewide Sales and Services Tax for School Infrastructure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 292.3

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 423E and 423F

### Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

January 2, 2024  
9:30 to 10 a.m.

Room B100  
Grimes State Office Building  
Des Moines, Iowa

### Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Grimes State Office Building, Second Floor  
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### Purpose and Summary

This proposed chapter is intended to benefit Iowans by providing a framework for use of the school infrastructure funds. In the most recent reporting year, schools spent \$881,373,745 in Secure an Advanced Vision for Education (SAVE) funds related to school infrastructure.

The Department proposes removing verbatim statutory text, removing restrictive terms that do not provide any additional protection to the taxpayer, and modernizing filing requirements (such as eliminating the requirement for paper copies).

### Analysis of Impact

1. Persons affected by the proposed rulemaking:
  - Classes of persons that will bear the costs of the proposed rulemaking:  
School officials will bear the cost of compliance.
  - Classes of persons that will benefit from the proposed rulemaking:  
Iowa’s students, families, and taxpayers will benefit from the proposed rulemaking.
  
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
  - Quantitative description of impact:  
There is no known quantitative impact of this proposed rulemaking.
  - Qualitative description of impact:  
There are qualitative benefits in streamlining and modernizing this proposed chapter.
  
3. Costs to the State:
  - Implementation and enforcement costs borne by the agency or any other agency:  
The Department and other state agencies (e.g., Department of Management) enforce this chapter, with costs offset by the agencies’ general appropriations.

- Anticipated effect on state revenues:  
There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:  
Inaction would retain obsolete and unnecessary rule language.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The statute requires rules.

### Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business.

### Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 96 and adopt the following **new** chapter in lieu thereof:

TITLE XVI  
SCHOOL FACILITIES  
CHAPTER 96  
STATEWIDE SALES AND  
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

#### **281—96.1(423E,423F) Definitions.**

“*Actual enrollment*” means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section 257.6(1).

“*Base year*” means the school year ending during the calendar year in which the budget is certified.

“*Certificate of need*” means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades 9 through 12.

“*Combined actual enrollment*” means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

“*Department*” means the state department of education.

“*Guaranteed school infrastructure amount*” means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

“*New construction*” means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12117.

“*Nonresident student*” means a student enrolled in a school district who does not meet the definition of a resident in Iowa Code section 282.1.

“*Reconstruction*” means rebuilding or restoring as an entity a thing that was lost or destroyed.

“*Repair*” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

“*Resident student*” means a student enrolled in a school district who meets the definition of a resident in Iowa Code section 282.1.

“*Revenue purpose statement*” means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

“*Sales tax*” means the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

“*School budget review committee*” or “*SBRC*” means a committee that is established under Iowa Code section 257.30.

“*School district*” means a public school district in Iowa accredited by the state department of education.

“*School infrastructure*” means the same as defined in Iowa Code section 423F.3(6).

“*Site improvement*” means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks that are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

“*Statewide tax revenues per student*” means the amount per student established by Iowa Code section 423E.4(2) “b”(3).

**281—96.2(423E,423F) Reports to the department.** Each school district shall, by October 15, annually report the school district’s actual enrollment on October 1 by the student’s county of residency according to the following:

**96.2(1) *County of residency.*** The county of residency for each of the students is the county in which the student lives in accordance with Iowa Code section 282.1.

**96.2(2) *Emancipated minor.*** The county of residency for an emancipated minor attending the school district is the county in which the emancipated minor is living.

**96.2(3) *County of residency unknown.*** If a school district cannot determine an enrolled student’s county of residency or if the county of residency is not a county in which the school district is located, the county of residency is the county in which the school district certifies its budget.

**281—96.3(423E,423F) Combined actual enrollment.** By March 1, annually, the department will forward to the department of management the actual enrollment and the actual enrollment by the student’s county of residency for each school district located in whole or in part in a county where a sales tax has been imposed and the combined actual enrollment for that county.

**281—96.4(423E,423F) Application and certificate of need process.**

**96.4(1) *When application needed; application period.*** A school district that does not exceed enrollment thresholds defined in Iowa Code section 423F.3(5) shall not expend the amount of statewide sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not necessary for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; school safety and security infrastructure as provided in Iowa Code section 423F.3(6) other than new construction; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications are due no later than eight weeks prior to a regularly scheduled meeting of the SBRC. The SBRC holds regularly scheduled meetings as stipulated in rule 289—1.4(257).

**96.4(2) *Application form.*** Each applicant school district is to use the form prepared by the department for this purpose and in the manner prescribed by the department. The application form includes at least the following information:

*a.* The total capital investment of the project. If the project is in collaboration with other public or private entities, a school district is to include the following information:

- (1) Identification of the collaborating public or private entities;
- (2) Total cost of the collaborative project; and
- (3) Total cost of the school district's portion of the project.

*b.* The infrastructure needs of a school district specific to the application, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If a school district's needs include fire and health safety needs, the school district is to attach to its application form a copy of the citation from the fire marshal for the safety deficiency or evidence of consultation with the fire marshal or other qualified inspector related to the health safety deficiency. A school district is to include evidence of public involvement in assessing the need for this project.

*c.* The description of need including a cost-benefit analysis of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

*d.* Enrollment trends by grade in a school district showing a five-year history and five years of projected enrollment by grade. The school district is to identify the grades that will be served at the new construction site. If a school district uses enrollment projections other than those prepared by the department, the school district is to submit a description of the basis for those projections. The school district is to demonstrate that there is sufficient economic activity and stability to support and sustain enrollment projections of the affected attendance center.

*e.* If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district is to attach a copy of a feasibility study pursuant to Iowa Code section 256.9(30) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

*f.* A description of the benefits and effects of the project and its relationship to improving student learning including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district is to provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12, including five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

*g.* Description of transportation barriers, if any, to the current site and to the proposed site and the distance in miles and in travel time from the nearest and furthest boundaries of the school district to the current site and the proposed site.

*h.* Evidence of a healthy financial condition and long-term financial stability. The school district is to provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis, including five years of history and three years of projected balances. The calculation of budget authority is to show and project the effect of the budget adjustment under Iowa Code section 257.14. Projected allowable growth is that which is known or generally anticipated at the time of the application. If the percent of allowable growth is not known or anticipated, a district may use an annual projected allowable growth of up to 2 percent.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

*i.* If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district is to include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district is to list any obligations against those current balances and future revenues or against the statewide sales and services tax for school infrastructure amounts. The school district is to attach a copy of the school district's revenue purpose statement, if any.

*j.* A comprehensive, districtwide infrastructure plan. The school district is to include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

*k.* A five-year history of significant infrastructure maintenance and repair.

*l.* A statement certifying the accuracy of the information contained in the application.

**96.4(3) Board minutes.** A school district that is applying for a certificate of need is to submit with its application a copy of the published minutes of the board of director's meeting showing that the board has authorized the application and the

project and that the public has been informed, with the section of the board minutes containing this information marked in such a way as to make it easily identifiable.

**96.4(4) *Reapplication.*** A school district that is not successful in obtaining a certificate of need for the project that is the subject of the application may apply for a certificate of need in succeeding application periods if its circumstances change substantially.

**96.4(5) *Application timeline.*** A school district is to apply for a certificate of need either:

a. When the school district has received amounts that it intends to accumulate for new construction or for payment of debt related to new construction; or

b. When the school district board has accumulated amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

**96.4(6) *Compliance requirement on uses.*** All projects included in the application must be consistent with the provisions of the Americans With Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

### **281—96.5(423E,423F) Review process.**

**96.5(1) *Task force.*** The department will form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department will invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, will establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4(5), which includes consideration of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The cost-benefit analysis of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the school district, including the effect of the budget adjustment and unspent balance.

g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

**96.5(2) *Task force review.*** The task force, or a subcommittee of the task force, and its designees, will review each application and make recommendations to the school budget review committee regarding approval of certificates of need based on the evidence provided by the applicant pursuant to subrule 96.4(2) and the criteria listed in subrule 96.5(1). More than one member of the task force or subcommittee of the task force and its designees shall review each application. A reviewer will not review any application in which the reviewer has a conflict of interest.

**96.5(3) *Approval process.*** Applications will be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria, with each applicable criterion scored on a scale of zero to ten. Applicable scores will be averaged. Nonapplicable criteria will not be used in determining the average score. An application shall have a minimum average score of five to be eligible to be recommended for approval. If an application receives a score of zero on one or more applicable criteria, the application will not be recommended for approval. A recommendation for approval by the task force does not constitute final approval of the application. The following categories on the application will be evaluated and scored:

a. Infrastructure needs the project proposes to alleviate. Special consideration shall be given to infrastructure needs that relate to fire or health safety issues.

b. Evidence that remodeling, reconstructing, or repairing the existing buildings is not feasible.

c. Unavailability of alternative, less costly, or more effective means of serving student needs.

d. Improvement of transportation distance, convenience, cost and accessibility with the new construction.

e. Sustainable financial condition and long-term financial stability of the school district.

f. Evidence that the proposed project will improve educational opportunities for students and enable the school district to meet or exceed educational standards.

g. Current comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan.

h. Description of collaboration with one or more other public or private entities.

**96.5(4) *Ineligibility for approval.*** If either of the following two descriptions applies to the school district, the school district is not eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code section 256.9(30) and the AEA plan pursuant to Iowa Code sections 275.1 through 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

*a.* The current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.

*b.* The current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

**96.5(5) *School budget review committee.*** The SBRC will review the recommendations from the task force for approval of certificates of need and make recommendations on approval to the department for final consideration.

**281—96.6(423E,423F) Award process.**

**96.6(1) *Department determination.*** The department will make the final determination on approval of certificates of need.

**96.6(2) *Notification.*** The department will notify applicants no later than two weeks following the date of receipt of the recommendations from the SBRC.

**281—96.7(423E,423F) Applicant responsibilities.**

**96.7(1) *Change in the project.*** If a school district significantly changes the proposed project, the school district shall notify the department within ten working days of the change and submit a new application for a certificate of need for the newly changed project.

**96.7(2) *Accounting for the funding.*** All revenues and all expenditures from the statewide school infrastructure amounts are to be separately identified and accounted for in a capital projects fund established for the statewide sales and services tax for school infrastructure proceeds.

**96.7(3) *Withdrawal of application.*** If a school district is granted a certificate of need for a project and the school district elects not to continue with the project, the school district is to notify the department within ten working days following the board action to discontinue the project.

**96.7(4) *Forfeiture of certificate.*** Failure to comply with any of the rules in this chapter or provide information that is included in the certificate of need application or that is requested by the department may result in the forfeiture of the certificate of need or removal from the application cycle.

**281—96.8(423E,423F) Appeal of certificate denial.** Any applicant may appeal the denial of a properly submitted application for certificate of need to the director of the department. Appeals are to be (1) in writing, (2) received within ten working days of the date of the notice of the decision to deny, and (3) based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director’s decisions apply to any appeal of denial.

These rules are intended to implement Iowa Code chapters 423E and 423F.