

TITLE XVI
SCHOOL FACILITIES

CHAPTER 96

STATEWIDE/LOCAL OPTION SALES AND
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

281—96.1(423E,423F) Definitions. For purposes of these rules, the following definitions shall apply:

“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, subsection 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 9-12. The certificate of need must be obtained by the school district before the district may expend the supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount or to expend the statewide sales and services amount or remaining unobligated local option sales and services balances for new construction.

“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 pursuant to 42 U.S.C. Section 12101-12117.

“Nonresident student” means a student enrolled in a school district who does not meet the requirements of a resident as defined 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 requirements of a resident as defined 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 a local option sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423E and the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

“Sales tax capacity per student” means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at 1 percent in the county, divided by the school district’s actual enrollment.

“School budget review committee” or *“SBRC”* means a committee that is established under Iowa Code section 257.30 in the department of education and that consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues and who are appointed by the governor to represent the public.

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

“*School infrastructure*” means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1, except those activities related to a teacher’s or superintendent’s home or homes. These activities include the construction, reconstruction, repair, demolition, purchase, or remodeling of schoolhouses, stadiums, gymnasiums, fieldhouses, and bus garages; the procurement of schoolhouse sites and site improvements; and the payment or retirement of general obligation bonds issued for school infrastructure purposes or of sales and services tax for school infrastructure revenue bonds. The definition of school infrastructure also includes activities for which revenues under Iowa Code sections 298.3 and 300.2 may be spent and property tax relief for the debt service property tax levy, regular physical plant and equipment property tax levy, voter-approved physical plant and equipment income surtax and property tax levy, and the public education and recreation property tax levy.

“*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 which 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 subsection 423E.4(2) “b”(3).

“*Supplemental school infrastructure amount*” means the guaranteed school infrastructure amount for the school district less the pro rata share of local sales and services tax for school infrastructure purposes.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

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 shall be 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 shall be 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 shall be the county in which the school district certifies its budget.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

281—96.3(423E,423F) Combined actual enrollment. By March 1, annually, the department shall 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.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

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

96.4(1) *When application needed; application period.* After July 1, 2008, a school district with a certified enrollment of fewer than 250 students in the entire district or a certified enrollment of fewer than 100 students in grades 9 through 12 shall not expend the amount of statewide or local 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 required for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications shall be hand-delivered or postmarked no later than eight weeks prior to a regularly scheduled meeting of the SBRC. Delivery of applications by way of

facsimile transmission is not allowed. The SBRC holds regularly scheduled meetings on the second Monday of September, December, March, and May.

96.4(2) Application form. The department shall make available an application form to Iowa public school districts. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during the application period. The application form shall include, but shall not be limited to, 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 shall 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 shall 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 shall include evidence of public involvement in assessing the need for this project.

c. The description of need including documentation of the infeasibility 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 shall 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 must submit a description of the basis for those projections. The school district shall 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 shall attach a copy of a feasibility study pursuant to Iowa Code subsection 256.9(34) 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 nature of the project and its relationship to improving educational opportunities for students 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 shall 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. The list shall include 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 shall provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis. The calculation shall include five years of history and three years of projected balances. The calculation of budget authority shall show and project the effect of the phaseout of the budget guarantee. Projected allowable growth shall be that known or generally anticipated at the time of the application. If the percent

of allowable growth is not known or anticipated, an allowable growth of no more than 2 percent shall be utilized in the annual projections.

(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 shall 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 shall list any obligations against those current balances and future revenues or against the local option or statewide sales and services tax for school infrastructure amounts. The school district shall attach a copy of the school district's revenue purpose statement, if any.

j. A comprehensive, districtwide infrastructure plan. The school district shall 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 submitting an application for certificate of need shall 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. The section of the board minutes containing this information shall be marked in such a way as to make it easily identifiable.

96.4(4) Number of copies. A school district that is submitting an application for certificate of need shall submit three complete sets of the application forms and board minutes with original signatures on the application forms.

96.4(5) 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(6) Application timeline. A school district shall submit an application 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(7) 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.

[ARC 8384B, IAB 12/16/09, effective 1/20/10; ARC 9473B, IAB 4/20/11, effective 5/25/11]

281—96.5(423E,423F) Review process.

96.5(1) Task force. The department shall form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department shall 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, shall establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4, subsection 5, which includes required consideration of the following:

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

b. The infeasibility 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 decline of the budget guarantee 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, shall 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 shall not review any application in which the reviewer has a conflict of interest.

96.5(3) *Approval process.* Applications shall be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria. Each applicable criterion shall be scored on a scale of zero to ten. Applicable scores shall be averaged. Nonapplicable criteria shall 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 shall 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 shall 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 shall not be eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code subsection 256.9(34) and the AEA plan pursuant to Iowa Code sections 275.1 to 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

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

b. If either 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 shall review the recommendations from the task force for approval of certificates of need. The committee shall make recommendations on approval to the department for final consideration.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

281—96.6(423E,423F) Award process.

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

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

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

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 shall submit a new application for a certificate of need for the newly changed project.

96.7(2) *Accounting for the funding.* All revenues from the local and statewide school infrastructure amounts and all expenditures from the local and statewide school infrastructure amounts shall be separately identified and accounted for in a capital projects fund established for the local option and 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 shall 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.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

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 must be in writing and received within ten working days of the date of the notice of the decision to deny. Appeals must be 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 shall be applicable to any appeal of denial.

[ARC 8384B, IAB 12/16/09, effective 1/20/10]

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

[Filed emergency 9/16/98—published 10/7/98, effective 9/16/98]

[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98]

[Filed emergency 8/4/00 after Notice 6/28/00—published 8/23/00, effective 8/7/00]

[Filed 4/20/05, Notice 2/16/05—published 5/11/05, effective 6/15/05]

[Filed 11/16/05, Notice 9/28/05—published 12/7/05, effective 1/11/06]

[Filed ARC 8384B (Notice ARC 8048B, IAB 8/26/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 9473B (Notice ARC 9373B, IAB 2/23/11), IAB 4/20/11, effective 5/25/11]