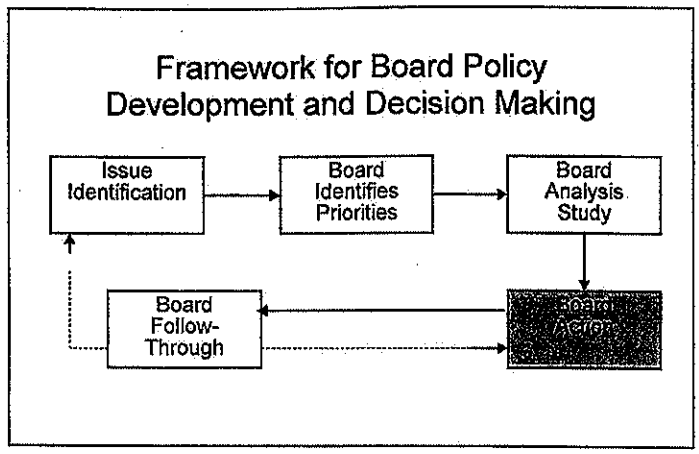
Iowa State Board of Education

Executive Summary

July 30, 2009



Agenda Item: Rules: Chapter 96 - Local Option Sales and Services Tax for School Infrastructure (Notice)

Iowa Goal: All K-12 students will achieve at a high level.

Equity Impact Statement: This chapter applies equally to all Iowa school districts.

Presenter: Carol Greta, Attorney
Office of the Director

Attachments: 1

Recommendation: It is recommended that the State Board give public notice of its intent to amend this chapter.

Background: 2008 Iowa Acts, chapter 1134, sections 27 – 32, and 2008 Iowa Acts, chapter 1191, sections 72 and 73, created new Iowa Code chapter 423F, Statewide School Infrastructure Funding. Thus, most of the amendments proposed herein are nonsubstantive, but are necessary to reflect the additional statutory authority of Iowa Code chapter 423F. There are two substantive changes. In item 5, paragraph 96.4(2)"d" reflects the suggestion of members of the School Budget Review Committee that there be evidence that the communities from which a district's student population come can sustain projected enrollments and the references in paragraphs 96.4(2)"e" and 96.5(4)"b" to enrollments of at least 25 students per grade level are stricken for lack of statutory support.

EDUCATION DEPARTMENT [281]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 96, "Local Option Sales and Services Tax for School Infrastructure," Iowa Administrative Code.

2008 Iowa Acts, chapter 1134, sections 27 – 32, and 2008 Iowa Acts, chapter 1191, sections 72 and 73, created new Iowa Code chapter 423F, Statewide School Infrastructure Funding. Thus, most of the amendments proposed herein are nonsubstantive, but are necessary to reflect the additional statutory authority of Iowa Code chapter 423F. There are two substantive changes. In item 5, paragraph 96.4(2)"d" reflects the suggestion of members of the School Budget Review Committee that there be evidence that the communities from which a district's student population come can sustain projected enrollments and the references in paragraphs 96.4(2)"e" and 96.5(4)"b" to enrollments of at least 25 students per grade level are stricken for lack of statutory support.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before September 15, 2009, at 4:30 p.m. Comments on the proposed amendments should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319–0146; telephone (515)281–4738; E–mail su.mccurdy@iowa.gov; or fax (515)281–7700.

A public hearing will be held on September 15, 2009, from 11 to noon in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any person who desires to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, may advise the Department of Education of specific needs by calling (515)281–5295.

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

The following amendments are proposed.

ITEM 1. Amend 281—Chapter 96, title, as follows:

STATEWIDE/LOCAL OPTION SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

ITEM 2. Amend rules **281—96.1(423E)** to **281—96.8(423E)** by adding **423F** to the parenthetical implementation statute.

ITEM 3. Amend rule **281—96.1(423E,423F)**, definitions of *"actual enrollment," "certificate of need," "revenue purpose statement," "sales tax," "school infrastructure,"* and *"statewide tax revenues per student,"* as follows:

"Actual enrollment" means the number of students each school district certifies to the department by October ~~1~~ 15 of each year in accordance with Iowa Code section 257.6, subsection 1.

"Certificate of need" means written approval that a school district that has a certified enrollment of fewer than 250 students in the district or that has a certified enrollment of fewer than 100 students in grades 9-12 submits to the department of education on application forms prepared for that purpose to 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.

"Revenue purpose statement" means a document prepared by the school district indicating the specific purpose or purposes for which the ~~local sales and services tax for school infrastructure revenue and the supplemental school infrastructure amount~~ funding pursuant to Iowa Code chapters 423E and 423F will be expended~~; which was posted at the appropriate polling places of each school district during the hours that the polls were open; and which was published in a newspaper of general circulation in the school district no sooner than 20 days and no later than 10~~

~~days prior to the local option sales and services tax for school infrastructure election~~.

"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 in accordance with Iowa Code chapter 423F.

"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 ~~local option~~ sales and services tax for school infrastructure revenue bonds. ~~For local option sales and services tax for school infrastructure elections passed on or after May 30, 2003, the~~ 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.

"Statewide tax revenues per student" means the amount per student established by Iowa Code subsection 423E.4(~~3~~2)*"b"*(3).

ITEM 4. Rescind rule **281—96.2(423E,423F)** and replace with new rule **281—96.2(423E,423F)** as follows:

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:

a. County of residency. The county of residency for each of the students shall be the county in which the student lives in accordance to Iowa Code section 282.1.

b. 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.

c. 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.

ITEM 5. Amend rule **281—96.4(423E,423F)** as follows:

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

96.4(1) *~~Application~~ 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 the high school 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 section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. sections 12101 - 12117. ~~School districts may submit applications for certificates of need between 8 a.m. and 4:30 p.m. Monday through Friday, except on holidays.~~ 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 ~~at least 30 days prior to the end of the application period~~. 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. No change.

b. and *c.* No change.

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 ~~or fewer than 25 students for any grade~~, 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. No change.

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 unreserved 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 the local option sales and services tax for school infrastructure,~~ 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 ~~tax~~ 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 local option sales and services tax for school infrastructure ballot,~~ the school district's revenue purpose statement, if any~~, and a list of the tax capacity per student by each county in which the school district is located~~.

j. A comprehensive, districtwide infrastructure plan ~~if the school district has an 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. and *l.* No change.

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) and **96.4(5).** No change.

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 ~~a supplemental amount~~ 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 ~~supplemental~~ amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

96.4(7) ~~*Supplemental amount restrictions*~~ *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.

ITEM 6. Amend subrule **96.5(1)**, introductory paragraph, as follows:

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 school budget review committee. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, ~~and~~ 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 ~~6~~5, which includes required consideration of the following:

ITEM 7. Amend subrule **96.5(3)** as follows:

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. ~~Financial~~ Healthy financial condition and long-term financial stability of the school district. ~~A school district affected by the decline of the budget shall submit information on the impact of the budget guarantee change.~~

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.

ITEM 8. Amend subrule **96.5(4)** as follows:

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, ~~or~~ 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 ~~each grade to be served in the building that is the subject of the application is fewer than 25 students~~ grades nine through twelve is fewer than a total of 100 students, if a high school building is the subject of the application.

ITEM 9. Amend subrule **96.5(5)** as follows:

96.5(5) *School budget review committee.* The ~~school budget review committee~~ 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.

ITEM 10. Amend subrule **96.6(2)** as follows:

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

ITEM 11. Amend subrule **96.7(2)** as follows:

96.7(2) *Accounting for the ~~supplemental amount~~ funding.* All revenues from the ~~supplemental~~ local and statewide school infrastructure ~~amount~~ amounts and all expenditures from the ~~supplemental~~ local and statewide school infrastructure ~~amount~~ 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.

ITEM 12. Amend implementation sentence as follows:

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