

## CHAPTER 13

### PROPERTY MANAGEMENT

#### Inventory

A school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. The appraisal shall be updated at least once every five [5] years **(282.24(1)"b")**.

#### Use of School Property

The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar societies, for parent-teacher associations, for community recreational activities, community education programs, election purposes, other meetings of public interest, public forums and similar community purposes; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils, except that in the case of community education programs, any compensation necessary for programs provided specifically by community education and not those provided through community education by other agencies or organizations shall be compensated from the funding provided for community education programs **(297.9)**.

Any compensation for the use of a schoolhouse and schoolhouse grounds shall be paid into the general fund and be expended in the upkeep and [minor] repair of and in purchasing supplies for that school property **(297.10)**.

In carrying out the provisions of chapter 29C regarding emergency management services, the governor, the director of the department of public defense, and the executive officers or governing boards of political subdivisions of the state shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of existing departments, officers, and agencies of the state and of political subdivisions at their respective levels of responsibility **(29C.12)**.

Boards of directors of school corporations may authorize the use by senior citizen organizations of school meal facilities subject to reasonable rules and regulations of the board. Such use shall not interfere with the use of the facilities for public school purposes. The board may charge for such use an amount not to exceed the cost to the district **(283A.8)**.

The school board may grant the use of a school room to the community for public library purposes unless the electors of the district have voted otherwise **(1910 Op. Att'y Gen. 57 (#9-3-10))**.

The voters at the regular election shall have power to instruct the board that school buildings may or may not be used for meetings of public interest **(278.1(1)"d")**.

If the voters of a district at a regular election forbid the use of any schoolhouse or grounds, the board shall not permit that use until the action of the voters is rescinded by the voters at an election held on a date specified in section 39.2, subsection 4, paragraph "c" **(297.11)**.

No one has the right to demand the free use of a gymnasium or auditorium or other school facility, but a board may authorize its use at any time that the use does not interfere with regular school activities **(OAG #35-6-19(L))**.

A leasehold interest in vehicles or other property is "public property" if the lease is acquired in the name of a public agency or is acquired with public funds. Private use of public property is permissible only if the private use is incidental to a public purpose. Heads of agencies should promulgate rules establishing guidelines for mixed public and private usage of publicly owned property. A contract may not authorize purely private use of public property, nor may public property be used for purely private purposes on a reimbursement basis **(OAG #83-5-13)**.

The property of a school corporation when devoted to public use and not held for pecuniary profit shall not be taxed **(427.1(2))**.

Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution **(627.18)**.

The board of directors shall notify the cities located within the school district, the counties in which the school district may be located, and the department of administrative services annually of the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased **(297.4)**.

Before proceeding to construct or purchase a facility as otherwise provided by law, a public agency shall inquire of other public agencies having facilities within the same general geographic area concerning the availability of all or part of those facilities for rent or sharing by agreement with the inquiring public agency. If there are no suitable facilities available for rent or sharing, the governing body of the public agency shall record its findings in its meeting minutes **(28E.18)**.

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the state agency at least thirty [30] days before the termination of the lease **(7.20)**.

## **Religious Use**

If school districts permit community groups to use schoolhouse or grounds for meetings, religious groups are entitled to use school property on an equal basis. School boards may promulgate 'time, place and manner' regulations for use of school property **(OAG #82-4-29)**.

School districts and AEA boards shall make public school services, which shall include special education programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. Service activities shall be similar to those undertaken for public school students. Health services, special education support, and related services provided by AEAs for the purpose of identifying children with disabilities, assistance with physical and communications needs of students with physical disabilities, and services of an educational interpreter may be provided on nonpublic school premises with the permission of the lawful custodian of the property. Other special education services may be provided on nonpublic school premises at the discretion of the school district or AEA provider of the service and with the permission of the lawful custodian of the property **(256.12(2))**.

There is no statute that allows a school board to loan school property to a parochial school **(OAG #29-10-19)**. [Exception - Textbooks, See Iowa Code section 301.1.]

A public school board may lease a vacant school building to a parochial school board for one year if adequate consideration is paid for the leasehold interest **(OAG #65-6-14)**.

A local board may set aside a public school classroom for the exclusive use of shared-time classes **(1972 Op. Att'y Gen. 453 (72-5-9))**.

## **Sex Offender Prohibitions and Exclusion Zones**

A sex offender who has been convicted of a sex offense against a minor or a person required to register as a sex offender in another jurisdiction for an offense involving a minor shall not do any of the following:

- a.* Be present upon the real property of a public or nonpublic elementary or secondary school without the written permission of the school administrator or school administrator's designee, unless enrolled as a student at the school.
- b.* Loiter within three hundred feet of the real property boundary of a public or nonpublic elementary or secondary school, unless enrolled as a student at the school.
- c.* Be present on or in any vehicle or other conveyance owned, leased, or contracted by a public or nonpublic elementary or secondary school without the written permission of the school administrator or school administrator's designee when the vehicle is in use to transport students to or from a school or school-related activities, unless enrolled as a student at the school or unless the vehicle is simultaneously made available to the public as a form of public transportation.
- d.* Be present upon the real property of a child care facility without the written permission of the child care facility administrator.
- e.* Loiter within three hundred feet of the real property boundary of a child care facility.

- f. Be present upon the real property of a public library without the written permission of the library administrator.
- g. Loiter within three hundred feet of the real property boundary of a public library.
- h. Loiter on or within three hundred feet of the premises of any place intended primarily for the use of minors including but not limited to a playground available to the public, a children's play area available to the public, a recreational or sport-related activity area when in use by a minor, a swimming or wading pool available to the public when in use by a minor, or a beach available to the public when in use by a minor (**692A.113(1)**).

A sex offender who has been convicted of a sex offense against a minor:

- a. Who resides in a dwelling located within three hundred feet of the real property boundary of public or nonpublic elementary or secondary school, child care facility, public library, or place intended primarily for the use of minors as specified in subsection 1, paragraph "h", shall not be in violation of subsection 1 for having an established residence within the exclusion zone.
- b. Who is the parent or legal guardian of a minor shall not be in violation of subsection 1 solely during the period of time reasonably necessary to transport the offender's own minor child or ward to or from a place specified in subsection 1.
- c. Who is legally entitled to vote shall not be in violation of subsection 1 solely for the period of time reasonably necessary to exercise the right to vote in a public election if the polling location of the offender is located in a place specified in subsection 1 (**692A.113(2)**).

A sex offender who has been convicted of a sex offense against a minor shall not do any of the following:

- a. Operate, manage, be employed by, or act as a contractor or volunteer at any municipal, county, or state fair or carnival when a minor is present on the premises.
- b. Operate, manage, be employed by, or act as a contractor or volunteer on the premises of any children's arcade, an amusement center having coin or token operated devices for entertainment, or facilities providing programs or services intended primarily for minors, when a minor is present.
- c. Operate, manage, be employed by, or act as a contractor or volunteer at a public or nonpublic elementary or secondary school, child care facility, or public library.
- d. Operate, manage, be employed by, or act as a contractor or volunteer at any place intended primarily for use by minors including but not limited to a playground, a children's play area, recreational or sport-related activity area, a swimming or wading pool, or a beach.
- e. Operate, manage, be employed by, or act as a contractor or volunteer at a business that operates a motor vehicle primarily marketing, from or near the motor vehicle, the sale and dispensing of ice cream or other food products to minors (**692A.113(3)**).

## **Maintenance of School Property**

The board shall make rules for the care of the schoolhouse, grounds, and property of the school corporation (**279.8**).

The board may make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on school grounds (**279.8A**).

The control and management of a school building is placed exclusively with the board of directors of the school district and cannot be voted or delegated to any other agency (**1938 Op. Att'y Gen. 234 (#37-5-17)**).

No school attendance center fence shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten [10] feet of any school attendance center. Any person violating the provisions of this section shall be guilty of a simple misdemeanor (**297.14, 1912 Op. Att'y Gen. 738 (#12-7-12)**).

If the owner of the ground adjacent to a school site has it fenced hog-tight, the schoolhouse fence must also be hog-tight. The board must maintain all of the fences between the school grounds and adjacent improved or cultivated land (**1912 Op. Att'y Gen. 658 (#12-4-20)**).

Electric companies have no right to trespass upon school property and they may be compelled to remove wires from crossing over a section of the school property. The enforcement would give the electric companies no right to cut off the service to the buildings (**1928 Op. Att'y Gen. 136 (#37-3-31)**).

A municipality cannot directly or indirectly prohibit a fire department from answering a fire call or making an inspection of school buildings within the corporate limits of the municipality (**OAG #60-7-13**).

Where an independent or community school district has within its limits a city of one hundred twenty-five thousand [125,000] population or more, and has a schoolhouse located outside the city limits of such city and outside the limits

of any city, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five percent [75%] of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four [4] feet in width along the highway adjacent to the property described and leading to such schoolhouse **(320.1)**.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall provide and maintain a suitable flagstaff on each school site under its control, and the United States flag and the Iowa state flag shall be raised on all school days when weather conditions are suitable **(280.5)**.

It shall be the duty of any board of public officers charged with providing supplies for a public building in the state to provide a suitable state flag, and it shall be the duty of the custodian of that public building to raise the flags of the United States of America and the state of Iowa, upon each secular day when weather conditions are favorable **(1B.3)**.

School districts and AEAs shall identify and implement, through energy audits and engineering analyses, all energy management improvements identified for which financing is facilitated by the authority for the entity. The energy management improvement financings shall be supported through payment from energy savings **(473.13A)**.

Between July 1, 1986, and June 30, 1991, and on a staggered annual basis each five [5] years thereafter, the board of directors of each school district shall file with the economic development authority, on forms prescribed by the office, the results of an energy audit of the buildings owned and leased by the school district. The office may waive the requirement for the initial and subsequent energy audits for school districts that submit evidence that energy audits were conducted prior to January 1, 1987, and energy consumption of the district is at an adjusted statewide average or below. This section takes effect only if funds have been made available to a school district to pay the costs of the energy audit **(279.44)**.

All private and public school officials and teachers are required to conduct not less than four [4] fire drills and not less than four [4] tornado drills in all school buildings during each school year when school is in session. Not less than two [2] drills of each type shall be conducted between July 1 and December 31 of each year and not less than two [2] drills of each type shall be conducted between January 1 and June 30 of each year **(100.31)**.

Officials and teachers of all schools are required to keep all doors and exits of their respective rooms and buildings unlocked when occupied during school hours or when such areas are being used by the public at other times **(100.31)**.

Every school building with two [2] or more classrooms shall have a warning system for fires of a type approved by the underwriters' laboratories and by the state fire marshal. The warning system shall be used only for fire drills or as a warning for emergency. Schools may modify the fire warning system for use as a tornado warning system or shall install a separate tornado warning system. Every school building shall also be equipped with portable fire extinguishers, with the type, size and number in accordance with national fire protection association standards and approved by the state fire marshal **(100.31)**.

The state fire marshal or the fire marshal's deputies shall cause each public or private school to be inspected at least once every two [2] years to determine whether each school meets the fire safety standards of this Code and is free from other fire hazards. Provided, however, that cities which employ fire department inspectors shall cause such inspections to be made **(100.31)**.

If a building or structure has a floor space of five thousand [5,000] square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than five thousand [5,000] square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical or a portion of the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. All letters and figures on signs required shall be at least three inches [3"] in height. The signs shall comply with the national fire protection association's standard system for the identification of fire hazards of materials, based upon NFPA 704-1980 **(89B.14)**.

After repairs are made, excess insurance proceeds become a part of the schoolhouse fund [PPEL] **(OAG #24-2-26; 1928 Op. Att'y Gen. 77(#27-3-23))**.

Work in excess of minor repair may be paid only from the schoolhouse [PPEL, capital projects] fund **(OAG #57-7-18)**.

A school district cannot contribute (voluntarily as opposed to paying a special assessment) its funds for the aid of a city or town sewage extension **(OAG #62-5-19)**.

School district boundaries are not automatically extended by the expansion of the city limits (**OAG #27-5-19(L)**).

Any damage, defacing, alteration, or destruction of property is criminal mischief when done intentionally by one who has no right to so act (**716.1**).

The AHERA rules published in the Code of Federal Regulations, Chapter 40, Part 763, Subpart E, requires the district/AEA to:

- Perform an original inspection and re-inspection every three years of asbestos-containing material;
- Develop, maintain, and update an asbestos management plan and keep a copy at the school;
- Provide yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school;
- Designate a contact person to ensure the responsibilities of the local education agency are properly implemented;
- Perform periodic surveillance of known or suspected asbestos-containing building material;
- Ensure that properly-accredited professionals perform inspections and response actions and prepare management plans; and
- Provide custodial staff with asbestos-awareness training.

#### **Establishment and Maintenance of Playgrounds Using the Public Education and Recreation Levy (PERL)**

Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and grounds of the district. The board may cooperate under chapter 28E with a public agency having the custody and management of public parks or public buildings and grounds, and with a private agency having custody and management of buildings or grounds open to the public, located within the school district, and may provide for the supervision and instruction necessary to carry on public educational and recreational activities in the parks, buildings, and grounds located within the district (**300.1**).

The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent [25%] of the number of voters at the last preceding school election, shall direct the county commissioner of elections to submit to the registered voters of the school district the question of whether to levy a tax of not to exceed thirteen and one-half cents [\$0.135] per thousand dollars [\$1,000] of assessed valuation for public educational and recreational activities authorized under chapter 300. The question shall be submitted at an election held on a date specified in section 39.2, subsection 4, paragraph "c" (**300.2**).

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by April 15 of the preceding fiscal year. The board of supervisors shall levy the amount certified. The amount shall be placed in the PERL fund of the district and shall be used only for the purposes specified in chapter 300 (**300.2**).

Once approved at an election, the authority of the board to levy and collect the tax under section 300.2 shall continue until the board votes to rescind the levy and collection of the tax or the voters of the school district by majority vote order the discontinuance of the levy and collection of the tax. The tax shall be discontinued in the manner provided in this section or in the manner provided for imposition of the tax in section 300.2 (**300.3**).

A school board and a city council have authority to enter into a lease from the school district to the city for land to be used as a playground or recreation center, and where reasonable, they may approve a lease, term of which is longer than the terms of office of the officers of the governmental bodies approving the lease (**OAG #68-9-8**).

A school district may lease land to a city for recreational purposes and cooperate in the operation thereof (**OAG #72-4-19**).

A school district may not assume the sole responsibility for maintenance of a playground constructed by a city for public use (**OAG #65-5-3**).

### **School Lunch Facilities**

School districts may purchase, erect, or otherwise acquire a building for use as a school meal facility, and equip a building for that use, and pay for the acquisition or equipping from funds available in the PPEL fund subject to the terms of section 298.2 (**283A.9**).

### **School Bus Maintenance Facilities**

Bonded indebtedness upon approval of voters for the cost of building a garage is permitted. General fund may not be expended for this purpose **(OAG #64-5-5)**.

Construction costs of a new school bus maintenance building must come from the schoolhouse fund [PPEL, capital projects] **(OAG #82-7-2(L))**.

### **Acquisition of Personal Property (Equipment) Using General Fund**

The board of directors of a school corporation may purchase equipment, and may negotiate and enter into a loan agreement and issue a note to pay for the equipment subject to the following terms and procedures:

- a. The note must mature within five years, or the useful life of the equipment, whichever is less.
- b. The note may bear interest at a rate to be determined by the board of directors in the manner provided in section 74A.3, subsection 1, paragraph "a". Chapter 75 is not applicable.
- c. The board of directors shall provide for the form of the agreement and note.
- d. Principal and interest on the note must be payable from budgeted receipts in the debt service fund for each year of a period of up to five [5] years **(279.48(1))**.

The total of scheduled annual payments of principal or interest due and payable from current budgeted receipts or future budgeted receipts with respect to all loan agreements authorized under this section or section 285.10, subsection 7, paragraph "b", must not exceed ten percent of the last authorized budget of the school corporation **(279.48(2))**.

Before entering into a loan agreement for an equipment purchase, the school corporation must publish a notice, including a statement of the amount and purpose of the agreement, at least once in a newspaper of general circulation within the school corporation at least ten days before the meeting at which the loan agreement is to be approved **(279.48(3))**.

The AEA board is authorized to purchase equipment as provided in section 279.48 **(273.3(20))**.

## **Acquisition of Buildings and Sites**

### **Financing Sources**

Rejection of a bond issue proposal conducted to build a school building does not limit the use of the other funds available for schoolhouses. The legislature has provided several sources of schoolhouse funds and the existence of one method does not restrict, by implication, the use of other methods. After the voters have approved the tax levy for a period of years for particular purposes they do not have power to rescind the tax levy or narrow the scope of the purposes for which the funds may be used **(OAG #85-2-1)**.

#### **Gifts and Bequests**

School corporations are authorized to take and hold property, real and personal, by gift and bequest and to administer the property through the proper officer in pursuance of the terms of the gift or bequest. Title shall not pass unless accepted by the governing board of the corporation. Conditions attached to the gifts or bequests become binding upon the corporation upon acceptance **(565.6)**.

The board of directors of a school district that receives funds through a gift, devise, or bequest shall deposit the funds in a trust fund, permanent fund, or agency fund [as appropriate under GAAP] and use the funds in accordance with the terms of the gift, devise, or bequest **(279.42)**. Generally these would be deposited into a trust fund or permanent fund; an agency fund would only be used if title did not pass because it was not accepted by the governing board.

Bequests to a school district must be turned over to the school treasurer and treated like all other school district moneys **(OAG #27-6-7(L))**.

A school district board may accept a gift of an auditorium to be built upon school property without submitting the issue to a vote of the district electorate **(OAG #83-3-4)**.

#### **Lease-Purchase and Other Contracts**

The board may, with approval of sixty percent [60%] of the voters, voting in an election in the school district, make extended time contracts not to exceed twenty [20] years in duration for rental of buildings to supplement existing schoolhouse facilities; and where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, these contracts may include lease-purchase option agreements, the amounts to be paid out of the PPEL fund. The election shall be held on a date specified in section 39.2, subsection 4, paragraph "c". Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids **(278.1(2))**.

School districts with approval of sixty percent [60%] of the voters may enter into lease-purchase agreements for pre-fabricated classroom units, but the cost thereof is to be paid out of the schoolhouse fund [PPEL] and cannot be paid from the general fund **(OAG #65-7-14)**.

The board of directors of a local school district for which a voter-approved physical plant and equipment levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved physical plant and equipment levy has been voted, for a period not exceeding ten [10] years and not exceeding the period for which the voter-approved physical plant and equipment levy has been authorized by the voters **(279.26)**. If the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes **(298.2(4)"a")**.

Any other law to the contrary notwithstanding, the board of directors of a school district may acquire by purchase, lease, or other arrangement real estate located within or adjoining the boundaries of a municipal airport, and may take title, leasehold, or other interest, subject to a right of purchase or repurchase by the city owning or controlling the municipal airport. The city may purchase, repurchase, or repossess such real estate and the improvements constructed on the real estate upon terms and conditions as agreed to by the board of directors and the city council. The board of directors of any such school district may construct a technical school on the real estate to carry on vocational instruction in aviation mechanics and other aviation programs upon compliance with conditions and limitations otherwise provided by law **(297.7(2))**.

The board of directors of a school corporation in which there is no free public library may contract with a free public library for the free use of the library by the residents of the school district, and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the consideration agreed upon, not exceeding twenty cents [\$0.20] per thousand dollars [\$1,000] of assessed value of the taxable property of the district. During the existence of the contract, the school corporation is relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence **(298.7(1))**.

The board may, when necessary, rent a room and employ a teacher, where there are ten [10] children for whose accommodation there is no schoolhouse **(297.12)**.

A school board of a community school district may enter into a contract for the rental of a school building from a church or church corporation, provided that the building is not a place of worship and that under the terms of the lease the building would not be under ecclesiastical or sectarian control. The school board could enter into a contract for the rental of a building to be used as school rooms with a non-profit corporation where the non-profit corporation would in advance lease the school building from a church. The school board could enter into a contract for rental of a building to be used as school rooms with a non-profit corporation, where the non-profit corporation owned and held title to the school building and the land underneath the building. The local school board could purchase land or a building from such a non-profit corporation **(1970 Op. Att'y Gen. 110 (#69-4-9))**.

A levy authorized by the board cannot be used on a contract of years as this tax may be terminated at any time by the electors **(OAG #54-8-10)**.

An AEA may hold property and execute purchase agreements within 2 years of a disaster as defined in section 29C.2, subsection 1, and lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease-purchase agreement exceeds 10 years or the purchase price of the property to be acquired pursuant to a purchase or lease-purchase agreement [is equal to or] exceeds \$25,000, the AEA shall conduct a public hearing on the proposed purchase or lease-purchase agreement and receive approval from the AEA board of directors and the state board of education or its designee before entering into the agreement **(273.2(2))**.

The AEA board is authorized to lease, purchase, or lease-purchase, subject to the approval of the state board of education or its designee and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than 10 years and with an annual cost of less than \$25,000 does not require the approval of the state board. The state board shall not approve a lease, purchase, or lease-purchase until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available. A purchase of property that is not a lease-purchase may be made only within 2 years of a disaster as defined in section 29C.2, subsection 1, and subject to the requirements of this subsection **(273.3(7))**.

#### **Purchase or Construction Using the Physical Plant and Equipment Levy (PPEL)**

The physical plant and equipment levy consists of the regular physical plant and equipment levy of not exceeding thirty-three cents [\$0.33] per thousand dollars [\$1,000] of assessed valuation in the district and a voter-approved physical plant and equipment levy of not exceeding one dollar and thirty-four cents [\$1.34] per thousand dollars [\$1,000] of assessed valuation in the district. However, the voter-approved physical plant and equipment levy may consist of a combination of a physical plant and equipment property tax levy and a physical plant and equipment income surtax as provided in section 298.2, subsection 4, with the maximum amount levied and imposed limited to an amount that could be raised by a one dollar and thirty-four cent [\$1.34] property tax levy **(298.2(1))**.

The board may on its own motion, and upon the written request of not less than one hundred [100] eligible electors or thirty percent [30%] of the number of eligible electors voting at the last regular school election, whichever is greater, shall direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters at the election, not to exceed ten [10] years. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressed as full percentage points, not to exceed twenty percent [20%] **(298.2(4)"a")**.

Authorized levies for the period of time approved are not affected as a result of a failure of a proposition proposal to expand the purposes for which the funds may be expended **(298.2(5)"b")**.

In order to make immediately available proceeds of the voter-approved physical plant and equipment levy which has been approved by the voters as provided in section 298.2, the board of directors may, with or without notice, borrow money and enter into loan agreements in anticipation of the collection of the tax with a bank, investment banker, trust company, insurance company, or insurance group. By resolution, the board shall provide for an annual levy which is within the limits of the voter-approved PPEL levy to pay for the amount of the principal and interest due each year until maturity. The board shall file a certified copy of the resolution with the auditor of each county in which the district is located. The filing of the resolution with the auditor makes it the duty of the auditor to annually levy the amount certified for collection until funds are realized to repay the loan and interest on the loan in full. The loan must mature within the period of time authorized by the voters and shall bear interest at a rate which does not exceed the limits under chapter 74A. A loan agreement entered into pursuant to this section shall be in a form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voter-approved physical plant and equipment levy or so much thereof as will be sufficient to pay the loan and interest on the loan. The proceeds of a loan must be deposited in the PPEL fund. Warrants paid from this fund must be for purposes authorized for the voter-approved physical plant and equipment levy **(297.36)**.

The fact that a school corporation may have previously borrowed money and entered into loan agreements under authority of this section does not prevent the school corporation from borrowing additional money and entering into further loan agreements if the aggregate of the amount payable under all of the loan agreements does not exceed the proceeds of the voter-approved physical plant and equipment levy **(297.36)**.

1. The revenue from the regular and voter-approved physical plant and equipment levies shall be placed in the physical plant and equipment levy fund and expended only for the following purposes:
  - a. The purchase and improvement of grounds. For the purpose of this paragraph:
    - 1) "Purchase of grounds" includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.

- 2) "Improvement of grounds" includes 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, as defined in section 384.37.
- b. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.
- c. The purchase, lease, or lease-purchase of equipment or technology exceeding five hundred dollars [\$500] in value per purchase, lease, or lease-purchase transaction. Each transaction may include multiple equipment or technology units.
- d. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.
- e. Procuring or acquisition of library facilities.
- f. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses. For the purpose of this paragraph:
  - 1) "Repairing" 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.
  - 2) "Reconstructing" means rebuilding or restoring as an entity a thing which was lost or destroyed.
- g. Expenditures for energy conservation, including payments made pursuant to a guarantee furnished by a school district entering into a financing agreement for energy management improvements, limited to agreements pursuant to section 473.19, 473.20, or 473.20A.
- h. The rental of facilities under chapter 28E.
- i. The purchase of transportation equipment for transporting students and the repair of such transportation equipment if the cost of the repair exceeds two thousand five hundred dollars. For the purposes of this paragraph, "repair" means restoring an existing item of equipment to its original condition, as near as may be, after gradual obsolescence or physical and functional depreciation due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance of an item of equipment.
- j. The purchase of buildings or lease-purchase option agreements for school buildings.
- k. Equipment purchases for recreational purposes.
- l. Payments to a municipality or other entity as required under section 403.19, subsection 2.
- m. Demolition, clean up, and other costs if such costs are necessitated by, and incurred within two years of, a disaster as defined in section 29C.2, subsection 1.
2. Interest earned on money in the physical plant and equipment levy fund may be expended for a purpose listed in this section.
3. Unencumbered funds collected prior to July 1, 1991, from the levy previously authorized under section 297.5, Code 1991, may be expended for the purposes listed in this section.
4. Revenue from the regular and voter-approved physical plant and equipment levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section (**298.3**).

### **Asbestos Project Grant Awards**

The board of directors may pay the actual cost of an asbestos project from any funds in the general fund of the district, funds received from the physical plant and equipment levy, or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this subsection over a three-year period. For the purpose of this section, "cost of an asbestos project" includes the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans and recordkeeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation (**279.52**).

A vote of the people is not required to remove or encapsulate asbestos when a federal grant or loan is obtained for the project (**AG Informal advice, August 7 1985**).

A state agency or political subdivision shall not accept a bid in connection with any asbestos project from a business entity which does not hold a permit from the division of labor services of the department of workforce development at the time the bid is submitted, unless the business entity provides the state agency or political subdivision with written proof that ensures that the business entity has contracted to have the asbestos removal or encapsulation performed by a licensed asbestos contractor (**88B.11**). "Asbestos project" means an activity involving the removal or encapsulation of

asbestos and affecting a building or structure. "*Asbestos project*" includes the preparation of the project site and all activities through the transportation of the asbestos-containing materials off the premises. "*Asbestos project*" includes the removal or encapsulation of building materials containing asbestos from the site of a building or structure renovation, demolition, or collapse **(88B.1)(1)**.

#### **School Infrastructure Grant Awards (Formerly Vision Iowa)**

"*School infrastructure*" means activities initiated on or after July 1, 2000, as authorized in section 296.1 but does not include those activities related to stadiums, bus barns, a home or homes of a teacher or superintendent, procuring and improving a site for an athletic field, or improving a site already owned for an athletic field **(292.1(9))**.

The "*local match percentage*" means a percentage equivalent to either of the following, whichever is less:

- a. Fifty percent [50%].
- b. The quotient of a school district's capacity per pupil divided by the capacity per pupil of the school district at the fortieth [40<sup>th</sup>] percentile, multiplied by fifty percent [50%], except that the percentage shall not be less than twenty percent [20%] **(292.1(5))**.

"*Capacity per pupil*" means the sum of a school district's property tax infrastructure capacity per pupil and the sales tax capacity per pupil **(292.1(1))**. "*Property tax infrastructure capacity per pupil*" means the sum of a school district's levies under sections 298.2 and 298.18 when the levies are imposed to the maximum extent allowable under law in the budget year divided by the school district's basic enrollment for the budget year **(292.1(7))**. "*Sales tax capacity per pupil*" means the estimated amount of revenues that a school district receives or would receive from the secure an advanced vision for education [SAVE] fund pursuant to section 423F.2, divided by the school district's basic enrollment for the budget year **(292.1(8))**.

A school district shall receive the lesser of one million dollars [\$1,000,000] of financial assistance under the program, or the total capital investment of the project minus the local match requirement **(292.2(5))**.

Chapter 292 specifies the criteria to be included in the application in subsection 292.2(3). Chapter 292 also specifies that greater priority be given to the following:

- a. A school district with a lower capacity per pupil.
- b. A school district whose plans address specific occupant safety issues.
- c. A school district reorganizing or collaborating.
- d. A school district receiving minimal revenues under section 423F.2 when the total enrollment of the school district is considered **(292.2(7))**.

A school district shall not receive more than one grant under the program **(292.2(4))**. If a school district receives financial assistance under the vision Iowa program created under section 15F.302 pursuant to a joint application shall not be eligible to receive financial assistance under this program **(292.2(9))**.

Although this chapter remains in Iowa Code, the section of chapter 292 that authorized the appropriation was repealed in 2005. Therefore, there are actually no School Infrastructure Grants available.

During the term of the school infrastructure program established in section 292.2, up to fifty thousand dollars [\$50,000] of the moneys deposited each fiscal year in the school infrastructure fund shall be allocated each fiscal year to the department of public safety for the use of the state fire marshal. The funds shall be used by the state fire marshal solely for the purpose of retaining an architect or architectural firm to evaluate structures for which school infrastructure program grant applications are made, to consult with school district representatives, to review construction drawings and blueprints, and to perform related duties at the direction of the state fire marshal to ensure the best possible use of moneys received by a school district under the school infrastructure program. The state fire marshal shall provide for the review of plans, drawings, and blueprints in a timely manner **(12.83)**.

#### **Iowa Demonstration Federal School Infrastructure Grant Awards**

If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to section 423E.6 which are inconsistent with the provision of this section, the state department shall comply with the requirements of the federal rules or regulations **(423E.6(6))**. The federal appropriation to the state of Iowa for school demonstration grants contains two parts: fire safety and new construction. The funds shall be allocated to the school budget review committee to develop a school infrastructure safety fund grant program, in conjunction with the state fire marshal. For purposes of reviewing grant applications and making recommendations regarding the administration of the program, the state fire marshal shall be considered an additional voting member of the school budget review committee **(423E.6(2))**. The school budget review committee shall allocate

the fire safety program funds to school districts which, in its discretion, are determined to be faced with the most severe deficiencies. School districts eligible for fire safety program grants shall have received an order or citation from the state fire marshal, or a fire department chief or fire prevention officer, for one or more fire safety violations regarding a school facility, or in the opinion of the state fire marshal shall be regarded as operating facilities subject to significant fire safety deficiencies. School districts applying for program grants shall have developed and submitted to the state fire marshal or local building department a written plan to remedy fire or safety defects within a specified time frame. Approval of the written plan by the state fire marshal or local building department shall be obtained prior to receipt of a grant award by a school district. Grant awards shall also be available for defects or violations of the state building code, as adopted pursuant to section 103A.7, revealed during an inspection of school facilities by a local building department, or for improvements consistent with the standards and specifications contained in the state building code regarding ensuring that buildings and facilities are accessible to and functional for persons with disabilities (423E.6(3)).

### **Qualified Zone Academy Bonds (QZAB) Program**

The Federal Taxpayer Relief Act of 1997 created the Qualified Zone Academy Bond (QZAB) program to provide low or no interest financing for renovating existing school buildings and purchasing equipment. New construction of buildings or additions to buildings does not qualify under this program. QZABs are financial instruments that provide low or no interest bonds which are subsidized by the federal government in the form of tax credits to the bondholder.

An eligible Qualified Zone Academy includes any public school (or academic program within a public school) that is established by and operated under the supervision of an eligible school district to provide education or training below the postsecondary level if:

1. Such public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce.
2. Students in such public school or program will be subject to the same academic standards and assessments as other students educated by the eligible district.
3. The comprehensive education plan of such public school or program is approved by the eligible district.
4. There is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent [35%] of the students attending such school or participating in such program will be eligible for free or reduced price lunches under the school lunch program established under the National School Lunch Act.
5. The private business contribution requirement is met with respect to any issue if the eligible district that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date issuance of the issue) of not less than 10 percent [10%] of the proceeds of the bond.
6. The local district issuing the QZABs (the Issuer) reasonably expects at the time of issuance of the QZABs that 98% of the QZAB proceeds will be spent for qualified purposes within 3 years of issuance. QZAB recipients are now required to spend 98% of the proceeds – 2% of proceeds are allowed for “issuance costs” (Section 54A (e) (4) (A) (ii)). Section 54A (d) (2) (A) (i) specifies that 100% or more of the QZAB available project proceeds to be spent for one or more qualified purposes within the 3-year period beginning on such date of issuance, and the “Available Project Proceeds” is defined as including no more than a two percent [2%] issuance cost.
7. Section 1601 of The American Recovery and Reinvestment Act of 2009 requires that projects that are funded with the proceeds of QZAB must comply with the Davis-Bacon Act (Subchapter IV of Chapter 31 of the Title 40 of the United States Code) Davis-Bacon Act .

Qualified contributions (of a type and quality acceptable to the eligible local education agency):

- Equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment).
- Technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom.
- Services of employees as volunteer mentors.
- Internships, field trips, or other educational opportunities outside the academy for students.
- Any other property or service (including cash) specified by the eligible local district.

School districts may use the Voted School Physical Plant and Equipment Levy (VPPEL) or the Secure an Advanced Vision for Education (SAVE) to repay the principal.

QZAB authority allocations will be made upon receipt of a qualified application on a “first come first served” basis. However, priority will be given to districts that previously applied but were not granted the total amount requested. Incomplete applications will be disqualified and the next application will be considered. The “day of receipt” shall be determined by postmark or if hand delivered, by stamped date of delivery. Authorizations will be made up to a

cumulative maximum of \$1,000,000 per project, but authorizations for multiple projects in one district may be made at the department's discretion.

### **Qualified School Construction Bonds (QSCB)**

The Iowa Department of Education has distributed \$130,674,000 in Qualified School Construction Bonds (QSCBs) authority through the American Recovery and Reinvestment Act (ARRA) of 2009. The state of Iowa was issued \$64,252,000 for 2009 and \$66,422,000 for 2010 in QSCB bonding allocations. ARRA created this new tax credit program to provide no interest financing for the renovation, repair and construction of school buildings, the purchase of land on which school buildings will be built and the purchase of equipment to be used in the portion or portions of the public school facility that is being constructed, rehabilitated, or repaired. This program is similar to the Qualified Zone Academy Bond Program except that this program is designed for new construction as well as renovation. QSCBs are less restrictive in their uses than QZABs. For a QSCB that is issued by a state or local government where a public school is located, 100 percent of available project proceeds must be used for the construction, rehabilitation, or repair of the public school facility. In addition, a portion of the proceeds of such a bond may be used for the acquisition of land on which a public school facility is to be constructed.

This program provides credits, in lieu of interest to lenders who issue bonds to eligible school districts. Because the federal government provides for the "interest" payment, the school district is only responsible for repayment of the bond principal. The federal government covers all of the interest in the form of tax credits on these bonds, resulting in potential savings up to 50 percent of the cost of renovation and improvement projects. School districts may use the Voter Approved School Physical Plant and Equipment Levy (VPPEL) and/or the Secure an Advanced Vision for Education (SAVE) to repay the principal.

Section 1601 of ARRA of 2009 requires that projects that are funded with the proceeds of QSCB must comply with the Davis-Bacon Act (Subchapter IV of Chapter 31 of the Title 40 of the United States Code).

### **School Budget Review Committee Approval of Modified Supplemental Amount or Use of Unexpended Fund Balance**

The SBRC shall establish a modified supplemental amount for a district by increasing its supplemental state aid when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety. The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous materials **(257.31(6))**.

The committee may authorize a district to spend a reasonable and specified amount from its unexpended fund balance for the following purposes:

- 1) Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a [general obligation] bond issue as provided by law or the tax levy provided in section 298.2 [VPPEL].
- 2) The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within 3 years of the dissolution or reorganization.
- 3) The costs associated with the demolition or repair of a building or structure in a school district if such costs are necessitated by, and incurred within 2 years of, a disaster as defined in section 29C.2, subsection 1 **(257.31(7)"a")**.

### **State-wide One-Cent Sales and Services Tax for School Infrastructure and Revenue Bonds**

After July 1, 2008, all local sales and services taxes for school infrastructure purposes imposed under chapter 423E are repealed and replaced by the increase in the state sales, services, and use taxes from five to six percent **(423F.2(1))**. It is the intent of the general assembly that the increase in the state sales, services, and use taxes from five percent [5%] to six percent [6%] on July 1, 2008, shall be used solely for purposes of providing revenue to local school districts under chapter 423F to be used solely for school infrastructure purposes or school district property tax relief **(423F.1)**.

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes and the supplemental school infrastructure amount distributed pursuant to section 423E.4, subsection 1, paragraph "b", and

revenues received pursuant to section 423F.2, for principal and interests repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 423E.1, subsection 3, Code 2007, and section 423F.3 (**423E.5(1)**).

A school district may anticipate its share of the revenues under section 423F.2 by issuing bonds in the manner provided in section 423E.5. However, to the extent any school district has issued bonds anticipating the proceeds of an extended local sales and services tax for school infrastructure purposes imposed by a county pursuant to former chapter 423E, Code and Code Supplement 2007, prior to July 1, 2008, the pledge of such revenues for the payment of principal and interest on such bonds shall be replaced by a pledge of its share of the revenues under section 423F.2 (**423F.4**).

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under 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 work, purchasing, or remodeling of schoolhouses, stadiums, gyms, field houses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements and those activities for which revenues under section 298.3 [PPEL] or 300.2 [PERL] may be spent. A school district that uses sales and services tax moneys for school infrastructure shall comply with the state building code in the absence of a local building code. Additionally, "school infrastructure" includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of [revenue] bonds issued under section 423E.5 (**423E.1(3) Code 2007**). Note that the Code states these activities include...but does not say "include, but are not limited to...". Items that are included in section 296.1, but that are not included in the list in 423E.5 are teacher's or superintendent's home or homes and furnishing a schoolhouse. Equipment other than as allowed in 298.3 or 300.2 is not separately listed in 423E.5, and is not listed in 296.1 at all. Equipment is listed in 298.21, which is not referenced in 423E.5 within the definition of school infrastructure.

For purposes of chapter 423F, "school infrastructure" means those activities authorized in section 423E.1, subsection 3, Code 2007. Additionally, "school infrastructure" includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under sections 423E.5 and 423F.4. A school district that uses secure an advanced vision for education fund moneys for school infrastructure shall comply with the state building code in the absence of a local building code (**423F.3(6)**).

Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field, and for any one or more of such purposes (**296.1**).

Section 423E.1(3)(Code 2007) does not prohibit per se a school district from expending school infrastructure sales and services tax revenues for salaries and benefits of school district employees who are engaged in school infrastructure activities authorized under chapter 423E (**OAG #00-4-4L**).

Equal protection guarantees do not prohibit a school infrastructure sales and services tax ballot [or revenue purpose statement] from setting forth different propositions for separate school districts that would give property tax relief only to those taxpayers residing within one of the school districts. A ballot proposition may also include language premised upon the passage of future legislation (**OAG #00-2-1**).

### **Bonded Indebtedness, General Obligation Bonds**

The board of directors of any school corporation when authorized by the voters at an election held on a date specified in section 39.2, subsection 4, paragraph "c", may issue the negotiable, interest-bearing school bonds of the corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings (**298.21**).

Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field, and for any one or more of such purposes. Taxes for the payment of said bonds

shall be levied in accordance with chapter 76, and said bonds shall mature within a period not exceeding 20 years from date of issue, shall bear interest at a rate or rates not exceeding that permitted by chapter 74A and shall be of such form as the board of directors of such school district shall by resolution provide, but the aggregate indebtedness of any school district shall not exceed five percent [5%] of the actual value of the taxable property within said school district, as ascertained by the last preceding state and county tax lists **(296.1)**.

A school board may alter the educational purpose served by a school building constructed with proceeds from bonds issued for a particular purpose in order to meet the current needs of the school district. A court would not likely reverse the exercise of a school board's discretion in the absence of some showing of fraud, arbitrary action or abuse of discretion **(OAG #92-8-6)**.

### **Boundary Changes**

In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the AEA administrator cannot with reasonable facility attend school in their own corporation, the AEA administrator shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section **(274.13)**.

When the natural obstacles by reason of which territory has been set off by the AEA administrator from one school district and attached to another in the same or an adjoining county have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of two-thirds [2/3] of the electors residing upon the territory so set off together with the concurrence of the AEA administrator and the board of the school district from which such territory was originally set off by the said administrator **(274.14)**.

The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings called for that purpose. Such concurrent action shall be subject to the approval of the AEA board but such concurrent action shall stand approved if the said board does not disapprove such concurrent action within 30 days following receipt of notice thereof. The corporation from which territory is detached shall, after the change, contain not less than four [4] government sections of land **(274.37)**.

The boards in the respective districts, the boundaries of which have been changed under this section, complete in all respects except for the passage of time prior to the effective date of the change, and when the right of appeal of the change has expired, may enter into joint contracts for the construction of buildings for the benefit of the corporations whose boundaries have been changed, using funds accumulated under the physical plant and equipment levy in section 298.2 [PPEL]. The district in which the building is to be located may use any funds authorized in accordance with chapter 75. This section does not permit the changed districts to expend any funds jointly which they are not entitled to expend acting individually **(274.37)**.

Any school board may request a study and recommendations of the department of education relative to the adjustment of boundary lines and the recommendations of the department of education shall be submitted to those districts involved within 60 days after the request for such study and recommendations is made but such recommendations shall be advisory only and shall not be binding on the local districts **(274.38)**.

If the federal government, or any agency or department of the federal government locates a project which is desirable for the development of the national defense or for the purpose of flood control, and for the purpose of locating the project determines that certain real property making up a portion of a school district is required, the director of the department of education may by resolution adjust the boundaries of school districts in which the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of the districts. A copy of the resolution shall be promptly filed with the board of directors of the adjoining school district or districts and with the board of directors of the school district in which the federally owned property is located unless the board has been reduced below a quorum in the manner contemplated in section 274.40, in which event the resolution shall be posted in two public places within the altered district **(274.42)**. The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the director of the department of education shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct **(274.43)**. The determination of the director of the department of education in such matters shall be final **(274.44)**.

## Size and Location of Sites

The board of each school district may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities and villages, not less than 30 rods from the residence of any landowner who objects thereto. [A rod is a linear measure of 5 ½ yards or 16 ½ feet. Thirty rods would be equal to 165 yards or 495 feet.] In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site **(297.1)**.

Except as hereinafter provided, any school district may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed 10 acres exclusive of public highway **(297.2)**.

Any school district, including a city or village, may take and hold an area equal to 2 blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding 30 acres for school playground, stadium, or field house, or other purposes for each such site **(297.3)**. [A city block 300 feet by 300 feet contains 2.01 acres of ground. This would allow approximately 34 acres for a site for any district including a city or village.]

A school district including a city, town, or village may purchase more land for sites providing each site is for a different school. It makes no difference if the sites adjoin. For example, if a district, under section 297.3, desired to build an elementary school on a site, a junior high school, and a senior high school, it may buy 2 blocks plus 30 acres for each site in three different locations quite remote from each other or the district might buy the three sites adjoining each other **(OAG #55-6-16(L))**.

A school board may purchase land in more than one location. Sites for a building and for play purposes need not be contiguous **(1928 Op. Att'y Gen. 187 (#27-7-12))**.

It shall be on a public highway already established or procured by the board. [A street is considered a public highway.] A school district cannot legally acquire a site by purchase or condemnation if it is not on some public highway **(1906 Op. Att'y Gen. 58 (#4-5-2))**.

It shall not be less than 30 rods from the residence of any landowner who objects to its location, except in cities, towns, and villages. [No one except the landowner may raise an objection.] **(1899 Op. Att'y Gen. 218 (#99-11-23))**.

A cemetery which is no longer used as burying ground cannot be acquired as a school site by any statutory proceedings, there being no provision authorizing the removal of a grave for any purpose in Iowa, but the only manner in which the cemetery can be removed is by obtaining consent of next of kin of those buried in the cemetery **(1920 Op. Att'y Gen. 529 (#19-9-10))**.

School sites may be purchased from a school board member. This is an unusual procedure and such a transaction should be so "above-board" that no accusation of collusion as to sale and price could be justified **(1929 Op. Att'y Gen. 104)**.

A site location may be included as part of a ballot question placed before the voters of a school district. In the event that multiple competing proposals are placed on the ballot at the same election and more than one proposal receives the number of votes necessary for approval, the school board is authorized to choose the proposal receiving the highest number of votes as the sole proposal to be accomplished **(OAG #93-2-3(L))**.

Where the location of a schoolhouse has been placed on the ballot and the people have voted it, the board cannot revoke that power unless for some controlling reason **(OAG #45-6-8)**.

The general fund is not to be used for schoolhouses or sites **(OAG #23-11-28)**.

Expenditures for a playground site are capital improvements which are required to be made out of the schoolhouse fund [PPEL or capital projects] rather than out of the general fund **(1938 Op. Att'y Gen. 210 (#37-5-7))**.

Payments for sites must be made from the schoolhouse fund [PPEL or capital projects], not from the general fund **(1934 Op. Att'y Gen. 223 (#33-5-18))**.

A district cannot use the general fund for building schoolhouses, purchasing sites or equipment [real property] for new schoolhouses **(OAG #56-11-20)**.

### **Condemnation**

Whenever the power to condemn private property for public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value [FMV], and from the parties having legal authority to convey, such right as would be acquired by condemnation **(6A.5)**.

If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate may be taken under condemnation proceedings in accordance with the provisions of chapter 6B **(297.6)**.

An acquiring agency shall provide written notice of a public hearing to each owner and any contract purchaser of record of agricultural land that may be the subject of condemnation. The authority under chapter 6B is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to mail and publish the notice as provided in section 6B.2A on the owner and any contract purchaser of record of the property subject to condemnation **(6B.2A(1))**.

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process **(6B.2B)**.

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits **(6B.2C)**.

A school district cannot condemn public property for school use or vice versa. State doctrine is that property dedicated to one public use may be taken over for another public use if there is mutual improvement, otherwise it cannot **(OAG #27-11-17)**. Absent a clear showing of fraud, bad faith, or arbitrary abuse of discretion, a city may condemn property owned by a school district to use as right-of-way for a street **(OAG #01-7-1(L))**.

In light of these authorities, and given the clear intent of the legislature to require and facilitate voluntary acquisition of property as an alternative to condemnation, we believe that chapter 6B should be interpreted to allow an acquiring agency which has a good faith belief that all property necessary for a public improvement can be obtained through dedication and voluntary negotiation to take advantage of the exception to procedure allowed by section 6B.1A, forego chapter 6B procedures, and proceed with the acquisition of property. In the event that the agency later discovers that it cannot voluntarily acquire all of the needed property, the agency should step back to the beginning of the process and follow through the procedural requirements for condemnation. An acquiring agency seeking to make a public improvement on agricultural land generally must provide notice and hearing to affected landowners. The acquiring agency may forgo providing notice and hearing if it plans to obtain necessary property or easements from all landowners by dedication or voluntary negotiation and purchase. If the acquiring agency finalizes its plans for the public improvement and then discovers it cannot acquire all necessary property or easements by dedication or voluntary negotiation and purchase, the agency should proceed with notice, public hearing, and condemnation proceedings **(OAG #03-1-1)**.

### **Construction**

It is the duty of the state board to prescribe guidelines for facility standards **(256.7(11))**.

School districts are quasi-municipal corporations of the most limited power known to the law and are subject to city ordinances pertaining to building permits and fees **(1950 Op. Att’y Gen. 201 (#50-12-21))**.

A school district is subject to the provisions of a city ordinance pertaining to the issuing of building permits in connection with the construction of school buildings and is required to pay the fees prescribed by the foregoing ordinance **(Cedar Rapids Community School District v. City of Cedar Rapids. 252 Iowa 205, 106 N.W. 2d, 655)**.

A school district is immune from the restrictions of zoning ordinances **(Bloomfield v. Davis County Community School District, 254 Iowa 900, 119 N.W. 2d, 909)**.

When a school district utilizes the services of a construction manager for building, compliance with the statutory requirements of public hearing on the project and form of contract, approval of plans and bonding is also required (**OAG #74-7-19**).

Under the statute making it the duty of the board to select the site, adopt the plans for the schoolhouse, and award the contract for the building thereof, the board cannot delegate such powers to a committee appointed by it (**Kinney v. Howard, 1907, 133 Iowa 94, 110 N.W. 282**).

### **Prohibition on Sex Offenders**

A sex offender who has been convicted of a sex offense against a minor shall not do any of the following:

- a. Operate, manage, be employed by, or act as a contractor or volunteer at any municipal, county, or state fair or carnival when a minor is present on the premises.
- b. Operate, manage, be employed by, or act as a contractor or volunteer on the premises of any children's arcade, an amusement center having coin or token operated devices for entertainment, or facilities providing programs or services intended primarily for minors, when a minor is present.
- c. Operate, manage, be employed by, or act as a contractor or volunteer at a public or nonpublic elementary or secondary school, child care facility, or public library.
- d. Operate, manage, be employed by, or act as a contractor or volunteer at any place intended primarily for use by minors including but not limited to a playground, a children's play area, recreational or sport-related activity area, a swimming or wading pool, or a beach.
- e. Operate, manage, be employed by, or act as a contractor or volunteer at a business that operates a motor vehicle primarily marketing, from or near the motor vehicle, the sale and dispensing of ice cream or other food products to minors (**692A.113(3)**).

### **Accessibility for Persons with Disabilities**

#### **Buildings**

It is the intent of Iowa Code chapter 104A that standards and specifications are followed in the construction of public and private buildings and facilities which are intended for use by the general public to ensure that these buildings and facilities are accessible to and functional for persons with disabilities (**104A.1**). The standards and specifications adopted by the state building code commissioner and set forth in chapter 104A shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public (**104A.2**).

#### **Parking**

1. Persons with disabilities parking spaces and access loading zones for persons with disabilities that serve a particular building shall be located on the shortest accessible route to the nearest accessible entrance to the building.
2. A person with disabilities parking space designated after July 1, 1990, shall comply with the dimension requirements in rules adopted by the department of public safety and in effect when the spaces are designated. Adopted rules shall be for accepted national standards for dimensions of persons with disabilities spaces, consistent with the requirements of federal law. However, these dimension requirements do not apply to parallel on-street parking spaces.
3.
  - a. The state or a political subdivision of the state which provides off-street public parking facilities or an entity providing nonresidential parking on off-street public parking facilities shall provide not less than two percent [2%] of the total parking spaces in each parking facility as persons with disabilities parking spaces, rounded to the nearest whole number of persons with disabilities parking spaces. However, such parking facilities having 10 or more parking spaces shall set aside at least one [1] persons with disabilities parking space.
  - b. An entity providing off-street nonresidential public parking facilities shall review the utilization of existing persons with disabilities parking spaces for a one-month period not less than once every 12 months. If upon review, the average occupancy rate for persons with disabilities parking spaces in a facility exceeds sixty percent [60%] during normal business hours, the entity shall provide additional persons with disabilities parking spaces as needed.
  - c. An entity providing off-street nonresidential parking as a lessor shall provide a persons with disabilities parking space to an individual requesting to lease a parking space, if that individual possesses a persons with disabilities parking permit.
  - d. A new nonresidential facility in which construction has been completed on or after July 1, 1991, providing parking to the general public shall provide persons with disabilities parking spaces as stipulated below:

Total Parking Spaces in Lot	Required Minimum Number of Persons with Disabilities Parking Spaces
10 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 spaces plus 1 for each 100 over 1000

- e. Any other person may also set aside persons with disabilities parking spaces on the person's property provided each persons with disabilities parking space is clearly and prominently designated as a person with disabilities parking space.
5. A persons with disabilities parking space located on a paved surface may be painted with a blue background upon which the international symbol of accessibility is painted in white or yellow paint. However, the blue background paint may be omitted. As used in this subsection, "paved surface" includes surfaces which are asphalt surfaced.
  6. A persons with disabilities parking review committee may be established by the state and each political subdivision of the state which is required to provide persons with disabilities parking spaces in off-street public parking facilities according to subsection 3. The persons with disabilities parking review committee shall consist of 5 members who are persons with disabilities as defined in section 321L.1 and 5 members who are officials of the state or political subdivision. The persons with disabilities parking review committee shall have the discretion to increase or decrease the numbers of persons with disabilities parking spaces required by this section. A decision to change the numbers or location of persons with disabilities parking spaces shall be based upon the needs of the community, the percentage of use of the present persons with disabilities parking spaces, and the past experience of the state or political subdivision regarding persons with disabilities parking. An individual may request the persons with disabilities parking committee to review the amounts and locations of persons with disabilities parking spaces. The persons with disabilities parking review committee shall investigate each individual's request and shall act upon such request if the investigation substantiates the individual's complaint **(321L.5)**.

A persons with disabilities parking sign shall be displayed designating the persons with disabilities parking space.

1. The persons with disabilities parking sign shall have a blue background and bear the international symbol of accessibility in white. If an entity who owns or leases real property in a city is required to provide persons with disabilities parking spaces, the city shall provide, upon request, the signs for the entity at cost. If an entity who owns or leases real property outside the corporate limits of a city is required to provide persons with disabilities parking spaces, the county in which the property is located shall provide the signs for the entity at cost upon request.
2. The persons with disabilities parking sign shall be affixed vertically on another object so that it is readily visible to a driver of a motor vehicle approaching the persons with disabilities parking space. A persons with disabilities parking space designated only by the international symbol of accessibility being painted or otherwise placed horizontally on the parking space does not meet the requirements of this subsection **(321L.6)**.

Failure to provide proper persons with disabilities parking spaces as provided in section 321L.5 or to properly display persons with disabilities parking signs as provided in section 321L.6 is a simple misdemeanor punishable as a scheduled violation under section 805.8A(1)(c) **(321L.7)**.

### **State Building Codes**

The authority responsible for the construction of any building or facility covered by section 104A.2 shall conform with rules adopted by the state building code commissioner as provided in Iowa Code section 103A.7 **(104A.6)**.

Nothing in chapter 103A shall be construed as prohibiting any governmental subdivision from adopting or enacting any building regulations relating to any building or structure within its limits, but a governmental subdivision in which the state building code has been accepted and is applicable shall not have the power to supersede, void, or repeal or make

more restrictive any of the provisions of chapter 103A or of the rules adopted by the commissioner. This subsection does not apply to energy conservation requirements adopted by the commissioner and approved by the council pursuant to section 103A.8A or 103A.10 (**103A.22(1)**).

Notwithstanding the provisions of subsection 103A.22(1):

- a. Provisions of the state building code establishing thermal efficiency energy conservation standards shall be applicable to all construction in the state which will contain enclosed space that is heated or cooled. The commissioner shall provide appropriate exceptions for construction where the application of an energy conservation requirements adopted pursuant to chapter 103A would be impractical.
- b. Provisions of the state building code establishing lighting efficiency standards shall be applicable to all construction in the state and to new and replacement lighting in existing buildings (**103A.10(4)**).

Places of assembly for public use including but not limited to theaters, auditoriums, and convention halls, constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code (**104B.1(1)**). All toilets installed pursuant to section 104B.1 shall be water efficient toilets which use three gallons or less of water per flush (**104B.1(3)**).

### **Energy Conservation and Life Cycle Analysis**

Life cycle cost analysis means an analytical technique that considers certain costs of owning, using and operating a facility over its economic life including but not limited to the following:

- a. Initial costs.
- b. System repair and replacement costs.
- c. Maintenance costs.
- d. Operating costs, including energy costs.
- e. Salvage value (**470.1(7)**).

A contract for a public improvement or construction of a public building, including new construction or renovation of an existing public building shall not be let without satisfying the following requirements:

- 1) A design professional submitting a design development proposal for consideration of the public body shall at minimum prepare one proposal meeting the design program's space and use requirements which reflects the lowest life cycle cost possible in light of existing commercially available technology.
- 2) Submission of a cost benefit analysis of any deviations from the lowest life cycle cost proposal contained in other design proposals requested by or prepared for submission to the public body (**72.5(1)"a"**).

The public body may request additional design proposals in light of funds available for construction, aesthetic considerations, or any other reason (**72.5(1)"b"**).

The director of the economic development authority, in consultation with the department of management, state building code commissioner, and state fire marshal, shall develop standards and methods to evaluate design development documents and construction documents based upon life cycle cost factors to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies (**72.5(2)**).

It is the intent of the general assembly to discourage construction of public buildings based upon lowest acquisition cost, and instead to require that such decisions be based upon life cycle costs to reduce energy consumption, maintenance requirements, and continuing burdens upon taxpayers (**72.5(4)**).

The general assembly declares that energy management is of primary importance in the design of publicly owned facilities. Commencing January 1, 1980, a public agency responsible for the construction or renovation of a facility shall, in a design begun after that date, include as a design criterion the requirement that a life cycle cost analysis be conducted for the facility. The objectives of the life cycle cost analysis are to optimize energy efficiency at an acceptable life cycle cost. The life cycle cost analysis shall meet the requirements of section 470.3 (**470.2**).

A life cycle cost analysis shall include but is not limited to the following elements:

- a. Specification of energy management objectives and health, safety and functional constraints. The facility design shall comply with applicable state or local building code requirements.
- b. Identification of energy needs of the facility and energy system alternatives to meet those needs.
- c. Cost of the energy system alternatives identified in paragraph "b" of this subsection.
- d. Determination of amounts and timing of cash flow.
- e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.

- f. Evaluation of design and system alternatives using a method such as, but limited to, design matrixes, ranking tables, or network analysis **(470.3(1))**.

A public agency or a person preparing a life cycle cost analysis for a public agency shall consider the methods and analytical models provided by the authority and available through the commissioner, which are suited to the purpose for which the project is intended **(470.3(2))**.

The life cycle cost analysis shall be approved by the public agency before contracts for the construction or renovation are let. A public agency may accept a facility design and shall meet the requirements of chapter 470 if the design meets the operational requirements of the agency and provides the optimum life cycle cost. The public agency shall retain a copy of the life cycle cost analysis and a statement justifying a design decision both of which shall be available for public inspection at reasonable hours **(470.4)**.

The public agency responsible for the new construction or renovation of a public facility shall implement the recommendations of the life cycle cost analysis **(470.8)**.

Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with chapter 470 and the actual construction or renovation meets the requirements of the design **(470.6)**.

Various statutes require counties, cities, and school corporations participating in the energy bank program to administer and use competitive-bidding procedures for capital improvements, which would include the implementation of energy conservation measures when the estimated cost exceed statutory limitations; in any event, public policy suggests all public entities administer and use competitive-bidding procedures in such circumstances. Public entities may consult with the private sector, such as an energy savings company, in preparing their proposals for energy conservation measures **(OAG #94-9-3(L))**.

### **Public Improvements**

Chapter 26 [bidding] is applicable to the construction or repair of school buildings and other public improvements as defined in section 26.2 **(297.7(1))**.

If private funds are offered to a governmental entity for a building or an improvement to be used by the public and such funds are conditioned upon private construction of the building or improvement, this chapter shall not apply to the project if the governmental entity does not contribute any funds to such construction **(26.6)**.

Splitting a project to avoid the requirements of Code [public contracts and bonds] is improper and indefensible **(West Harrison Community School District v. Iowa State Board of Public Instruction, App. 1984, 347 N.W. 2d 684)**. If the estimated total cost of a public improvement exceeds the competitive bid threshold of \$100,000, or as established in section 314.1B, a governmental entity shall not divide the public improvement project into separate parts, regardless of intent, if a resulting part of the public improvement project is not let in accordance with section 26.3 **(26.5)**.

As used in chapter 26 [public construction bidding], unless the context clearly indicates otherwise:

1. “*Estimated total cost of a public improvement*” or “estimated total cost” means the estimated total cost to the governmental entity to construct a public improvement, including cost of labor, materials, equipment, and supplies, but excluding the cost of architectural, landscape architectural, or engineering design services and inspection.
2. “Governmental entity” means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation.
3. “Public improvement” means a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under chapter 388 by its employees or performed for a rural water district under chapter 357A by its employees.
4. “Repair or maintenance work” means the preservation of a building, storm sewer, sanitary sewer, or other public facility or structure so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility or structure to its original condition with the same design **(26.2)**.

For chapter 73A [public contracts and bonds] purposes, “public improvement” means public improvements as defined in section 73A.1 [a building or other construction work to be paid for in whole or in part by the use of funds of any municipality] and includes road construction, reconstruction, and maintenance projects **(73A.21(1)”a”)**. Generally

chapter 73A no longer applies to school districts except when the term “political subdivision” is used—section 73A.21 applies to the state and any political subdivisions of the state, including a school district **(73A.21(1)d”)**.

### **Public Hearing**

If the estimated total cost of a public improvement exceeds the competitive bid threshold in section 26.3, or as adjusted in section 314.1B, the governmental entity shall not enter into a contract for the public improvement until the governmental entity has held a public hearing and has approved the proposed plans, specifications, and form of contract, and estimated total cost of the public improvement. Notice of the hearing must be published as provided in section 362.3. At the hearing, any interested person may appear and file objections to the proposed plans, specifications, contract, or estimated cost of the public improvement. After hearing objections, the governmental entity shall by resolution enter its decision on the plans, specifications, contract, and estimated cost **(26.12)**.

1. Unless otherwise provided by state law:
  - a. If notice of an election, hearing, or other official action is required by the city code, the notice must be published at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action.
  - b. A publication required by the city code must be in a newspaper published at least once weekly and having general circulation in the city. However, if the city has a population of 200 or less, or in the case of ordinances and amendments to be published in a city in which no newspaper is published, a publication may be made by posting in 3 public places in the city which have been permanently designated by ordinance.
2. In the case of notices of elections, a city with a population of 200 or less meets the publication requirement of this section by posting notices of elections in 3 public places which have been designated by ordinance **(362.3)**.

### **Bids**

If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars [\$100,000], or the adjusted competitive bid threshold established in section 314.1B, the governmental entity shall advertise for sealed bids for the proposed public improvement by publishing a notice to bidders. The notice to bidders shall be published at least once, not less than four [4] and not more than forty-five [45] days before the date for filing bids, in a newspaper published at least once weekly and having general circulation in the geographic area served by the governmental entity. Additionally, the governmental entity may publish a notice in a relevant contractor organization publication and a relevant contractor plan room service with statewide circulation, provided that a notice is posted on an internet site sponsored by either a governmental entity or a statewide association that represents the governmental entity **(26.3(1))**.

A governmental entity shall have an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect registered under chapter 544A prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement. A governmental entity shall ensure that a sufficient number of paper copies and, if available, electronic and digital copies of the project’s contract documents, including all drawings, plans, specifications, and estimated total costs of the proposed public improvement are made available for distribution at no charge to prospective bidders, subcontractor bidders, suppliers, and plan room services. If a deposit is required as part of a paper contract documents distribution policy by the public owner, the deposit shall not exceed two hundred fifty dollars per set which shall be refunded upon return of the contract documents within fourteen days after award of the project. If the contract documents are not returned in a timely manner and in a reusable condition, the deposit shall be forfeited. The governmental entity shall reimburse the landscape architect, architect, or professional engineer for the actual costs of preparation and distribution of plans and specifications **(26.3(2))**.

Sections 26.4 through 26.13 apply to all competitive bidding pursuant to this section **(26.3(3))**.

Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to sections 26.3 [competitive bid] and 26.14[competitive quotes] **(26.4)**.

When emergency repairs costing more than the competitive bid threshold in section 26.3, or as established in section 314.1B, are necessary in order to ensure the continued use of any school or school facility, the provisions of the law with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids. However, before such emergency repairs can be made to any schoolhouse or school facility, it shall be necessary to procure a certificate from the AEA administrator that such emergency repairs are necessary to ensure the continued use of the school or school facility **(297.8)**. Public hearing requirements would still apply.

No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law **(72.3)**.

A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on the violator's bond, if any, to liquidated damages in the sum of one thousand dollars [\$1,000] for each violation, to inure to and be collected by the school corporation of which the violator is an officer or deputy **(72.4)**.

Evaluations of bid proposals are public records which are confidential until the bids are opened and an award made. The possibility of misuse of nonconfidential public records does not justify placing restrictions on access to those records **(OAG #79-3-3)**.

Where a school district first solicited bids for removal of asbestos from two schools as one project, and awarded the contract without making determination that the lowest bidder was not a "responsible bidder," and after being informed by the lowest bidder's attorney of public bidding requirements and the fact that the project was subject to those requirements, rejected all bids, split the project into two contracts and did not solicit bids from the lowest bidder, the school district divided the repair project for improper, inadequate and indefensible purpose of evading the public bidding procedures **(West Harrison Community School District v. Iowa State Board of Public Instruction, App.1984, 347 N.W. 2d 684)**.

Public notice in regard to competitive bidding assumes three elements:

- first, there should be an offering, or notice, extended to the public;
- second, an opportunity for competition; and
- third, a basis for an exact comparison of bids **(OAG #80-9-4)**.

Refer to chapter 26 of the Iowa Code for more information on bid security, notice, award, opening and considering bids and early release of retained funds.

### **Competitive Quotations**

1. Competitive quotations shall be required for a public improvement having an estimated total cost that exceeds the applicable threshold amount provided in this section, but is less than the competitive bid threshold established in section 26.3.
2. Unless the threshold amounts are adjusted pursuant to section 314.1B, the following threshold amounts shall apply:
  - a. \$67,000 for a county, including a county hospital.
  - b. \$51,000 for a city having a population of 50,000 or more.
  - c. \$51,000 for a school district having a population of \$50,000 or more.
  - d. \$51,000 for an aviation authority created within a city having a population of 50,000 or more.
  - e. \$36,000 for a city having a population of less than 50,000, for a school district having a population of less than 50,000, and for any other governmental entity.
  - f. The threshold amount applied to a city applies to a city hospital.
3. a. When a competitive quotation is required, the governmental entity shall make a good faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Good faith effort shall include advising all contractors who have filed with the governmental entity a request for notice of projects. The governmental entity shall provide such notice in a timely manner so that a requesting contractor will have a reasonable opportunity to submit a competitive quotation. Quotations may be obtained from contractors after the governmental entity provides a description of the work to be performed, including the plans and specifications prepared by an architect, landscape architect, or engineer, if required under chapter 542B, 544B, or 544A, and an opportunity to inspect the work site. The contractor shall include in the quotation the price for labor, materials, equipment, and supplies required to perform the work. If the work can be performed by an employee or employees of the governmental entity, the governmental entity may file a quotation for the work to be performed in the same manner as a contractor. If the governmental entity receives no quotations after making a good faith effort to obtain quotations from at least two contractors regularly engaged in such work, the governmental entity may negotiate a contract with a contractor regularly engaged in such work.
  - b. The governmental entity shall designate the time, place, and manner for filing quotations, which may be received by mail, facsimile, or electronic mail. The governmental entity shall award the contract to the contractor submitting the lowest responsive, responsible quotation subject to section 26.9, or the governmental entity may reject all of the quotations. The unconditional acceptance and approval of the lowest responsive, responsible quotation shall constitute the award of a contract. The governmental entity shall record the approved quotation in its meeting minutes. The contractor awarded the contract shall not commence work until the contractor's performance and payment bond has been approved by the governmental entity. A governmental entity may delegate the authority to award a contract, to

execute a contract, to authorize work to proceed under a contract, or to approve the contractor's performance and payment bond to an officer or employee of the governmental entity. A quotation approved outside a meeting of the governing body of a governmental entity shall be included in the minutes of the next regular or special meeting of the governing body.

c. If a public improvement may be performed by an employee of the governmental entity, the amount of estimated sales and fuel tax and the premium cost for the performance and payment bond which a contractor identifies in its quotation shall be deducted from the contractor's price for determining the lowest responsive, responsible quotation. If no quotations are received to perform the work, or if the governmental entity's estimated cost to do the work with its employee is less than the lowest responsive, responsible quotation received, the governmental entity may authorize its employee or employees to perform the work **(26.14)**.

### **Alternative procedures**

1. When competitive quotations are required under section 26.14 for a public improvement, the governmental entity may proceed, in lieu of competitive quotations, as if the estimated total cost of the public improvement exceeds the competitive bid threshold under section 26.3.

2. If the total estimated cost of the public improvement does not warrant either competitive quotations under section 26.14 or competitive bidding under section 26.3, the governmental entity may nevertheless proceed with competitive quotations or competitive bidding for the public improvement **(26.14A)**.

### **Structure Demolition Project**

A governmental entity may enter into annual contracts with multiple contractors for structure demolition projects, with each project having a total estimated cost of \$100,000 or less, or each project having a total estimated cost equal to or less than the competitive bid threshold as established in section 314.1B. The governmental entity shall solicit contractors by publishing a notice as provided in section 362.3. A contractor is eligible to perform structure demolition work for the governmental entity after the contractor executes an annual demolition contract in a form satisfactory to the governmental entity, including a bond and insurance. For the twelve-month period following execution of the contract or contracts, the governmental entity may obtain competitive proposals from each eligible contractor as necessary for the demolition of structures. The contractor submitting the lowest responsible proposal shall enter into a contract addendum to perform the work **(26.15)**.

### **Architects**

The practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the law of the state are authorized to engage in the practice of architecture in the state **(544A.1)**.

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed professional land surveyor as provided in chapter 542B, except as permitted by section 542B.26 **(542B.1)**.

An architect's fee is based on the original cost of the building. Where a change of materials must be made to meet lawful specifications and these materials are higher priced than the original ones, an architect cannot charge on the extra cost. The architect is supposed to know legal materials when signing the contract **(OAG #58-1-7(L))**.

Architect's fees can be paid from the proceeds of a bond issue. Such fees are considered as part of the cost of construction of a building and should be paid out of the same fund as a building **(OAG #29-2-4(L), OAG #39-5-27(L))**. If the bond issue fails, and the school board has employed an architect to make preliminary sketches and present informative data, the costs may be paid out of the general fund **(1954 Op. Att'y Gen. 98 (#53-11-19))**. Architect's fee for schematic phase of projects presented to the electorate may be paid from the general fund even when a bond issue is defeated. When a building is constructed with proceeds of a 67.5 cent schoolhouse levy [PPEL], the architect may be paid from such fund **(1970 Op. Att'y Gen. 344 (#69-11-28))**.

### **Preference**

When a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force

preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident **(73A.21(2))**.

### **Contracts and Bonding**

Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law **(72.1)**.

Contracts based on bids made by mistake are not enforceable **(1912 Op. Att’y Gen. 735 (#12-7-10))**.

### **Bid Bonds**

Contracts for the construction of a public improvement shall, when the contract price equals or exceeds twenty-five thousand dollars [\$25,000], be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law. The bond may also be required when the contract price does not equal that amount. However, if a contractor provides a performance or maintenance bond as required by a public improvement contract governed by this chapter and subsequently the surety company becomes insolvent and the contractor is required to purchase a new bond, the contractor may apply for reimbursement from the governmental agency that required a second bond and the claims shall be reimbursed from funds allocated for road construction purposes. If the requirement for a bond is waived pursuant to section 12.44, a person, firm, or corporation, having a contract with the targeted small business or with subcontractors of the targeted small business, for labor performed or materials furnished, in the performance of the contract on account of which the bond was waived, is entitled to any remedy provided under this chapter. When a bond has been waived pursuant to section 12.44, the remedies provided for under this paragraph are available in an action against the public corporation. **(573.2)**.

Agencies of state government shall be required to waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience, lack of net worth, or lack of capital. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract. The department of inspections and appeals shall certify targeted small businesses for eligibility and participation in this program and shall make this information available to other state agencies. Subdivisions of state government may also grant such a waiver under similar circumstances **(12.44)**.

The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. A public corporation, with respect to a public improvement which is or has been competitively bid or negotiated, shall not require a contractor to procure a bond, as required under section 573.2, from a particular insurance or surety company, agent, or broker **(573.3)**.

A deposit of money, certified check on a solvent bank of the county in which the improvement is to be located, a credit union certified share draft, state or federal bonds, bonds issued by a school corporation may be received in an amount equal to the amount of the bond and held in lieu of a surety on the bond, and when so received the securities shall be held on the terms and conditions applicable to a surety **(573.4)**.

The amount of the bond shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent [75%] of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent [25%] of the contract price **(573.5)**.

Notwithstanding section 573.14, a public corporation may release retained funds upon completion of ninety-five percent [95%] of the contract under certain circumstances **(573.15A)**.

Where a bidder's check is lost, there is no liability on the school district. The district should not furnish a bond to protect the drawee bank **(OAG #25-12-2(L))**.

### **Payment Schedule to Architects and Contractors**

Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent [5%] of that amount which is determined to be due according to the estimate of the architect or engineer. The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor **(573.12(1))**.

Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer and remains unpaid for a period of fourteen [14] days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen [14] days, unless a time period greater than fourteen [14] days is specified in the contract documents, not to exceed thirty [30] days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract **(573.12(2)"a"(1))**.

A public corporation shall not be permitted to plead noncompliance with section 573.12 and the retained percentage of the contract price, which in no case shall be more than five percent [5%], constitutes a fund for the payment of claims for materials furnished and labor performed on the improvement and shall be held and disposed of by the public corporation as provided in chapter 573 **(573.13)**.

The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty [30] days after the completion and final acceptance of the improvement. If at the end of the thirty-day period claims are on file as provided the public corporation shall continue to retain from the unpaid funds a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor **(573.14)**.

No part of the unpaid fund due the contractor shall be retained as provided in chapter 573 on claims for material furnished, other than materials ordered by the general contractor or the general contractor's authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty [30] days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work of the amount, kind, and value of the material furnished for use upon the said public improvement **(573.15)**.

Notwithstanding anything in this Code to the contrary, when at least ninety-five percent [95%] of any contract for the construction of public improvements has been completed to the satisfaction of the public contracting authority and owing to conditions beyond the control of the construction contractor the remaining work on the contract cannot proceed for a period of more than sixty [60] days, such public contracting authority may make full payment for the completed work and enter into a supplemental contract with the construction contractor involved on the same terms and conditions so far as applicable thereto for the construction of the work remaining to be done, provided however, that the contractor's surety consents thereto and agrees that the bond shall remain in full force and effect **(573.27)**.

#### **Refunds of Sales Tax on Construction Projects**

A governmental subdivision may make application to the department of revenue for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written contract with any political subdivision if the property becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses **(423.4(1))**.

Such contractor shall state under oath, on forms provided by the department of revenue, the amount of such sales of goods, wares or merchandise or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit before final settlement is made **(423.4(1)"a")**.

Such governmental unit shall, not more than one year after the final settlement has been made, make application to the department of revenue for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit in the amount of the sales or use tax which has been paid to the state of Iowa under the contract **(423.4(1)"b")**.

Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable (**423.4(2)“d”**).

Any contractor who shall willfully make a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest (**423.4(1)“d”**).

Contractors, subcontractors, and builders who enter into written construction contracts with designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A can still be required to remit sales tax on building materials, supplies, and equipment to their suppliers or to pay a corresponding use tax. Reasons for this will vary; these reasons are not intended to be all-inclusive. In the case of a contractor, subcontractor, or builder entering into a written construction contract with a designated exempt entity, the requirement to remit or pay tax can result from failure to secure an exemption certificate or purchasing agent authorization letter. In the case of a contractor, subcontractor, or builder entering into a written construction contract with businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A, the requirement to remit or pay tax can result from the fact that businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A are not designated exempt entities and thus not eligible to claim their exemption. Even if no right to claim the designated exempt entity exemption exists, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), a contractor is still required to provide a designated exempt entity which has not properly claimed its exemption, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on these items. The department provides Form 35-002 for this purpose. If final settlement occurred before May 20, 1999, the governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after the final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund. The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue*, Jasper County District Court, 90-3910936, December 6, 1978. If a construction contract is a contract which includes machinery or equipment with installation (see rule 701—19.8(422,423)) or a mixed contract (see rule 701—19.9(422,423)), the machinery and equipment must be purchased tax-free because the machinery and equipment will be resold to the contract sponsor. There will be no sales tax charged on resales of machinery and equipment to sponsors which are designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A since these sales are exempt under Iowa Code sections 422.45(5) and 422.45(8). See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area (**IAC 701--19.12(5)**).

Sales tax refunds may be spent by the school board for the original project which was the source of the refund but not for construction of a new building or for an addition to an existing building; funds received from sale of real estate may be used for the purposes listed in Code; and contributions from the public may be used for the purposes designated by the donors but the voters [or board in some instances], not donors, must approve new construction (**OAG #86-12-13**).

## **Disposition of School Property**

### **Vacating School Facilities**

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law (**279.11**).

The board of directors of a school district by record action may discontinue any or all of grades seven [7] through twelve [12] and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having accredited school systems (**282.7(1)**).

The board of directors shall notify the cities located within the school district, the counties in which the school district may be located, and the department of administrative services annually of the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased (**297.4**).

### **Procedures for Closing Facilities (Barker Guidelines)**

The state board of education has reviewed local board decisions involving the closing of attendance centers. The first time it addressed a school closing issue, the state board issued seven principles to guide local boards, commonly called the Barker Guidelines. These guidelines were reviewed and approved by the Iowa Supreme Court in *Keeler v. Iowa Board of Public Instruction*, 331 NW2d 110, 112 (Iowa 1983). Those steps have long existed as guidance and they remain as valid guidance. Those steps are:

- The board shall establish a timeline in advance for carrying out the procedures involved in making the decision on the matter, focusing all aspects of the timeline upon the anticipated date that the board will make its final decision.
- The board shall inform segments of the community within its district that the matter is under consideration by the board. This shall be done in a manner reasonably calculated to apprise the public of that information.
- The board shall seek public input in all study and planning steps involved in making the decision.
- The board and groups and individuals selected by the board shall carry out sufficient research, study, and planning. The research, study, and planning shall include consideration of, at a minimum, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment.
- The board shall promote open and frank public discussion of the facts and issues involved.
- The board shall make a proper record of all steps taken in the making of the decision.
- The board shall make its final decision in an open meeting with record made thereof (**1 D.P.I. App Dec. 145 (1977)**).

#### **Disposition with School Budget Review Committee Approval**

The SBRC may authorize a district to spend a reasonable and specified amount from its unexpended fund balance for the following purposes:

The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three [3] years of the dissolution or reorganization (**257.31(7)"a"(2)**).

#### **Disposition by Sales and Leases**

Monies received from the condemnation, sale, or other disposition for public purposes of schoolhouses, school sites, or both schoolhouses and school sites shall be deposited in the PPEL fund and may without a vote of the electorate be used for the purposes authorized under section 298.3, as ordered by the board of directors of such school district (**279.41**).

The board of directors of a school district may sell, lease, or dispose of, in whole or in part, a schoolhouse, school site, or other property belonging to the district (**297.22(1)"a"**). Before the board may sell, lease for a period in excess of one year, or dispose of any property belonging to the school, the board shall hold a public hearing on the proposal. After the public hearing, the board may make a final determination on the proposal contained in the resolution (**297.22(1)"c"**). However, property having a value of not more than five thousand dollars [\$5,000], other than real property, may be disposed of by any procedure which is adopted by the board and each sale shall be published by at least one [1] insertion each week for two [2] consecutive weeks in a newspaper having general circulation in the district (**297.22(1)"d"**).

The AEA board is authorized to sell, lease, or dispose of, in whole or in part, property belonging to the AEA. Before the AEA may sell property belonging to the agency, the board of directors shall comply with the requirements set forth in section 297.22. Before the board of directors of an AEA may lease property belonging to the agency, the board shall obtain the approval of the director of the Department of Education (**273.3(21)**).

The voters at the regular election shall have the powers to, except when restricted by section 297.25, direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof. However, nothing in this section shall be construed to prevent the sale, lease, exchange, gift, or grant and acceptance of any interest in real or other property of the corporation to the extent authorized in section 297.22 (**278.1(1)"b"**).

A proposition to sell a school site or school building and use the proceeds in a certain way is a single proposition and may be so stated on a ballot. However, if more than one public measure is to be voted upon, they may be printed on the same ballot but as single propositions, one below the other with one-inch space between them (**1944 Op. Att'y Gen. 139 (#44-3-4)**).

Proceeds from the sale or disposition of real property shall be placed in the PPEL fund. Proceeds from the sale or disposition of property other than real property shall be placed in the general fund. Proceeds from the lease of real or other property shall be placed in the general fund (**297.22**).

If the real property contains less than two [2] acres, is located outside of a city, is not adjacent to a city and was previously used as a schoolhouse site, the procedure contained in sections 297.15 through 297.20 shall be followed in lieu of section 297.22 for sale, lease, or disposition of real property belonging to the district **(297.22(1)"a")**.

The board of directors of a school district may sell, lease, exchange, give, or grant and accept any interest in real property to, with, or from a county, municipal corporation, school district, township, or AEA if the real property is within the jurisdiction of both the grantor and grantee **(297.22(2)"a")**.

The board of directors of a school district may lease a portion of an existing school building in which the remaining portion of the building will be used for school purposes for a period of not to exceed five [5] years. The lease may be renewed at the option of the board. The notice and public hearing requirements of this section do not apply to the lease of a portion of an existing school building. A school district shall pay out of the revenue from a lease to the state of Iowa, and to the city, school district and any other political subdivision authorized to levy taxes, an amount as determined by this section. The amount shall be determined by applying the annual tax rate of the taxing district to the assessed value of the portion of the building leased, prorated for the term of the lease during the appropriate taxing period. The provisions of this section relating to the payment of property tax because of leases shall only apply to leases to private, for-profit entities which lease a portion of the school building for a period of thirty [30] or more consecutive days **(297.22(2)"b")**.

The provisions in subsections 1 and 2 relating to the sale, lease, or disposition of school district property do not apply to student-constructed buildings and the property on which student-constructed buildings are located. The board of directors of a school district may sell, lease, or dispose of a student-constructed building and the property on which the student-constructed building is located, and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board **(297.22(3))**.

Sections 297.22 shall be construed as independent of the power vested in the electors by section 278.1, and as additional to such power. If a board of directors has exercised its independent power under section 297.22 regarding the disposition of real or personal property of the school district and has by resolution approved such action, the electors may subsequently proceed to exercise their power under section 278.1 for a purpose directly contrary to an action previously approved by the board in accordance with section 297.22. However, the electors shall be limited to ten [10] days after an action by the board to exercise such power for a purpose directly contrary to the board's action **(297.25)**.

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the state agency at least thirty [30] days before the termination of the lease **(7.20)**.

When voters authorize the board of directors to sell and convey or lease or otherwise dispose of certain real property such authorization does not give the board power to deal with the real property differently than other property which they are otherwise authorized to sell or lease **(1968 Op. Att'y Gen. 115 (#67-5-23))**.

A school board has six months during which it can seek the best bid for property advertised for sale **(OAG #64-8-7(L))**.

The school board may give free of charge an old schoolhouse site to a town under section 297.22 **(OAG #71-9-14)**.

Where a school district board conveys real estate to another governmental unit by gift, it does not hold power to spend school funds to demolish school buildings to satisfy the wishes of the donee of the gift because such expenditure would not be for a school purpose **(OAG #82-1-1(L))**.

Payment for school property must be made in cash. No mortgage on real estate may be accepted. The authority to sell does not give authority to accept anything but cash in settlement for property **(OAG #32-8-6(L))**.

Neither by board action nor on petition could a school building be sold if there weren't sufficient remaining schoolhouses to house the pupils **(OAG #52-1-7)**.

AEAs may not buy property from sources other than school districts **(OAG #94-12-3(L))**.

Any school building or any school site, the title of which is vested in the state of Iowa by reason of it having been provided by state mining camp funds for schools in mining camps, shall be sold by the department when the director of the department of education determines it is no longer needed for school purposes **(297.26)**.

If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the director of the department of education may remove the same and divert their use to other public school districts **(297.32)**.

All deeds and conveyances of land executed by or purporting to be executed by a school district or by the board of directors of a school district, and placed of record more than 10 years earlier, which deeds or conveyances purport to sustain the record title, are legalized and valid, even though the record fails to show that all necessary steps in the sale and deeding of the property were complied with. The deeds and conveyances are legalized and valid as if the record showed that the law had been complied with, and that the sales had been duly authorized by the electors of the school district **(589.25)**.

### **Disposition by Reversion of Sites**

Any real estate, owned by a school district, containing less than two [2] acres, situated wholly outside of a city, and not adjacent thereto, and heretofore used as a schoolhouse site shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school district. Any such schoolhouse site containing two [2] or more acres shall be subject to the law as otherwise provided **(297.15)**.

In case the school district and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the chief judge of the judicial district of the county in which the greater part of such school district is situated, shall, on the written application of either party, appoint three [3] disinterested voters of the county from the list of person eligible to serve as compensation commissioners to appraise the site **(297.16)**.

The county sheriff shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court **(297.17)**.

Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisement, after being duly verified, shall be filed with the county sheriff **(297.18)**.

If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such school district within twenty [20] days after the filing of same with the county sheriff, the school district may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder **(297.19)**.

If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately **(297.20)**.

A school board may sell improvements on a site to the owner at a price mutually agreed upon, or it may sell to the owner at a price higher than the appraised value. The landowner has no equity in improvements placed on the site with public funds **(OAG #54-10-28(L))**.

Where a large farm was divided into tracts and two of the tracts adjoin the school ground and both owners want the school site, they should draw lots. If not, the site should be sold according to law **(OAG #55-1-17)**.

### **Disposition of Land to the Federal Government**

Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by school districts is required, the board of directors of such school districts by resolution is hereby authorized to sell and convey such property at a price and upon terms as may be agreed upon, any such instruments of conveyance to be executed on behalf of such school districts by the president of such district **(274.39)**.

The proceeds of the sale of the property of the school district under the authority granted in sections 274.39 and 274.40 shall be deposited with the treasurer of the county and applied so far as necessary to the payment of the outstanding indebtedness of such school district **(274.41)**.

If the federal government, or any agency or department of the federal government, determines that certain real property making up a portion of a school district is required, the director of the department of education may by resolution adjust the boundaries of school districts in which the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of the districts **(274.42)**.

The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the director of the department of education shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct **(274.43)**.

### **Davis-Bacon and Related Acts (41 CFR 1-18.7; 29 CFR 1, 3, 4, and 5)**

This law is applicable to most federally-financed or assisted contracts of \$2,000 or greater for the construction, alteration, or repair, including painting and decorating, of public buildings or public works. It provides that all laborers and mechanics employed under such contracts be paid the wage rates and fringe benefits found by the department of labor to be prevailing on similar projects for corresponding classifications of laborers and mechanics in the locality in which the work is to be performed and included in a wage decision in the contract. A contract which is subject to the Davis-Bacon Act or most of the related acts is also subject to the Copeland (Anti-Kickback) Act which prohibits illegal deductions or kickbacks of wages. Such contracts also require the submission of certified payroll records on a weekly basis to the contracting agency.