

Proposed Readoption without Amendments of N.J.A.C. 6A:25, Qualified Zone Academy Bond Program

The following is the accessible version of the proposed readoption without amendments of N.J.A.C. 6A:25. The adoption level document includes two sections – [a summary of the chapter](#) and [the existing rule text](#).



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Adoption Level
February 2, 2022

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To: Members, State Board of Education

From: Angela Allen-McMillan, Ed.D., Acting Commissioner

Subject: N.J.A.C. 6A:25, Qualified Zone Academy Bond Program

Authority: N.J.S.A. 18A:4-15, 18A:7G-26, and 18A:36A-18 and 26 U.S.C. § 54E

Reason for Action: Readoption without Amendments

Sunset Date: April 6, 2022

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:25, Qualified Zone Academy Bond Program, without amendments through a notice of readoption. Through the Federal Taxpayer Relief Act of 1997 (Pub. L. 105-34) and codified at 26 U.S.C. § 1397E, Congress created a school financing instrument -- the Qualified Zone Academy Bond (QZAB) -- to enable state and local governments, such as school districts, to borrow money from financial institutions at no interest for costs incurred to rehabilitate and repair schools, train teachers, develop curriculum, and invest in technology for "qualified zone academies" that serve large concentrations of low-income families. Federal code allocates to state education agencies the bond cap, which is the dollar limit on interest-free state bonding capacity that can be used to finance the costs at qualified zone academies; state education agencies, in turn, allocate the state bond cap to qualified zone academies within the state. As New Jersey's state education agency, the Department is authorized to allocate the QZAB bond cap in New Jersey.

N.J.A.C. 6A:25, which is set to expire on April 6, 2022, implements the Federal QZAB program for New Jersey. The rules include eligibility requirements for the QZAB program, procedures for application submission for school districts and charter schools applying on behalf of qualified zone academies, and criteria used for the Department's review of applications.

This State's QZAB program is best understood within the context of the Federal QZAB statutory and regulatory requirements. The Federal government subsidizes QZABs for a period of time, typically up to 15 years, by providing to bondholders tax credits that are approximately equal in value to the interest that state and local government entities would normally pay the holders of taxable bonds. Since the Federal government provides the interest payment by means of a tax credit, the borrower, in this case the debt issuer for a school district or charter school, is responsible only for repaying the QZAB principal. Certain banks, insurance companies, and

corporations actively involved in the business of lending money can receive a tax credit as an incentive to hold QZABs.

To participate in the QZAB program, a public school must be designated as a "qualified zone academy" according to Federal requirements. A qualified zone academy must be located in a Federal empowerment zone or enterprise community, or have at least 35 percent of its student body qualify for free or reduced-price lunch under the National School Lunch Act. In collaboration with a private entity, a public school also develops a comprehensive educational program to expand learning opportunities and provide students with skills needed for the rigors of college and the increasingly complex workplace. The comprehensive educational program must be approved by the school's district board of education or board of trustees, and its students must be subject to the same academic standards and assessments as other students in the school district or charter school. Private entities that collaborate with a qualified zone academy must contribute the equivalent of 10 percent of the QZAB principal issued for the school. Contributions may include cash, goods, or services such as technical assistance.

The chapter, originally adopted effective June 3, 2002, addressed the initial phase of the QZAB program, which was implemented by integrating the newly enacted Federal QZAB program with the bonding authority for school construction projects authorized under the State Educational Facilities Construction and Financing Act (EFCFA). Amendments to the chapter effective in 2003 broadened the program beyond the initial phase by removing restrictive language. The chapter's most recent readoption in 2007 included the addition of Subchapter 5 to provide for the participation of eligible charter schools in accordance with P.L. 2002, c. 10, which amended the State's Charter School Program Act. Since that change, charter schools have been eligible to participate in the program. Pursuant to N.J.S.A. 18A:36-10, charter schools are not eligible for State facility construction funds. Therefore, Federal funds or Federal programs like the QZAB program are the only public facility construction funds for which charter schools are eligible.

The Federal QZAB program was last authorized for calendar years 2015 and 2016. Recent Federal bills proposed reauthorization of the program but have not been enacted to date. As the program has not been reauthorized, the Department is lacking information needed to propose amendments to New Jersey's QZAB rules. However, the Department is proposing to readopt N.J.A.C. 6A:25 without amendments to ensure that New Jersey is prepared should a QZAB reauthorization occur. Once the Federal program is reauthorized, the Department will review the chapter to determine if substantive changes are warranted.

The following summarizes the content of each section.

Subchapter 1. General Provisions

N.J.A.C. 6A:25-1.1 Purpose and applicability of rules

This section describes the purpose of the rules, which is to implement the QZAB program in New Jersey. The QZAB program may finance the costs of school facilities projects approved pursuant to the EFCFA and charter school capital projects. The section also states that the chapter applies to all district boards of education and charter schools in the State, as well as to the bondholders and private entities that participate in the program.

N.J.A.C. 6A:25-1.2 Definitions

This section defines terms used in the chapter. The rules also state that terms not defined in the chapter have the meanings defined for qualified zone academy bonds as set forth at 26 U.S.C. § 54E and the Federal regulations and for the State program of school construction as set forth in EFCFA and N.J.A.C. 6A:26, Educational Facilities.

Subchapter 2. Eligibility for QZAB Funding

N.J.A.C. 6A:25-2.1 School requirements

This section sets forth the criteria that a school must meet to be designated as a qualified zone academy and be eligible for QZAB funding. The rules supplement the Federal eligibility criteria by requiring the school to be in a “school district” as defined at N.J.S.A. 18A:7G-3 and N.J.A.C. 6A:26-1.2.

N.J.A.C. 6A:25-2.2 QZAB project requirements

This section provides that a QZAB-eligible project must (i) be located in a school that qualifies as a qualified zone academy; (ii) be included in a school district's approved long-range facilities plan; (iii) be approved by the Department as a school facilities project; (iv) not be completed at the time the QZAB funding application is submitted; (v) consist of rehabilitation work, including equipment related to the rehabilitation of the school facility that houses a qualified zone academy; and (vi) be located in a school facility eligible for a private business contribution by a private entity. This section also provides that a school district can apply for one or more school facilities projects in one or more school facilities provided each facility and each project meet the chapter's requirements.

N.J.A.C. 6A:25-2.3 Private collaboration requirement

This section describes the type of written commitment that a school must receive from a private entity to meet the private business contribution requirement of not less than 10 percent of the bond issue's proceeds. The section also sets forth a list of the allowable types of private business contributions.

N.J.A.C. 6A:25-2.4 Comprehensive educational plan requirements

This section describes the comprehensive educational plan that a school must design in cooperation with one or more private entities to meet Federally defined purposes such as preparing students for the rigors of college.

Subchapter 3. Application for QZAB Funding

N.J.A.C. 6A:25-3.1 Application requirements

This section describes the requirements for a QZAB program funding application. The application must include information regarding school eligibility, project approval, the comprehensive educational plan, the private entity collaboration, and the school district approval of the QZAB bond issuance.

N.J.A.C. 6A:25-3.2 Application review and approval

This section requires school districts to submit QZAB program applications to the Department by July 1. The rules also govern the Department's review of applications and notification of approvals or denials.

N.J.A.C. 6A:25-3.3 Appeals of Department determinations

This section requires appeals of Department determinations with respect to QZAB program eligibility to be made in accordance with N.J.A.C. 6A:3, Controversies and Disputes.

Subchapter 4. Charter School Eligibility for QZAB Funding

N.J.A.C. 6A:25-4.1 Charter school requirements

This section requires a charter school to have an approved charter and meet the Federal eligibility criteria to qualify as a qualified zone academy and receive QZAB funding.

N.J.A.C. 6A:25-4.2 QZAB project requirement

This section requires a charter school capital project to meet the following criteria to be eligible for QZAB program funding: (i) consist of rehabilitation work, including equipment related to the rehabilitation of the charter school facility that houses a qualified zone academy; (ii) not be completed at the time an application for QZAB funding is submitted; (iii) be located in a charter school that qualifies pursuant to N.J.A.C. 6A:25-2.1(a); and (iv) be located in a charter school eligible for a private business contribution by a private entity.

N.J.A.C. 6A:25-4.3 Private collaboration requirement

This section describes the type of written commitment that a charter school must receive from a private entity to meet the private business contribution requirement of not less than 10 percent of the bond issue's proceeds. The section also refers to the list of the allowable types of private business contributions.

N.J.A.C. 6A:25-4.4 Comprehensive educational plan requirements

This section describes the comprehensive educational plan that a charter school must design in cooperation with a private entity to meet Federally defined purposes such as preparing students for the rigors of college.

Subchapter 5. Charter School Application for QZAB Funding

N.J.A.C. 6A:25-5.1 Application requirements

This section describes the requirements for a charter school's application for QZAB funding. The application must demonstrate the charter school's eligibility and include the capital project, the comprehensive educational plan, the private entity collaboration, and charter school approval of the QZAB bond issuance.

N.J.A.C. 6A:25-5.2 Application review and approval

This section requires charter schools to submit QZAB program applications to the Department by July 1. The rules also govern the Department's review of the application and notification of approvals or denials.

N.J.A.C. 6A:25-5.3 Appeals of Department determinations

This section requires appeals of Department determinations with respect to a charter school's QZAB program eligibility to be made in accordance with N.J.A.C. 6A:3.

Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

Full text of the rules proposed for readoption follows.

N.J.A.C. 6A:25, Qualified Zone Academy Bond Program

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Chapter 25. Qualified Zone Academy Bond Program

Subchapter 1. General Provisions

6A:25-1.1 Purpose and applicability of rules

- (a) This chapter implements the Federal Qualified Zone Academy Bond (QZAB) Program in this State. Under 26 U.S.C. § 54E, bond cap is allocated to the Department of Education, for bonds issued by the State, to be used by public schools, including charter schools, with needy populations (qualified academy zones) for Federally qualified purposes such as to rehabilitate and repair schools providing the schools develop in cooperation with business an educational plan to expand learning opportunities. Bondholders receive a tax credit as an incentive for holding bonds and the issuer is responsible only for paying the principal of the QZAB bonds. Since the initial phase of the QZAB Program, QZABs financed the costs of school facilities projects approved pursuant to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, and charter school capital projects.
- (b) This chapter applies to all district boards of education and charter schools in the State, as well as to the bondholders and private entities that participate in the State QZAB Program.

6A:25-1.2 Definitions

- (a) The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

“Charter school” means a public school established in accordance with N.J.S.A.

18A:36A-1 et seq.

“Charter school capital project” means a rehabilitation project for a charter school as described in N.J.A.C. 6A:25-4.2.

"Comprehensive education plan" means a plan established by the qualified zone academy, or the school district or charter school on behalf of the qualified zone academy, in conjunction with one or more private entities to provide education and training to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the workforce.

"EFCFA" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.).

"Issuer" means the entity fiscally responsible for the sale and repayment of principal on QZABs. Such an entity may include, but not be limited to, a school district, county, municipality, charter school, improvement authority, or the State.

"New Jersey Economic Development Authority" or "NJEDA" means the authority established pursuant to N.J.S.A. 43:1B-1 et seq.

"Private entity" means any person (as defined in section 7701(a) of the Internal Revenue Code) other than the United States, a State or local government, or any agency or instrumentality thereof, that enters into a collaboration with a school or school district for the purpose of establishing a qualified zone academy, and making a qualified contribution pursuant to 26 U.S.C. § 54E and this chapter. A private entity may be an individual, a trust, a partnership, a non-profit organization, or for-profit corporation.

"Qualified zone academy" means a public school (or academic program within a public school) that meets the eligibility criteria of the QZAB Program.

"Qualified contribution" means contributions that are made by private entities, are of a type and quality acceptable to the qualified zone academy, and consist of technical assistance in developing curriculum or in training teachers, services of employees as

volunteer mentors, internships, field trips, or other educational opportunities for students, or any other property or service specified by the qualified zone academy. Cash received from a private entity constitutes a qualified contribution if it is used to purchase a property or service described above.

"QZAB funding" means the financing of school facilities projects or charter school capital projects through QZABs issued pursuant to the QZAB Program.

"QZAB Program" means this State's implementation of the Federal qualified zone academy bond provisions of 26 U.S.C. § 54E, subject to Federal appropriation available therefor.

"Rehabilitation" means as defined in 26 U.S.C. § 47, which is broader than the meaning defined in N.J.A.C. 6A:26-1.2. The Federal meaning encompasses both the term as defined in N.J.A.C. 6A:26-1.2 and additions to existing school facilities.

- (b) Terms not defined in (a) above shall have the meanings defined for qualified zone academy bonds by 26 U.S.C. § 54E and regulations thereunder (see 26 CFR 1.1397E-1) and the meanings defined for the State program of school construction under EFCFA and N.J.A.C. 6A:26, Educational Facilities.

Subchapter 2. Eligibility for QZAB Funding

6A:25-2.1 School requirements

- (a) To qualify for designation as a qualified zone academy and receive QZAB funding, a school shall:
1. Be in a school district as that term is defined in N.J.S.A. 18A:7G-3 and N.J.A.C. 6A:26-1.2; and
 2. Have a student body composed of at least 35 percent of students who will be eligible for free or reduced-price lunch under the National School Lunch Act as of

the date of issuance of the QZABs based on a reasonable expectation; be located in a Federal empowerment zone; or be located in a Federal enterprise community.

- (b) The school district, or the Department on behalf of the school district, must supply on the QZAB application form the eligibility information required by (a) above for each school seeking designation as a qualified zone academy.

6A:25-2.2 QZAB project requirements

- (a) To be eligible for QZAB funding, a school facilities project shall:
 1. Be located in a school that qualifies pursuant to N.J.A.C. 6A:25-2.1(a);
 2. Be included in a school district's approved long-range facilities plan pursuant to N.J.A.C. 6A:26-2.3;
 3. Be approved as a school facilities project by the Department pursuant to N.J.A.C. 6A:26-3.3 or N.J.S.A. 18A:7G-4.b or 9.c;
 4. Not be completed at the time of submission of an application for QZAB Program funding;
 5. Consist of rehabilitation work, including equipment related to the rehabilitation of the school facility that houses a qualified zone academy; and
 6. Be located in a school facility eligible for a private business contribution by a private entity.
- (b) A school district, or the Department on behalf of a school district, may apply for one or more school facilities projects in one or more school facilities, provided each school and each project meet all of the requirements to qualify for the QZAB Program under this chapter.

6A:25-2.3 Private collaboration requirement

- (a) The school district shall establish, via written commitment, a collaboration between the school and one or more private entities under which the private entity evidences in

writing that it will make a contribution having a present value (as of the date of issuance of the issue) of not less than 10 percent of the bond issue's proceeds.

- (b) Contributions by the private entity shall be described in the written commitment and may include the following general types of contributions:
 - 1. Equipment for use in the qualified zone academy (including technology and vocational equipment);
 - 2. Technical assistance in developing curriculum or in training teachers [in order] to promote appropriate market-driven technology in the classroom;
 - 3. Services of employees as volunteer mentors;
 - 4. Internships, field trips, or other educational opportunities for students outside the qualified zone academy;
 - 5. Any other property or service specified by the school district; or
 - 6. Cash received if used to purchase property or services described in (b)1 through 5 above.
- (c) Services of employees of the qualified zone academy shall not constitute qualified contributions.

6A:25-2.4 Comprehensive educational plan requirements

- (a) The qualified zone academy, or school district on behalf of the qualified zone academy, shall design a comprehensive educational plan in cooperation with one or more private entities.
- (b) Students enrolled in the qualified zone academy shall be subject to the same academic standards and assessments as other students in the school district.
- (c) The school district shall approve the comprehensive educational plan prior to submission to the Department of an application for QZAB funding.

Subchapter 3. Application for QZAB Funding

6A:25-3.1 Application requirements

- (a) A school district seeking to initiate a school facilities project funded by a QZAB shall apply to the Department on a Commissioner-provided form for approval of the school facilities project for QZAB funding.
- (b) The application must demonstrate the school facilities project meets the requirements for participation in the QZAB Program, as set forth in N.J.A.C. 6A:25-2.1 through 2.4, as well as the Federal requirements set forth in 26 U.S.C. § 54E and regulations thereunder (see 26 CFR 1.1397E-1).
- (c) The application must include the following:
 - 1. Evidence the school facilities project is for a school facility meeting the school location or student body composition requirements of N.J.A.C. 6A:25-2.1;
 - 2. Evidence the school facilities project has been approved by the Department for rehabilitation, pursuant to N.J.A.C. 6A:25-2.2;
 - 3. A copy of the comprehensive educational plan approved by the school district, pursuant to N.J.A.C. 6A:25-2.4;
 - 4. Certification by the issuer that it has the written commitment of the private entity to satisfy the private contribution requirement, pursuant to N.J.A.C. 6A:25-2.3, or to make qualified contributions for one or more qualified zone academy school district applicants sufficient to meet the private contribution requirement for each school district applicant; and
 - 5. Certification by the issuer that it has the school district's written approval of the QZAB bond issuance.

- (d) A school district applying for QZAB funding may submit to the Department an application for one or more school facilities projects for which it seeks funding, provided the application satisfies this subsection's requirements for each school facilities project.

6A:25-3.2 Application review and approval

- (a) The deadline for accepting applications shall be July 1 annually.
- (b) The Department must assess each application to determine on a first-come, first-served basis if it is complete. The Department must verify the school facilities project in the application is the same as the previously approved school facilities project. If the application is determined to be incomplete, the Department must inform the school district in writing, listing all deficiencies and missing required information. If the application is determined to be complete, the Department must review the application for eligibility for QZAB funding within 30 days of the determination of completeness.
- (c) The Department must approve all applications that meet the QZAB Program requirements as described or referenced in this chapter, subject to the availability of bond cap under 26 U.S.C. § 54E.
- (d) If a school district's application is approved, the Department must notify the school district that a qualified zone academy(ies) in the school district is eligible for QZAB funding. The Department must also provide notice to the NJEDA of school district eligibility for QZAB funding. State share funded through QZAB financing will be available in the same way that State share funded through other financing is available for school facilities projects approved pursuant to EFCFA, that is, available pursuant to N.J.S.A. 18A:7G-5, 9, 10, or 15 as applicable.
- (e) If a school district's application does not meet the QZAB Program requirements, the Department must notify the school district in writing, informing it of the reason for the denial.

6A:25-3.3 Appeals of Department determinations

Appeals of Department determinations with respect to the QZAB Program shall be made in accordance with N.J.A.C. 6A:3, Controversies and Disputes.

Subchapter 4. Charter School Eligibility for QZAB Funding

6A:25-4.1 Charter school requirements

- (a) To qualify for designation as a qualified zone academy and receive QZAB funding, a charter school shall:
 - 1. Have an approved charter; and
 - 2. Meet the requirement stated in N.J.A.C. 6A:25-2.1(a)2.

6A:25-4.2 QZAB project requirements

- (a) To be eligible for QZAB funding, a charter school capital project shall:
 - 1. Consist of rehabilitation work, including equipment related to the rehabilitation of the charter school facility that houses a qualified zone academy;
 - 2. Not be completed at the time of submission of an application for QZAB Program funding;
 - 3. Be located in charter school that qualifies pursuant to N.J.A.C. 6A:25-2.1(a); and
 - 4. Be located in a charter school eligible for a private business contribution by a private entity.

6A:25-4.3 Private collaboration requirement

- (a) The charter school shall establish, via written commitment, a collaboration between the charter school and one or more private entities under which the private entity evidences

in writing that it will make a contribution having a present value (as of the date of issuance of the issue) of not less than 10 percent of the bond issue's proceeds.

- (b) Contributions by the private entity shall be described in the written commitment and may include items referenced in N.J.A.C. 6A:25-2.3(b)1.

6A:25-4.4 Comprehensive educational plan requirements

- (a) The qualified zone academy, or charter school on behalf of the qualified zone academy, shall design a comprehensive educational plan in cooperation with one or more private entities.
- (b) Students enrolled in the qualified zone academy shall be subject to the same academic standards and assessments as other students in the school district.

Subchapter 5. Charter School Application for QZAB Funding

6A:25-5.1 Application requirements

- (a) A charter school seeking to initiate a charter school capital project funded by a QZAB shall apply to the Department on a Commissioner-provided form for approval of the charter school capital project for QZAB funding.
- (b) The application must demonstrate the charter school capital project meets the requirements for participation in the QZAB Program, as set forth in N.J.A.C. 6A:25-4.1 through 4.4, as well as the Federal requirements set forth in 26 U.S.C. § 54E and regulations thereunder (see 26 CFR 1.1397E-1).
- (c) The application must include the following:
 1. The name of the school and the name, street address, phone number, and e-mail address of a contact person;
 2. A description of the capital project, including evidence the charter school capital project is for a school facility meeting the charter school location or student body composition requirements of N.J.A.C. 6A:25-2.1 and 4.2, respectively;

3. Evidence the charter school capital project is for rehabilitation, pursuant to N.J.A.C. 6A:25-4.2;
 4. A copy of the comprehensive educational plan approved by the charter school, pursuant to N.J.A.C. 6A:25-4.4;
 5. Identification of the issuer of QZABs for the charter school;
 6. Certification by the charter school that it has the written commitment of the private entity to satisfy the private contribution requirement, pursuant to N.J.A.C. 6A:25-4.3. This requirement may also be satisfied by the issuer's certification that it has the written commitment of the private entity to make qualified contributions to meet the private contribution requirement for the charter school applicant; and
 7. A resolution evidencing that the issuer has the charter school's written approval of the QZAB bond issuance.
- (d) A charter school applying for QZAB funding may submit to the Department an application for one or more charter school capital projects for which it seeks funding, provided the application satisfies this subsection's requirements for each charter school capital project.

6A:25-5.2 Application review and approval

- (a) The deadline for accepting applications shall be July 1 annually.
- (b) The Department must assess each application on a first-come, first-served basis to determine if it is complete. If the application is determined to be incomplete, the Department must inform the charter school in writing, listing all deficiencies and missing required information. If the application is determined to be complete, the Department must review the application for eligibility for QZAB funding within 30 days of the determination of completeness.

- (c) The Department must approve all applications that meet the QZAB Program requirements as described or referenced in this chapter, subject to the availability of bond cap under 26 U.S.C. § 54E.
- (d) If a charter school's application is approved, the Department must notify the charter school and the issuer that a qualified zone academy in the charter school is eligible for QZAB funding.
- (e) If a charter school application does not meet the QZAB Program requirements, the Department must notify the charter school and the issuer in writing, informing them of the reason for the denial.
- (f) If the NJEDA is the issuer of QZABs for the charter school, the Department must notify in writing the charter school eligible for funding to apply to the NJEDA pursuant to N.J.A.C. 19:31, to the extent applicable, and to utilize the NJEDA application for financial assistance available at <http://www.njeda.com/applications.asp>.

6A:25-5.3 Appeals of Department determinations

Appeals of Department determinations with respect to N.J.A.C. 6A:25-5.1 and 5.2 shall be made in accordance with N.J.A.C. 6A:3.