Treasury Board's
Energy Leasing Program

Background: At its 2001 Session, the Virginia General Assembly enacted the Energy and Operational Efficiency Performance-Based Contracting Act which permits any public body to enter into an energy performance contract with an energy performance contractor to significantly reduce energy operating costs of a facility through one or more energy conservation or operational efficiency measures.

On July 23, 2003 Governor Warner issued Executive Order 54 that directed the Governor's Secretaries and all executive branch agencies to reduce energy costs and consumption in state government operations at least seven percent by 2004, when compared to a 2002 baseline and by at least ten percent by 2006 relative to a 2002 baseline, with a long–term goal of reducing energy consumption by the maximum amount feasible.

In September 2005, the Treasury Board issued a Request for Proposal and subsequently established a program for financing energy efficiency projects.

Purpose: The Energy Leasing Program enables Commonwealth agencies to obtain consistent and competitive credit terms for financing energy efficiency improvements.

The program provides a financing vehicle for qualifying energy projects that the using agency has evaluated and determined to be appropriate and cost effective.

Code Reference - Section 2.2-2417: Under §2.2-2417 of the *Code of Virginia*, the Board's role is to review and approve financial terms of all contracts for the purchase of personal property by agencies, institutions, boards and authorities which receive appropriations from the Commonwealth, where payment of the purchase price is deferred through installment payments, includes the payment of interest or is otherwise financed by the seller, lessor or third party.

- **Eligibility for Financing**
  - **Eligible Agencies:** Any agency, institution, board or authority of The Commonwealth of Virginia that receives appropriation from the General Assembly of the Commonwealth.
  - **Agency Responsibility:** Agencies are responsible for evaluating the merits and cost effectiveness of any energy project. Agencies are responsible for ensuring that the energy project is in accordance with §4-4.01(u) of the General Provisions of the Appropriations Act. Agencies are responsible for lease payments regardless of actual energy savings resulting from the project; however under a performance contract the agency may have recourse with the energy vendor if savings are insufficient.
  - **Energy Projects:** Equipment or services including improvements or retrofits to electrical, lighting and auxiliary systems, heating ventilating and air conditioning systems, building improvements and professional and nonprofessional services relating to the design, installation, training and monitoring of such equipment or systems, and subject to the Lessor's approval.
  - **Minimum Amount:** Energy Projects less than $100,000 are not eligible for financing through the Energy Leasing Program.

- **Essential Property:** The property to be financed must be used for an essential governmental purpose.
- **Vendor Payments:** Lease proceeds will generally be paid directly to the agency vendor. Reimbursements to agencies for amounts paid prior to financing approval are limited by IRS regulations.

- **Lease Terms**
  - **Available Payment Terms:** 12 and 15 years (shorter terms may be available from the Treasury Board's Master Equipment Leasing Program)

    a) **Rate**s
      - **12-Year Lease Term:** The 7-Year Interest Rate Swap as published in the Federal Reserve Statistical Release Report H.15 two business days immediately preceding the Acceptance Date.
      - **15-Year Lease Term:** The 10-Year Interest Rate Swap as published in the Federal Reserve Statistical Release Report H.15 two business days immediately preceding the Acceptance Date.

    b) **Payments -** May be made monthly, semiannually or annually as established at the time of financing.
      - **Monthly Lease Payments -** The initial monthly lease payment made by the agency will be due on the first day of the month that is the second month following the escrow fund date and monthly thereafter.
      - **Semi-Annual Lease Payments -** The initial semi-annual lease payment made by the agency will be due on the first day of the month that is six months after the month following the escrow fund date and semi-annual thereafter.
      - **Annual Lease Payments -** The initial annual lease payment made by the agency will be due on the first day of the month which is twelve months after the month following the month of the escrow fund date and annual thereafter.
  - **Useful Life:** The term may not exceed the aggregate useful life of the equipment/project.

- **Interest Rates**
  - **Interest Rates:** The rates are indexed to the ten-year Constant Treasury Note as published by the Federal Reserve on a weekly average basis.
  - **Rates are fixed at the time of the financing.**

- **Legal Structure of the Energy Leasing Program**
  - **Single Lease Agreement:** The Treasury Board, through an Request for Proposal (RFP) process, negotiates a master lease agreement through one or more finance companies to provide financing for state agencies, institutions, boards and authorities. Each acquisition/financing under the Master Lease contract constitutes an "appendix" to the Master Lease agreement

- **Tax-Exempt Lease:**

  a) **Governmental Borrower –** All state agencies, institutions, boards and authorities of the Commonwealth may borrow through the program to finance energy projects.

  b) **Governmental Use** – The projects financed must be for governmental use.

  c) **Lease Payments Subject to Appropriation** – The lease payments are subject to appropriation by the General Assembly each year.

  d) **Lease Term** – The term of the lease may not exceed the aggregate useful life of the project.

- **Security Structure of the Energy Leasing Program:**

  a) **Lessor's Security Interest in Equipment/Project** – If an agency defaults or if the Master Lease terminates, the lessor can repossess all of the equipment/ projects financed under the Agreement.

  b) **Creditworthiness of the Commonwealth** – The creditworthiness of the Commonwealth as a whole is considered and enhances the interest rates available through the program.

• **Accessing the Energy Leasing Program**

- **Apply to the Department of the Treasury:** Agencies should submit financing requests to the Department of the Treasury. Financing requests should include:

  1. Request Form
  2. Copy of the Review Letter from the Department of Mines, Mineral and Energy.
  3. Copy of the Energy Audit (Executive Summary)
  4. Project Scope/Cashflows
  5. Copy of the approved Decision Brief for energy projects totaling $7 million or more.
  6. Equipment Cost Breakdown (Requested Per the Finance Company)
  7. A copy of the executed Performance Contract (Requested Per the Finance Company)

- **Approved Requests:** Prior to funding under any lease, the Agency will provide:

  1. Appendix
  2. Evidence that Lessor has been named as Co-Obligee under any payment and/ or performance bond.
  3. Escrow Agreement
  4. Disbursement Request Certificate (Schedule 1 of the escrow agreement)
  5. List of Authorized Representatives

- **Primary Contact:**

Debora B. Greene
Public Finance Analyst
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- **Prepayment Provisions**

  - **Prepayment Penalties:** Leases can be prepaid at the following prepayment prices, expressed as a percentage of the principal amount outstanding, plus accrued interest to the prepayment date. Prepayment penalties apply as follows:

Prepayment Period (all months inclusive)	Prepayment Prices
Vendor Payment Date to 6 months	103%
7 to 12 months	102%
13 to 18 months	101%
over 18 months	100%

  - **Purpose:** Prepayment should be used where financially beneficial to the agency and the Commonwealth.

  - **Prohibition:** Financings and subsequent prepayments should not be used in an abusive manner solely to enhance annual cash flow.

- **Vendor/Third Party Financings**

  - **Treasury Board Approval:** Agencies are not required to use the Energy Leasing Program; however, alternative financing arrangements must first be approved by the Treasury Board.

  - **Minimum Amount:** Energy purchases less than $100,000 are not eligible for review by the Treasury Board.

  - **Apply to the Department of the Treasury:** Agencies should submit application seeking approval to the Department of the Treasury. Submissions should include:
    1. Application/Letter from Agency
    2. Financing Summary (available from the Department of the Treasury)
    3. Copy of the Energy Audit (Executive Summary)
    4. Project Scope/Cashflows
    5. Pricing/Term Sheet
    6. Form of Lease Agreement

  - **Treasury Board Meetings**: Applications for Treasury Board approval will be considered only at regular monthly meetings of the Board. Board meetings are usually held on the third Wednesday of the month at 9:00 a.m.; however the meeting dates are subject to change and should be confirmed. Requests for consideration of Treasury Board approval of terms and structure must be received in the Debt Management Division of the Department of the Treasury a minimum of three (3) weeks prior to the scheduled meeting date. Final documentation must be received in the Debt Management Division of the Department of the Treasury one (1) week prior to the scheduled meeting date for inclusion to the Treasury Board package submitted to the board members.

- **Procurement Process:** Agencies must adhere to the State's procurement laws and regulations procuring financing arrangements.

- **Treasury Board Review:** Treasury Board review is limited to the financial terms and conditions of the financing arrangement.

- **Approval:** Financing arrangements that offer more favorable rates and terms are typically approved.

- **Documents:** Agencies must provide the Treasury Board with a copy of the final executed financing contract.