



# PURCHASING ENVIRONMENTAL PROGRESS

Some state programs have fully bought into innovation, others  
are stuck writing paper checks



ENVIRONMENTAL POLICY  
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CENTER



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The [Restoration Economy Center](#) works to speed up the pace and scale of restoration in the United States to meet the need for carbon-storing offsets created by climate policies, increase our resilience to the effects of climate change, and offset new or previous impacts. We are housed in the national nonprofit, the [Environmental Policy Innovation Center](#) (EPIC).

The mission of EPIC is to build policies that deliver spectacular improvement in the speed and scale of conservation. We focus on a narrow set of strategies:

- Improving policies that allow private sector funding or stewardship to expand or supplant public or charitable conservation work
- Transforming government policies to focus on what matters—outcomes
- Eliminating the organizational barriers that prevent public agencies from adapting to 21st century solutions

We believe that innovation and speed are central to broadening efforts to conserve wildlife, to restore special natural places, and to deliver to people and nature with the clean water they need to thrive. To achieve those goals, conservation programs must evolve to accommodate our modern understanding of human behavior and incentives and the challenges posed by humanity's expanding footprint. We embrace experimentation with novel ideas in conservation policy, to learn quickly from mistakes and iteratively design effective approaches to be even more successful.

EPIC is a fiscally sponsored project of Sand County Foundation. Sand County Foundation is a nonprofit conservation organization dedicated to working with private landowners across North America to advance ethical and scientifically sound land management practices that benefit the environment.

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# EXECUTIVE SUMMARY

States are major buyers of restoration outcomes, but they usually purchase these outcomes through traditional construction contracts and bid processes. Some state programs are leading the way with outcomes-based procurement that speeds up timelines and creates assurances around project success. This paper features those efforts and makes recommendations for others that are well-positioned to adopt Pay for Success (PFS) programs. Below is a compilation of case studies, opportunities, and constructive recommendations with a focus on underlying legislative authority.

At a macro level, very few states are using PFS contracts for environmental outcomes. More often than not, states that have forayed into PFS have done so with social programs like pre-K education initiatives or recidivism reduction efforts. However, over the last few years we have seen an uptick in the use of PFS for environmentally beneficial projects.

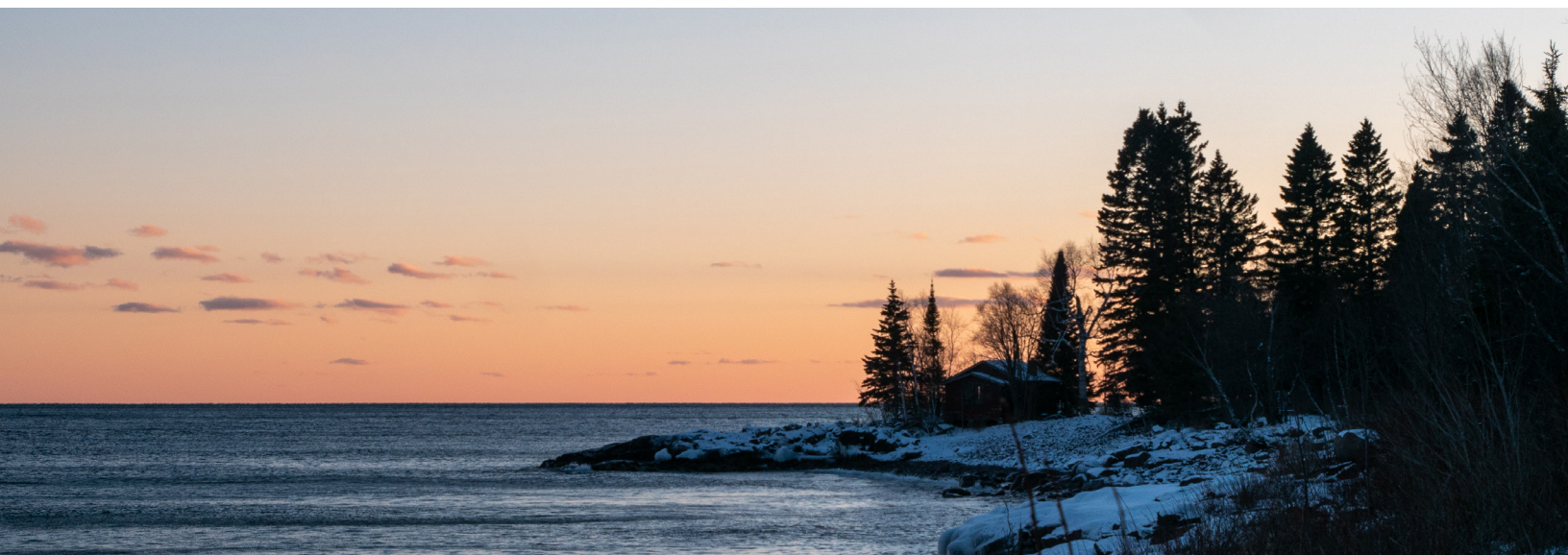
Some efforts have been more successful than others. Oftentimes with innovation we see overly complicated protocols that end up stalling progress, or really conservative agency staff who are resistant to try something new, even with the legislative green light. This isn't always the case though; states like Maryland have enacted very clear language that allows PFS for environmental outcomes, and authorizes state programs to do so in a way that's approachable and utilizes best practices.

- Pay for Success can speed projects up and cost less, all while maintaining project integrity and high standards.
- Some previous attempts have created unnecessary hurdles, prohibiting progress. We should learn from these examples and revise future efforts.
- PFS has been ground truthed and shown to work for environmental outcomes. It's time to embrace it.

States like Maryland, North Carolina, Florida, and Pennsylvania have all taken steps to develop programs that use PFS where they buy units of verified environmental outcomes rather than pay for effort expended. Some of these programs are decades old, with multiple iterations under their belt designed to improve the program. Others are brand new, taking the big lessons learned from established successes and failed attempts.

On the other hand, in places like Louisiana, Texas, Minnesota, and Ohio, there are vast opportunities to improve existing programs. Each has a unique set of circumstances that well positions them for this contracting adoption.

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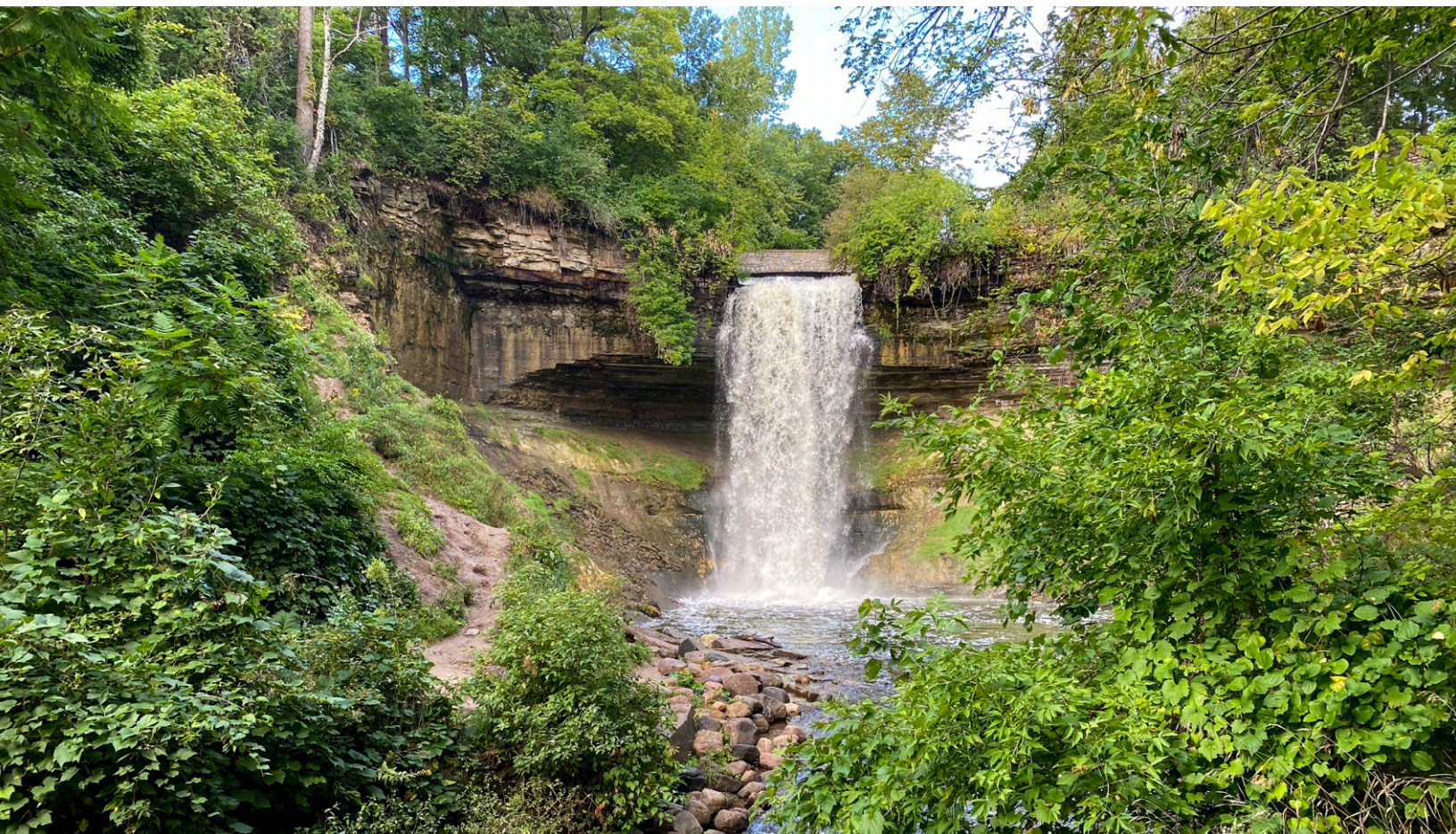
# INTRODUCTION

[Pay for Success](#) contracting (PFS), [also known as](#) Pay for Performance or Outcomes-Based contracting, is a procurement strategy that defines desired outcomes and invites the private sector to deliver those in advance of payment to ensure outcomes are achieved. Instead of traditional invoicing and payment that happens on a regular basis (monthly, quarterly, etc.), a significant amount of the total payment for Pay for Success contracts are paid only when the project has been completed (verified outcomes have been measured, often by a 3rd party evaluator). This helps create positive economic pressure, allowing the private sector to take on the risk of achieving project outcomes, and that new funding goes as far as possible. The payments are then based on delivery and verification of those outcomes.

Currently, most government procurement works by issuing separate contracts to designers, builders, maintenance, etc. using the '[design-bid-build](#)' procurement process. This puts the government employees in the role of project managers, where they hire out and oversee all contractors, using a significant amount of staff time to ensure projects move forward. We know that under-staffed and under-resourced local and state departments are struggling to keep up with this work, which often causes further delays. Using this method, there are no guarantees that funded projects will succeed. Payments for design-bid-build projects are awarded throughout the project rather than upon delivery of successful outcomes. It is entirely possible that intermediate steps are met, but final goals are not. This increases risk to taxpayers and keeps the majority of the responsibility for project implementation and success (or failure) on the government.

Not only are PFS contracts only paid out upon delivery of successful outcomes, thus reducing the risk to taxpayers, there is evidence that this innovation takes significantly less time. In Florida, traditional procurement has taken up to three phases funded over 16 years, compared to a new PFS contract that is shaving off a decade from the process. Not only are they faster, they can also be cheaper. RFPs in Maryland show PFS contracts [costing one third](#) of past procurement.

These benefits will be discussed in detail through case studies of successes and opportunities. Constructive recommendations are made to strengthen existing programs and institute new ones.





## HEADING IN THE RIGHT DIRECTION



### MARYLAND

- Has legislation authorizing PFS, specifically for environmental outcomes, [enacted in 2022](#)
- Has set aside \$20 million a year through at least 2030 to buy nitrogen reduction outcomes
- Has solicited nitrogen reduction outcomes via an RFP, is in process of reviewing bids at the time this report was written



### NORTH CAROLINA

- Since 2008, the State Division of Mitigation Services authorized to sell credits via an in-lieu fee (ILF) program
- The majority of the state's cumulative [\\$508 million in contracting](#) for their ILF is for full delivery of restoration outcomes (\$398 million, or 78%)
- Purchasers come from permittees for compliance with Clean Water Act
- [Unique authorization](#), no statewide PFS legislation to date



### PENNSYLVANIA

- Has set aside \$22.5 million over 4 years to buy nitrogen, phosphorus, and sediment reduction outcomes by instituting the outcomes-based [Clean Water Procurement Program](#) (CWPP)



### FLORIDA

- Has two existing PFS programs that are issue specific, one focused on nutrient reduction and the other on oil spill cleanups. Both function through the Florida Department of Environmental Protection ([DEP](#)).
- Both programs are authorized via legislation. The oil spill cleanup program began using performance-based contracts in the late 1990s, while the nutrient reduction initiative was enacted in 2022.

## RIPE FOR OPPORTUNITY



### LOUISIANA

- Has existing environmental PFS legislation, enacted in [2017](#)
- Legislation is not utilized for various reasons (discussed below)
- Opportunity to resurrect existing law and break down hurdles using knowledge gained over the last five years



### TEXAS

- Has broad authority, as of [2015](#) all state agencies can execute PFS contracts
- Legislation has not been used to solicit environmental outcomes to date
- Philanthropic PFS projects have occurred
- Opportunity to better utilize existing authorization to procure environmental outcomes



### MINNESOTA

- Has legislation authorizing a PFS pilot, enacted in [2011](#)
- Required a feasibility study with various sectors and state bonds for up to \$10 million
- Opportunity to amend current legislation, simplifying the process and including environmental outcomes



### OHIO

- Has existing state PFS program, [ResultsOhio](#), established in 2020
- Housed within the state treasury, solicits PFS proposals and handles contracting
- Opportunity to pair with the state water quality improvement program, [H2Ohio](#), to ground truth water quality outcomes purchasing



## HEADING IN THE RIGHT DIRECTION



### MARYLAND

In 2017, Maryland passed the Clean Water Commerce Act (CWCA), first-of-its-kind [legislation](#) that allowed the well-capitalized Bay Restoration Fund to buy the most cost-effective nutrient pollution or sediment reductions through a competitive, Pay for Success (PFS) process. The program was originally very limited and focused almost entirely on upgrades

to wastewater treatment plants. Agricultural projects were statutorily excluded, but one stream restoration project was funded under the program and a seed was planted. In [2021](#), the CWCA was dramatically upgraded to purchase nitrogen reduction outcomes from a much broader array of green infrastructure projects—including on agricultural land—and funding doubled to \$20 million a year.

The new CWCA will pay for modeled reductions in nitrogen pollution flowing into the Chesapeake Bay that last for at least ten years. It uses the [Chesapeake Assessment Scenario Tool](#) as an agreed upon model, and the Maryland Department of Agriculture or Department of Environment will visit the project to verify the practice is actually in place before funds are released. This program is specifically focused on long term nitrogen reductions, so projects like buffer strips and bioreactors that can last decades will be prioritized for funding. At least 35 percent of funds are set aside specifically for outcomes from agricultural practices, but a minimum of 10 percent is also reserved for non-agricultural landscape restoration.

In addition to the nitrogen reduction cost efficiency, projects will be prioritized for funding based on co-benefits related to greenhouse gas offsetting, climate risk resiliency, phosphorus and sediment load reductions, and alleviating environmental harms historically borne by disadvantaged communities. This focus on equity is further exemplified by the requirement that at least 20 percent of funds are used on projects, such as stormwater management and green infrastructure, that are established in communities disproportionately burdened by environmental harms and risks.

In early June 2022, the Maryland Department of Environment released its solicitation for applications for the new, improved Clean Water Commerce Program that explicitly allows buying outcomes from agricultural and green infrastructure projects. The application period closed on September 9, 2022, and early evaluation of the projects looks promising. This program is exciting in and of itself, but the hope is it will show the state how PFS contracts can lead to significantly lower costs for restoration across a range of programs and funding sources.

In fact, Maryland's legislature took another big step towards PFS when, in 2022, it passed the [Conservation Finance Act](#) (SB0348/HB0653) with overwhelming bipartisan support. The legislation is centered around a set of changes that do not increase taxpayer costs, yet are designed to help the state attract at least \$100 million/year in private investment for conservation. The overwhelming focus of the bill is on actions that improve water quality, but the bill will also advance environmental justice and public health, expand initiatives around forest and agricultural soil carbon sequestration, and reward projects that deliver co-benefits like local jobs, flood risk reduction, and climate resilience. The CFA is still a brand new initiative, so no on-the-ground projects have successfully been completed, but several of the authorizations have begun implementation.

One of the most important sections of the bill for private investment is language that adds PFS contracts as an acceptable form of state contract under state procurement law (i.e., it provides an alternative to traditional design-bid-build contracts that have the disadvantages noted above). A new subsection defines many of the criteria or requirements of PFS contracts and authorizes it to be used by state agencies that undertake environmental restoration and conservation including the Department of Agriculture, Department of the Environment, Department of Natural Resources, Department of Transportation, and the Department of General Services. Additionally, the law creates a definition of "environmental outcome" as a commodity that is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment, including nutrient and carbon benefits, allowing simpler forms of contracting. Finally, the bill directs the Maryland Environmental Service to carry out a review every three years of previously completed PFS contracts to document what is or is not working through this approach.



## HEADING IN THE RIGHT DIRECTION

Additionally, this legislation makes Maryland the second state (after California) to put green and blue infrastructure on par with gray infrastructure by explicitly stating that they can be financed in the exact same manner as gray infrastructure. It also explicitly defines green and blue infrastructure that includes flood risk reduction and carbon sequestration as primary goals. Pay for Success contracts will facilitate rapid deployment of state and new federal infrastructure funds for gray, green, and blue infrastructure.

The CFA includes other components that work to expand options for water quality loans and financing options and provide better alignment among different Chesapeake Bay programs. It establishes a 3-year Green and Blue Infrastructure Policy Advisory Commission, whose membership includes state agencies, local government, restoration businesses, conservation nonprofits, and others. The purpose of the Commission is to make recommendations on how to promote ecological restoration through green and blue infrastructure practices, including by looking at overlapping local, state, and federal requirements that may hinder climate resilience or ecological restoration projects. For more information on the Conservation Finance Act, and to dive deeper into the non-Pay for Success aspects, please visit [policyinnovation.org/cfa](https://policyinnovation.org/cfa).

One of the most important sections of the bill for private investment is language that adds Pay for Success contracts as an acceptable form of state contract under state procurement law. A new subsection defines many of the criteria or requirements of Pay for Success contracts and authorizes it to be used by agencies that undertake environmental restoration and conservation including the Department of Agriculture, Department of the Environment, Department of Natural Resources, Department of Transportation, and the Department of General Services.





# HEADING IN THE RIGHT DIRECTION



## NORTH CAROLINA

To many professionals in the restoration field, North Carolina is viewed as the progenitor of environmental Pay for Success. The state's Division of Mitigation Services (DMS) in lieu fee (ILF) program purchases environmental outcomes to enable environmentally responsible economic development. This state-wide program is

designed to help both private and public entities meet wetland mitigation and nutrient offset requirements under the federal Clean Water Act, and uses a watershed approach to maximize the environmental returns of mitigation investments.

In lieu fee programs aggregate funding from permittees (e.g., private companies, transportation agencies, etc.) who need to offset their impacts to wetlands, streams, riparian buffers, or water quality. Funds are used to carry out restoration projects in the same watersheds in which impacts are occurring. Because ILFs aggregate funding, they can create larger and more ecologically beneficial restoration than one-off restoration projects. ILF restoration credits also transfer legal liability of restoration success from the permittee to the ILF program.

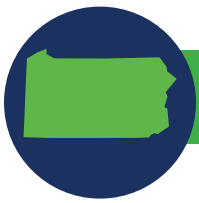
North Carolina's decades-strong program has restored and/or protected over [4 million feet of stream and 29,000 acres of wetlands](#), meeting the compliance needs of over 650 development projects. When stream or wetland credits are unavailable from mitigation banks in an area, a permittee can submit a request for mitigation from the state ILF. After collating these requests, the [DMS determines](#) where and how much mitigation is needed. The PFS aspect of the ILF program lies in the way the DMS creates ILF credits. The majority of the state's cumulative [\\$508 million in contracting](#) for their ILF is for full delivery of restoration outcomes (\$398 million, or 78%), and another \$5.6 million (1%) is the purchase of outcomes from mitigation banks. The state is required by law to avoid competing with credits from existing mitigation banks ([G.S. 143-214.11](#)), ensuring that private restoration investment is not hindered or undercut by the ILF program. The ILF program creates strong demand for restoration outcomes, and provides an easy way for permittees to comply with mitigation requirements. For example, the North Carolina Department of Transportation (NCDOT), the largest buyer of ILF restoration credits (at one point up to [85%](#)), claims the ILF has resulted in higher quality restoration as well as faster project timelines, which both NCDOT and the regulator appreciate.

Long after the institution of this ILF program, North Carolina became interested in expanding PFS options at the state level and published a Request for Information (RFI) in 2015 to explore PFS in other, unspecified sectors. Although weblinks to public responses and the RFI itself have been removed, [secondary sources](#) indicated that the RFI asked for projects that could cover their own operating costs with a small initial investment, as well as ideas that could provide evidence of existing programs against a baseline of no intervention. Essentially they wanted programs that could stay afloat until success was measured, as well as have evidence that the program interventions were creating measurable benefits. We found no evidence of developments from this RFI. The initiative [may have died due](#) to a lack of state government support, as well as a gap in PFS contracting knowledge.

While the state is successfully purchasing environmental outcomes through their ILF program, there is still room to grow. We recommend that North Carolina revitalize their attempts at diving further into PFS for environmental outcomes, using their ILF program as a strong case study for success.



## HEADING IN THE RIGHT DIRECTION



### PENNSYLVANIA

While Pennsylvania has no land directly bordering the Chesapeake Bay, the state is a major Bay polluter and is responsible for 69% of the Bay watershed-wide nitrogen reductions required by 2025, 80% of which must come from its agriculture sector, according to the [Pennsylvania Department of Environmental Protection](#). For decades,

advocates in Pennsylvania have struggled to build political support to address these concerns at scale, at least partially because unlike Virginia and Maryland—the other states that lie largely in the Chesapeake Bay watershed—Pennsylvania derives little to no economic and recreational benefit from the distant estuary. But for the citizens of Pennsylvania, the issue of nutrient pollution (excess nitrogen and phosphorus) is not just about a distant Bay; it's about the creeks in their backyards, the streams in their neighborhoods, and the rivers in their cities fouled by ugly and sometimes toxic algae. More than [a third](#) of Pennsylvania's rivers and streams are impaired, an issue that regularly impacts citizens' quality of life while also [devastating wildlife populations](#).

In July 2022, Pennsylvania took a dramatic step towards restoring the state's streams and by extension the Chesapeake Bay by instituting the outcomes-based [Clean Water Procurement Program](#) (CWPP).

Included in the state's 2022-2023 budget as part of the Clean Streams Fund, the Clean Water Procurement Program is the country's second legislatively-authorized clean water outcomes purchasing program. The state paid for the entire Clean Streams Fund (which also provides cost-share for agriculture conservation and acid mine drainage remediation) with money from the American Rescue Plan. The CWPP is a \$22.5 million fund for the Pennsylvania Infrastructure Investment Authority (PENNVEST) to directly buy the most cost-effective sediment, nitrogen, or phosphorus reductions that count toward meeting the [Chesapeake Bay Total Maximum Daily Load](#)—just like how the state buys office supplies and other commodities.

PENNVEST will soon release a request for proposals allowing nonprofits, farmers, and private restoration companies to submit bids to reduce nitrogen, phosphorus, and sediment pollution. The reductions from each project are modeled using the Chesapeake Assessment Scenario Tool or any other model approved by the Pennsylvania Department of Environmental Protection or the US Environmental Protection Agency. PENNVEST (in consultation with state environmental and agricultural departments) will award PFS contracts based on publicly available scoring criteria, including a prioritization for projects that provide co-benefits like being in a locally impaired watershed, helping small farmers, and mitigating climate change. The projects will then be implemented, verified to meet technical specifications, and finally paid for, based on the actual outcomes associated with them, with no cost overruns ever.

Still in its infancy, Pennsylvania has yet to see a project come to fruition. EPIC will be tracking these efforts and offering assistance to the state as the program matures and iterates.





# HEADING IN THE RIGHT DIRECTION

## On the Ground in California

While this report focuses on legislative underpinnings of PFS, CA has dabbled in performance-based contracting without explicit authority. [Lookout Slough](#) will provide the California Department of Water Resources (DWR) with high-quality Delta smelt habitat to help the state meet the requirements of an Endangered Species Act biological opinion. The restoration firm Environmental Investment Partners (EIP) is providing DWR with a large-scale, full-delivery restoration solution through a PFS model. Under this model, DWR has contracted with EIP to deliver habitat credits for a fixed price. EIP's responsibilities under the contract with DWR include land identification, land acquisition, restoration design, permitting, construction, posting financial assurances, and monitoring through final approval of as-built results.

The contract fulfills compliance for DWR's biological opinion by providing habitat restoration that offsets impacts from State Water Project (SWP) operations to the endangered Delta smelt and other species of concern in the Sacramento-San Joaquin Delta. The SWP is one of the largest public water and power utilities in the world, providing water for more than 23 million people. The restoration of tidally influenced wetlands at Lookout Slough also creates 40,000 acre-feet of water storage to prevent dangerous flooding and protect neighboring communities and infrastructure.

While not explicitly authorized in state statute, DWR has deemed PFS a viable contracting method. **It is possible for state agencies to enter into PFS contracts without explicit legislative support, depending on procurement code language. An upcoming whitepaper will focus on this exact subject, and go much more in depth on California's journey.**



## HEADING IN THE RIGHT DIRECTION



### FLORIDA

Florida, surrounded by water and with a very low elevation (average only 100 ft above sea level), is particularly concerned with water quality and sea level rise. Florida's Department of Environmental Protection ([DEP](#)) has taken the initiative to use performed-based contracts and crediting systems in specific

cases to address threats of water pollution through two different avenues.

The Department's Performance Base Cleanup ([PBC](#)) program "*focus[es] on the completion of milestones on the way to an aggressive, efficient and successful cleanup of petroleum-contaminated facilities. Payments are made based upon measured progress toward reaching the cleanup goal and require the successful completion of tasks/milestones. This method differs from the traditional approach in which payments are made based upon efforts expended regardless of cleanup results. The Agency Term Contractor (ATC) is expected to perform all actions necessary to meet the agreed upon milestones.*"

Contractors are required to take baseline and post-intervention measurements to calculate percent reductions in various contaminants which is verified by DEP before final payment is made.

This program began issuing performance-based contracts (PFS) in the late 1990s, with explicit authorization in [state statute](#). Since 2014, the Petroleum Restoration Program has issued 149 Performance Based Advanced Cleanup Bundles, that include multiple project sites under one contract. Additionally, the Petroleum Restoration Program includes a [suite of other funding mechanisms](#) and resources for potential projects as well.

"The department is committed to the clean-up of sites contaminated by discharges of petroleum and petroleum products from stationary storage systems," said Natasha Lampkin, Program Administrator with the Florida Department of Environmental Protection. In corresponding with members of this management team, it was clear they expressed pride in the work they're doing. These remediated sites have turned into urban parks as well as multifamily housing, working to serve their communities.

Additionally, in 2022 Governor DeSantis signed [HB 965](#): Environmental Management into law, which directs the DEP to authorize the sale and use of water quality enhancement credits for water management districts. This legislation permits the development of "enhancement credits" which can be used to meet an assigned basin management action plan allocation or other purposes to achieve net improvement. The Act specifically calls out government bodies as eligible purchasers, with private development currently excluded.

This bill authorizes DEP to approve 'water quality enhancement areas' under the current environmental resource permit program. The bill outlines the requirements to obtain a permit, the determination of a service area, transparency measures to keep record of credit release and sales, and other stipulations. Additionally, the bill determines where a buyer can purchase credits for regulatory compliance and what the credits can be used to offset.

The bill states that the DEP will adopt rules pertaining to enhancement credits, which are still in development. Progress on rulemaking is tracked [here](#) for reference.

Florida has really embraced the immense opportunity by enacting this bill and continuing to use PFS for petroleum cleanups. As both of these programs progress, we at EPIC will be following along closely, working to capture what's working and opportunities to iterate and improve upon the programs.



# RIPE FOR OPPORTUNITY



## LOUISIANA

Louisiana has some of the greatest potential need for large-scale impact investment because of the importance of enormous coastal restoration projects on its Gulf coast. The state is losing [16.6 square miles per year](#) of its land- an area equivalent to a football field - every hour. This is due to coastal subsidence, erosion, sea level rise, and especially the loss of sediment-rich freshwater that used to be delivered by the

Mississippi River. The faster that large-scale restoration projects are funded and implemented, the more likely the state is to be able to hold onto more of its land area and restore acres that have recently been lost.

In May 2017, bipartisan members of the Louisiana legislature introduced a bill (HB596) that was signed into [law](#) by Governor John Bel Edwards. This legislation gave specific authorization to a state agency to use “outcome-based performance contracts” to deliver coastal protection and restoration projects. The legislature and Governor Edwards passed this law to allow projects to move more quickly, deliver better value and performance, and lower costs. Individual projects were not allowed to cost more than \$250 million, a ceiling far greater than many other PFS initiatives since. Unfortunately at this time, five years after the bill passed, no projects have been successfully funded through this mechanism. One solicitation was issued without an award.

In theory, Louisiana’s law creates many of the enabling conditions necessary for PFS to work. It requires that a “substantial portion” of no less than 75% of project costs be conditioned upon delivery of specific outcomes and defined performance targets. It requires a competitive bidding process for awards of future contracts, requires financial assurances for projects, and creates a process to vet the companies and investors who would seek to bid on projects. What it doesn’t ensure is that state government workers are willing to give it a try.

In 2019, EPIC staff reached out to Louisiana to try to understand exactly why this authorization was not being utilized by the state. At a high level, two significant factors seem at play.

First, staff with years of experience in other forms of contracting simply have a cultural bias against this innovation which is perceived to give government employees less control over projects. This kind of cultural resistance is common in similar initiatives across the country. The reaction is understandable, but often misplaced, as companies that do results-based contracting have a strong incentive to work closely with the agencies that pay them because they want to be competitive in future contracting opportunities. Instead of doing paperwork, government staff retain many informal and consultative roles on projects that are critical, but it can be hard to see this in the written materials associated with contract solicitations.

Second, there are aspects of the contract solicitation that created unintentional costs and unnecessary risk transfer. For example, a “clawback” provision was included that put an increased percent of construction costs into the contract as a penalty for poor performance. This essentially meant that contractors would have to pay back the state funds already paid out (a portion that wasn’t tied directly to meeting success metrics). This is likely unnecessary since bidders would be expected only to be paid for successful projects. Contractors already have an incredibly strong incentive to meet the performance contract standards given that the final payment is tied to project success.

These are the two biggest high-level issues; however, additional ‘on the ground’ issues were also identified, including how the state calculated risk reduction.

Based on interviews, conversations, and reports that were analyzed for this report, Louisiana’s efforts at establishing a PFS program have stagnated. The opportunity and authorizations are in place; the state could revitalize this effort with the help of experts and new knowledge gained since this program’s initiation.

# RIPE FOR OPPORTUNITY



## TEXAS

In 2015, all Texas state agencies gained the ability to issue PFS contracts through [HB3014: Administration of “Pay for Success”](#) contracts for state agencies. This bill established a trust fund outside of the state treasury with the Comptroller of Public Accounts of the State of Texas as trustee. In order for a project

to utilize PFS, the comptroller and the Legislative Budget Board has to certify that the project will save money and improve performance.

While great in theory, we could not find evidence that this contract structure has been utilized for environmental outcomes and see that as a missed opportunity.

HB3014 isn't the only foray Texas has taken into PFS. In 2020, a Texas Outcomes-Based Finance Challenge began in conjunction with [Quantified Ventures](#), an outcomes-based capital firm that works to drive social impact. The initiative worked “to leverage outcomes-based capital in support of projects that deliver environmental and community benefits, including improved water quality and quantity, land conservation, and clean energy. The funding will cover costs incurred by Quantified Ventures as it works with the selected projects to structure the outcomes-based financing.”

The first round of projects were selected in December, 2020 with philanthropic investment. At the time this report was written, [three environmental Pay for Success projects](#) were underway. [One of those projects](#) takes a PFS approach to restore water quantity (perennial flow) of Comanche Springs through restoration within a market-based program. After speaking with Quantified Ventures, there are no plans to issue subsequent rounds of funding. This program, funded by philanthropic dollars, did not need to use the routes developed by HB3014.

State agencies should use the Texas Outcomes-Based Finance Challenge as a successful case study for purchasing environmental outcomes within Texas. Already authorized to do so, state agencies should start using PFS for their own ecological restoration efforts.





# RIPE FOR OPPORTUNITY



## MINNESOTA

The [Minnesota Pay for Performance Act](#) was signed into law in 2011. This legislation authorized a pilot program to experiment in Public-Private Partnerships (P3s) and PFS procurement. It was the first state in the nation to pass legislation authorizing social impact financing (providing finance to organizations addressing social needs with the expectation of a measurable social and

financial return) through a state bond. Unfortunately, this opportunity to be a leader in state finance innovation has stalled and many other states have leaped ahead.

The bill approved issuing up to \$10 million in state appropriation bonds; however, over a decade later, they have not been able to get a pilot off the ground. The Nonprofits Assistance Fund launched an investigation and created a [report](#) in 2015 outlining the major barriers to instituting this pilot. After speaking with contributors of this report, and the state Management and Budget Office (MMB), the issue arose that found that staff responsible for implementing these pilots and issuing these contracts were not on board with how they were structured. Staff indicated that the bonding elements of the law were cumbersome and confusing and that success metrics (dollars saved to the state budget compared to current level of spend) were difficult to quantify on an annual basis.

The 2015 report also identified a lack of a dedicated champion, high administrative costs, and limited flexibility in types of services to fund as major issues.

We could not find any government text outlining a timeline or sunset date by which the pilot needed to be completed. It seems that this initiative is sitting there, with legislative authority, ready for a champion to rework it and try again.

Overcoming these issues is possible through a legislative amendment removing the bonding requirements, or through creative problem-solving on the pilot implementation. Although the bill was focused on social impact, using the authorization to test PFS for environmental outcomes could be easier than PFS for social services because environmental outcomes are easier to quantify. Clear measurements can be taken, like pounds of nitrogen, acres of streambank, etc. Additionally, the timelines on budget savings and from which budget can be easier to estimate as well. For example, someone participating in a recidivism reduction program might enter additional social service programs (Medicaid, housing assistance, etc.) that come from other parts of the state budget making net benefits difficult to quantify. This woven complexity isn't as present for environmental outcomes like it is for social.

Image 1: List of "Lessons Learned" presented by Nonprofits Assistance Fund

1. Social impact financing initiatives require a strong public sector champion. A lack of a champion cannot be overcome.	
2. Administrative costs associated with social impact financing are high.	
3. Strict adherence to the appropriations bond model limits flexibility in the selection of particular services to fund.	
4. The complexity of funding streams from multiple levels of government limits the ability to capture savings.	
5. The assumption of risk and risk-aversion are important limiting factors.	
6. Issues of cash flow need to be considered closely, especially from the service provider's perspective.	
7. There are alternative ways of thinking about the government's role in promoting social impact financing.	



We urge MMB and leaders in the state of Minnesota to resurrect PFS, even just in an exploratory way. Much has been learned across the country in the last decade, and other PFS models have been successful. The legislative authorization is sitting there, waiting to be brought back to life.

# RIPE FOR OPPORTUNITY



## OHIO

Ohio's General Assembly passed a bill in 2019 that created the [ResultsOhio](#) program, a PFS program for state projects, housed within the Treasury Department. Under the program, a state agency, nonprofit, or other organization can propose a project to the ResultsOhio program. ResultsOhio staff analyze projects to determine whether or not they are well suited for a PFS contract

structure, or if traditional procurement methods are preferable. Projects selected to continue are presented to the Ohio legislature during state budget discussions, requiring approval from the legislature in order to issue the contract.

To date, one project has made it through this process: a mobile eye care clinic targeting rural, traditionally under-resourced areas of the state. The contract is for two years, which is in line with the state's budget cycle. A [progress report](#) was recently published, indicating great progress through year one. The project is on track to meet the agreed upon outcomes and receive their payment on time.

Ohio is also home to a water quality improvement program, [H2Ohio](#). First funded in 2020 with an investment of over \$170 million from the state, H2Ohio restores wetlands, reduces nutrient loads, addresses failing septic symptoms, and replaces lead service lines (among other activities).

Right now, H2Ohio uses traditional procurement primarily through grants given to NGOs. While grants for environmental projects are widely used across the US, a PFS model provides an assurance of success that grants do not. Since many of the projects H2Ohio funds could use straightforward outcome quantification (particularly for water quality measures like nutrient reduction), it would not be a stretch for H2Ohio to adopt a PFS model. Private sector interest in PFS would likely drive down project costs, allowing the H2Ohio budget to have a larger impact overall.

Tapping into PFS, however, has a barrier: the only state entity with explicit authorization to execute PFS contracts right now is ResultsOhio ([ORC 113.60](#)). That being said, other state agencies are not explicitly prohibited from doing so either. For the Ohio Department of Natural Resources (the state agency primarily responsible for H2Ohio) to use PFS, they would likely have to overcome internal resistances and preconceived biases but could do so with the guidance and expertise of ResultsOHIO staff.

It is our impression that H2Ohio is hesitant to consider PFS. We have heard from staff that it is difficult to accurately measure success for the types of projects they do and traditional grants are more comfortable. ResultsOhio's door is always open to supporting new projects, answering questions, and offering assistance in all things PFS. We at EPIC think this great resource should be utilized by H2Ohio to begin diving into more efficient contracting strategies.

By making this possible connection transparent, EPIC hopes H2Ohio will consult ResultsOhio to help reshape their procurement strategy. We have expressed interest and availability in providing expertise, context, and case studies to help facilitate a connection as well.

What we hope for long term, is that the Ohio legislature will explicitly permit state agencies to issue their own PFS contracts. Explicit authorization may help lower the activation energy needed for state agencies to take on something new. It's more powerful to say 'this is allowed and you should do it' than to say 'well..nothing's saying you *can't*'. We see ResultsOhio as a stepping stone; a way to showcase how PFS can benefit the state. After a few rounds of successful projects, we hope this legislative next step is taken towards proliferating innovative contracting.



## CONCLUSION

There is great work happening across the country, with many states well positioned to make positive environmental change through innovative procurement. Utilizing Pay for Success guarantees successful environmental outcomes, is often cheaper and faster than traditional procurement, and incentivizes private investment.

EPIC welcomes further discussion and works to move the needle forward on Pay for Success contracting in the states highlighted here. If interested, please reach out to EPIC's Senior Manager of the Restoration Economy Center, [Grace Edinger](#), for additional information.

