

A LOOK AT FOUR NEW NATURAL RESOURCE PROCUREMENT BILLS

Congressional support for private
capital investment in natural
resource management



ENVIRONMENTAL POLICY
INNOVATION
CENTER

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The Restoration Economy Center, housed in the national nonprofit Environmental Policy Innovation Center (EPIC), aims to increase the scale and speed of high-quality, equitable restoration outcomes through policy change.

The mission of EPIC is to build policies that deliver spectacular improvement in the speed and scale of conservation. EPIC focuses 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 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 non-profit 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

Four Senate bills propose straightforward procurement strategies that facilitate private capital in environmental outcomes:

- S.3539 - Watershed Results Act (Sen. Wyden, Ron [D-OR])
- S.3266 - Outdoor Recreation Act (Sen. Manchin, Joe, III [D-WV])
 - SEC 302. Forest Service Conservation Finance Partnerships
 - SEC 304. Public Private Partnerships to Modernize Campgrounds on Federal Land
- S.1855 - Wildfire Emergency Act of 2021 (Sen. Feinstein, Dianne [D-CA])
 - Title 1. Landscape-Scale Forest Restoration
- S.4231 - STREAM Act (Sen. Feinstein, Dianne [D-CA])
 - SEC. 302. Performance-Based Restoration Authority

At a high level all four bills authorize federal agencies to enter into long term agreements with private contractors, three of which emphasize 'Pay for Performance' financing, meaning contractors are paid based upon delivery (or verification) of outcomes. The Pay for Performance procurement strategy shifts project risk to the private sector, who provides up-front capital for restoration, and it ensures successful delivery of project outcomes in advance of payment.

This report summarizes and compares these bills, highlighting the strengths and weaknesses of each. We also share recommendations for how to improve upon the bills to ensure stronger outcomes and co-benefits. All four bills are a step in a positive direction, whereby private investment is facilitated in ecological restoration.

Key Findings:

- Together, these bills authorize up to \$875 million towards environmental outcomes like water quality, recreational facilities, and habitat restoration.
- Three of the four bills require federal agencies to test these new procurement strategies through pilots (2-5 pilot projects in the Watershed Results Act, 15 or more in the Outdoor Recreation Act SEC 302, up to 20 in the Wildfire Emergency Act of 2021).
- Three of these bills, if enacted, will reduce risk to the public of project failure by instituting payment upon delivery or verification of agreed-upon outcomes (Watershed Results Act, Outdoor Recreation Act, and STREAM Act), and only fund projects that demonstrate cost savings (Outdoor Recreation Act only).
- The Watershed Results Act reduces the uncertainty to private sector contractors by eliminating cost-share requirements and providing a floor price for outcomes, whereas the Outdoor Restoration Act (SEC 302) requires at least 50% cost share, and the Wildfire Emergency Act of 2021 requires between 25-30% cost share.
- Only the STREAM Act mentions equity or other social considerations when awarding contracts. However, the Wildfire Emergency Act of 2021 mentions ecological benefits and using local labor as a priority.
- The Outdoor Recreation Act SEC 302 and the STREAM Act specifically mentions Tribal governments as eligible outcome providers.

RECOMMENDATIONS:

EPIC recommends adding or strengthening the equity and social co-benefits considerations for Pay for Performance contracts under all bills by making these considerations part of the project selection criteria.

Co-benefits include items like access to green space in urban areas, improvements in air quality, use of local labor and minority-owned businesses, mitigating environmental and health hazards, etc. Additionally, EPIC suggests a revision of the \$2 million investment floor in the Outdoor Recreation Act, such that the investment be \$2 million or an appropriate percentage of total project costs to be determined by the Secretary, whichever is smaller. Lastly, the STREAM Act should require testing Pay for Performance contracting through a pilot program rather than simply give permission for them to do so.

The Environmental Policy Innovation Center works to develop policies that dramatically increase the scale, pace, quality and inclusion of environmental restoration. Contact Grace Edinger at grace@policyinnovation.org to learn more.


Additional resources can be found on restorationeconomy.org.





INTRODUCTION


Within the last year, four bills that focus on innovative financing for natural resources have been proposed. The use of innovative, collaborative procurement strategies is a welcomed shift from traditional granting and contract structures. While many agencies already utilize Pay for Performance and public-private partnership (P3) models, such practices are inconsistent and are largely based on individual staff members' preferences and comfort. The adoption of these bills would allow agencies to use these finance strategies and require them to enter into pilot programs.

What is Pay for Performance contracting? *Pay for Performance, also known as **Pay for Success** 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. They help 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 bidding process, contracts, and payments are then based on delivery and verification of those outcomes.*

 The **Watershed Results Act**, proposed by Senator Ron Wyden in September, 2021 authorizes up to \$375 million for a pilot program for Pay for Performance contracts for environmental outcomes like a reduction in nutrient or sediment runoff, a reduction in thermal load, an increase in dissolved oxygen, or “any other quantifiable benefit identified by the management team as being desirable in the applicable watershed”.

 The **Outdoor Recreation Act**, proposed by Senator Joe Manchin in November, 2021 looks specifically at recreation infrastructure on federally owned land and adjacent areas. This bill would allow the federal government to enter into P3s to manage and modernize campgrounds adjacent to federal parkland. Additionally, this bill states that innovative finance strategies (like Pay for Performance) are “appropriate way[s] to develop and maintain recreation infrastructure on Federal land.”

 The **Wildfire Emergency Act**, proposed by Senator Dianne Feinstein in May 2021 works to bolster community resiliency in the face of wildfire. A major function of this bill is to allow the US Forest Service to enter into multi-year agreements that promote investment from the private-sector and create payment safety nets for canceled contracts due to lack of funding. The bill authorizes \$250 million to pilot multi-year agreements for forest restoration.

 Lastly, the Support to Rehydrate the Environment, Agriculture, and Municipalities Act, or **STREAM Act**, authorizes the use of Pay for Performance-based contracts for environmental restoration projects with a particular emphasis on projects that have multiple benefits for a watershed.



In this report, we analyze the innovative procurement aspects of each bill. A high-level summary is below (Table 1), followed by a more in-depth look at each bill, commentary on their overall strengths and weaknesses, and recommendations for improvement.

Table 1. Summary of the Innovative Procurement Elements of the Three Bills

	Pay for Performance	P3s	Institutes a pilot program	Length of pilot program	Implementing Agency
Watershed Results Act	x		x	5 years	DOI
Outdoor Recreation Act	x	x	x	10 years	USFS, BLM
Wildfire Emergency Act	Somewhat	x	x	5 years	USFS
STREAM Act	x			3 years*	DOI

*The STREAM Act does not require the use of a Pay for Performance contract, but it provides permission to do so. The 3 year timeline noted here is to create programmatic guidelines and templates for use moving forward.

These bills aren't the only momentum around Pay for Performance at the federal level. A proposed WRDA Amendment that would allow USACE civil works to utilize full delivery procurement to satisfy mitigation requirements is currently being considered as well. This amendment would expedite restoration projects by providing USACE the authority to utilize full delivery procurement to implement required mitigation for Civil works projects. Read more [here](#).



WATERSHED RESULTS ACT

The Watershed Results Act ([Wyden S. 3539](#)), introduced in the fall of 2021 authorizes the construction of between two and five, five-year pilot programs, each with a \$15 million annual budget (total maximum of \$375 million) and an additional \$2 million for advance watershed analytics. The goal of these pilots is for federal agencies to quickly execute Pay for Performance contracts for quantifiable benefits, thus securing environmental outcomes in a reasonable timeframe.

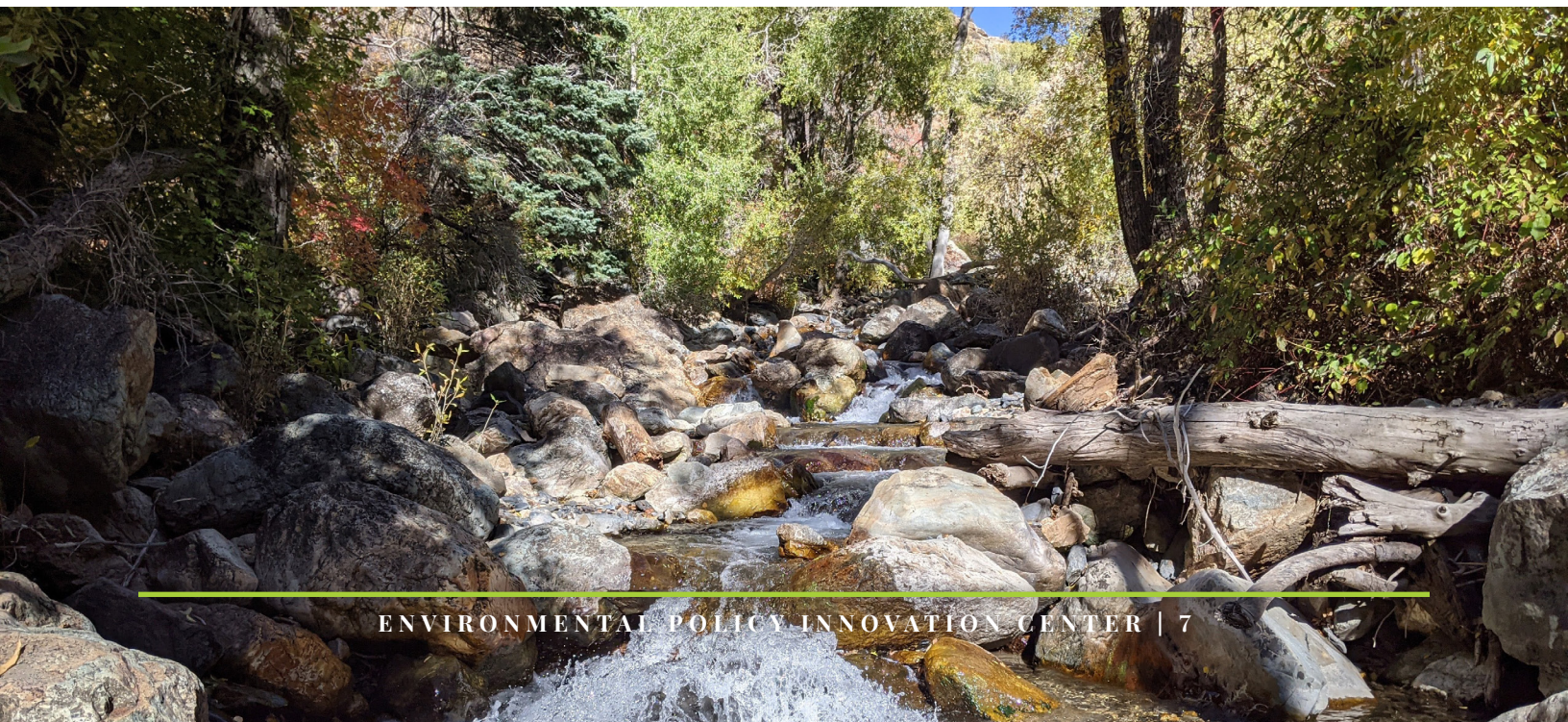
This bill provides significant incentives for upfront private investment in creating environmental outcomes. If passed, the Watershed Results Act would create cross-agency ‘Environmental Outcomes Funds’ within natural resources agencies that implement a pilot and waive cost-share requirements for these projects, which is significant and fairly unconventional. The regulatory agency would set a minimum price for the desired outcomes (e.g., pounds of sediment reduced), thus reducing uncertainty for private investment.

After five years of conducting these pilots, this bill requires a report submitted by the Interior Secretary to Congress outlining the outcome of the projects and recommendations for how to move forward. Specifically, they need to report on:

- The results of the pilots compared to success outcomes
- The projected outcomes of the pilots
- The total amount of funding made available under the pilots
- The type of funds expended under the pilots
- Recommendations for making watershed pilots permanent

This bill restricts pilot projects to reclamation states, and does it specify which environmental outcomes are to be purchased—only that they be quantifiable.

This bill has been referred to the Senate Committee on Energy and Natural Resources.



OUTDOOR RECREATION ACT

[Manchin S. 3266](#), also known as the Outdoor Recreation Act, was introduced to the Senate in November of 2021. While much of this bill is targeted towards accessible outdoor recreation for youth 25 years or younger, *SEC 302: Forest Service Conservation Finance Partnerships* and *SEC 304: Public-Private Partnerships to Modernize Campgrounds on Federal Land* both propose the use of innovative finance strategies to benefit federal parkland.

SEC 302 permits the US Forest Service to establish conservation finance partnerships for pilot projects that develop and/or maintain recreation infrastructure on federal land for up to a \$10 million investment per contract. This bill authorizes USFS to enter into contracts until the year 2032. Pay for Performance models are explicitly called out as an example of an acceptable innovative strategy. Contract payments are to be paid when specific outcomes are met as determined by an independent evaluator. A minimum 50% cost share is required.

SEC 304 establishes another pilot program that allows private businesses to modernize campgrounds on federal land (P3s). Private entities could now enter into contracts with the federal government to provide capital improvements, management, and long-term maintenance of campgrounds. The bill contains language surrounding escrow funds: *“require[ing] that, not later than 3 years after the date on which the Secretary concerned enters into an agreement the private entity expend, or place in an escrow account for expenditure, for the construction or improvement of structures and infrastructure relating to the operation of, or access to, the applicable campground, not less than \$2,000,000, or a specified percentage, as determined by the Secretary concerned, of the anticipated receipts for the period of the agreement.”* This escrow requirement could be a barrier to entry for some contractors, especially smaller firms. The default minimum of \$2 million may be unreasonable as a proportion of project costs. Rather than defaulting to a \$2 million floor, an option between \$2 million or the specified percentage, whichever is smaller, is more reasonable and becomes dependent on project size.

Overall, both of these programs will help reduce federal employee workloads and lean on the expertise of the private sector. The Outdoor Recreation Act posits that by working together, federally owned parkland can be modernized, reach more people, and provide great recreational and educational experiences for Americans.

This bill has been referred to the Senate Committee on Energy and Natural Resources.



WILDFIRE EMERGENCY ACT OF 2021

The [Wildfire Emergency Act of 2021](#) was written to help bolster community resiliency in the face of wildfire. The act is broken into three Titles, focusing on different facets of resiliency. *Title I - Landscape-Scale Forest Restoration*, pertains to procurement.

Title I was built to assist the Secretary of Agriculture in implementing landscape-scale (100,000+ acres) forest restoration projects. Historically, federal forest restoration has been done on a smaller scale, due to agency funding restrictions and the need to enter into multi-year agreements. This bill aims to leverage conservation finance methodology to secure external investments to achieve larger restoration projects. It gives explicit permission (and requires a pilot program) to enter into long-term agreements that incentivize external investment while minimizing risk to the contractor.

Under this act, the Forest Service can enter into P3s for landscape-scale restoration projects. It recognizes that funding for future years' payments is not guaranteed, and has extensive language on how USFS can provide payment for canceled agreements. Contractors incur costs over the course of a project, including building internal infrastructure, cost of materials, etc. Without payment upon cancellation, contractors significantly increase their risk when taking on a project of this scale, potentially deterring them from participating at all.

The following bill text explains where funding can come from to pay canceled or terminated agreement:

(B) PAYMENT OF COSTS.—If the Secretary determines that it is necessary to cancel or terminate a conservation finance agreement ... and the conservation finance agreement includes a cancellation provision ...the Secretary may pay the costs of that cancellation or termination using any of the following amounts:

- (i) Appropriations originally available for the performance of the applicable conservation finance agreement.*
- (ii) Appropriations currently available for the type of services concerned under the applicable conservation finance agreement, and not otherwise obligated.*
- (iii) Funds appropriated for payments for those costs of cancellation or termination*

Additionally, this act creates a five year pilot program, whereby the USFS can enter into a maximum of twenty landscape-wide forest restoration projects. It authorizes \$250 million over the course of the pilot, with maximum individual project costs capping at \$50 million. Depending on the specific aspects of the project, federal cost share maximums are between 60-75%. When selecting project criteria, co-benefits like ecosystem services provided, support to local employment, etc. are considered with a focus on servicing economically disadvantaged communities.

This act has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry.

STREAM ACT

The Support to Rehydrate the Environment, Agriculture, and Municipalities Act ([STREAM Act](#)) was just proposed by Senator Feinstein's office in late May of 2022. While the bill focuses on aspects of water infrastructure and includes traditional grant procurement methods, SEC 302 is dedicated to *Performance-Based Restoration Authority*. This bill, like the others, authorizes the government to enter performance-based contracts. However, unlike the Watershed Results Act and Outdoor Recreation Act, it does not *require* them to do so. Focused on habitat and ecosystem restoration, the Pay for Performance aspects of the STREAM Act emphasize projects that have clearly defined outcomes that are likely to be successfully achieved. Eligible Pay for Performance projects include ecosystem or habitat restoration, mitigation, or enhancement, with success reviewed annually.

Not only does this bill allow Pay for Performance, it also authorizes \$250 million in funding for environmental restoration projects. The bill emphasizes the need for multi-benefit projects, which are projects that provide additional positive outcomes for the public - above and beyond environmental outcomes. These include metrics like local job creation, equitable access to safe outdoor recreation, increased flood control, energy savings, greenhouse gas emissions reduction, and increased water quality/supply. While mentioned broadly, EPIC is hopeful that these co-benefits are specifically called out as a project selection criteria for Pay for Performance contracts.

After the first year of enactment, programmatic guidelines for the use of performance-based contracts and cooperative agreements for these projects will be developed by the DOI. Guidance includes project proposal evaluation criteria, eligibility criteria for for-profit providers, defining ecological outcomes, and financial assurances. This bill requires that guidance is formed with the consultation of professionals and experts in performance-based contracting, ensuring the resulting guidelines will work for all involved.



Strengths and Weaknesses

Table 2. Summary of Strengths and Weaknesses

	Appropriates Funds	Number of Pilots	Includes Social benefits	Federal Cost Share	Pilot Value Cap
Watershed Results Act	Up to \$375M	2 - 5	No	Not restricted	\$15M
Outdoor Recreation Act	\$0	1	No	50%	\$10M
Wildfire Emergency Act	Up to \$250M	20 max	Yes	60%	\$50M
STREAM Act	Up to \$250M	0	Yes	Not specified	Not specified

Watersheds Results Act:

The Watersheds Results Act appropriates the most funding compared to the other two discussed herein. While it doesn't call out the importance of equity or social co-benefits, it does waive cost share requirements, which opens the door for participation by lower-resourced organizations. By including equity co-benefits, money can more easily flow where it's needed most- in the hands of minority and disadvantaged communities.

Outdoor Recreation Act:

The contracting language in this bill allows flexibility to draft contracts that fit the specific needs of the project including agreement structure, payment scheduling and term (max of 20 years). That being said, the size of eligible projects is relatively small, capping out at \$10 million per project. This bill does not appropriate funds and specifies the government cost share shall not exceed 50%.

SEC 305 currently includes a \$2 million investment floor within the first three years of the project, either to have been spent on project costs or be put into escrow. While it does include language that allows the Secretary concerned to decide on a different project cost percentage, the default of \$2 million sets a high bar and likely presents a barrier to participation for all but the most highly-resourced firms. By tweaking that clause such that the escrowed amount is \$2 million or an appropriate percentage, whichever is smaller, we can remove barriers to investment by smaller firms.

Wildfire Emergency Act of 2021:

While this act doesn't address Pay for Performance directly, it is a step in the right direction for the US Forest Service to do so in the future, especially when taken in conjunction with the Outdoor Recreation Act. This bill lays a foundation of entering multi-year agreements, providing payment upon cancellation, and working closely with the private sector in the form of P3s. Language could be strengthened in terms of social co-benefits criteria, and explicitly calling out Pay for Performance contracting as an acceptable conservation finance instrument.

STREAM Act:

The appropriation of up to \$250 million for Pay for Performance contracting is a strength of this bill. Additionally, this bill emphasizes social co-benefits of ecological projects and focuses on multi-benefit projects. However, this language isn't specifically in the section regarding Pay for Performance contracts; ideally, it would be included in a revised version of the bill as a project selection criterion.

CONCLUSION

All of these natural resource procurement bills strengthen the relationship between the federal government and private sector investment. The Pay for Performance aspects of these bills will assist in speeding up project timelines and ensure specific outcomes are met. As previously mentioned, Pay for Performance is currently happening in certain agencies. This is largely due to the familiarity and comfort level with individual government employees. By enacting these bills, federal natural resource programs can leverage private investment, creating faster and more efficient ecological outcomes.

