

# **Bond Case Briefs**

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## **Authorizing Pay for Success Projects: A Legislative Review and Model Pay for Success Legislation.**

Pay for Success (“PFS”) is a model for deploying government resources that drives funding toward social programs that prove effective at providing results to people with the most need. Under a PFS model, government agrees to pay for a service contingent on the program having measurable impact. If there is no impact, government does not pay. Impact funders and philanthropists provide the funds to pay for program delivery while impact is being evaluated and bear the risk that there will not be any proven impact. PFS initiatives have garnered substantial media attention, with the focus primarily on the innovation, the intervention and parties themselves.

Despite the rapidly growing interest in Pay for Success contracting in the United States, little attention has been given to the enabling environment, including regulatory policy. The regulatory situation, principally state and local legislation, is an essential yet overlooked component of these interventions. Given the direct impact, predominance and progress of state- and local-level PFS legislation, this paper<sup>1</sup> focuses on state and local legislative initiatives, analyzing the choices legislative bodies should consider when drafting and revising PFS legislation. We analyze history, enactment, and primary features across jurisdictions. We then offer legal and policy recommendations for lawmakers considering future PFS legislation, based on the following key questions:

- Should legislation be PFS-specific or should the State rely on general contracting authority?
- Should legislation be focused on a specific transaction or rather serve as a general grant of authority?
- Should the PFS contract result in a general obligation of the State?
- Should a sinking fund be included?
- Should legislation require cost savings within a particular timeframe or focus instead on resource allocation?
- Should legislation require outcome based payments or provide greater flexibility?
- Should an evaluation be required?

## **II. Pay for Success Overview**

PFS is taking off nationally. As of February 2016, eleven PFS projects have launched in nine jurisdictions across the U.S., beginning with New York City’s Recidivism Reduction Initiative in 2012.<sup>2</sup> PFS projects exist in Democratic and Republican-leaning jurisdictions, encompassing diverse issue areas, such as recidivism, early childhood education, and chronic homelessness. As of February 2016, we estimate that there are in excess of 20 in development across the U.S.<sup>3</sup> The Sorenson Impact Center, a Division of David Eccles School of Business, University of Utah, estimates that 39 states have project feasibility studies, many of which may lead to newly-launched projects in the near future.<sup>4</sup>

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## Footnotes

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2. Press Release, N.Y.C. Office of the Mayor, Mayor Bloomberg, Deputy Mayor Gibbs and Corrections Commissioner Schiri Announce Nation's First Social Impact Bond Program, available at <http://tinyurl.com/j8aj4yo>.
3. See e.g., Third Sector Capital Partners, <http://www.thirdsectorcap.org/projects/>; Sorenson Impact Center, <http://www.policyinnovationlab.org/pay-for-success/>.
4. Sorenson, <http://www.policyinnovationlab.org/pay-for-success/>.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.