

## SB 178 Fact Sheet

# SB 178 Puts Kentucky's Health and Environment in Harm's Way

Just last year, SB 89 took away Kentucky's authority to define its own waters. Now SB 178 strips Kentucky of its ability to define its own health. Together, these measures represent a steady surrender of the Commonwealth's responsibility to protect its people and natural resources.

## 1. Federalism Minimum Are Not Ceilings

SB 178 rejects cooperative federalism. Congress established federal baseline protections to address interstate pollution but explicitly preserved states' authority to adopt more protective standards. For example, the Clean Water Act plainly states that "nothing in this chapter shall preclude or deny the right of any State" to impose stricter requirements (33 U.S.C. § 1370).

The U.S. Supreme Court has affirmed this framework. In *Arkansas v. Oklahoma*, 503 U.S. 91 (1992), and *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Court upheld states' authority to enforce and condition permits based on their own, more protective water quality standards.

### Potential Outcomes for Kentucky:

- Loss of state authority to address unique local conditions.
- Increased federal intervention when state standards fail to meet minimum requirements.
- Reduced flexibility to protect drinking water sources and high-value ecosystems.
- Long-term erosion of state sovereignty in public and environmental health governance.

## 2. "No More Stringent Than" Standards Don't Protect Public and Environmental Health

Federal public and environmental health laws were designed to create a **floor, not a ceiling**. SB 178 would turn that principle upside down.

Kentucky's waters are already impaired under "no more stringent than" restrictions (KRS 224.16-050(4)). According to Kentucky 2024 assessments under the Clean Water Act:

- 68% of assessed waters are impaired,
- 70% of assessed river miles fail to meet Clean Water Act goals,

- 87% of assessed lake acres fail to meet those goals,
- 78% are impaired for swimming,
- 56% are impaired for fish consumption.

If Kentucky cannot achieve healthy waters under an existing “no more stringent than” permitting structure, how can it claim other public and environmental health programs will fare better.

#### **Potential Outcomes for Kentucky:**

- Increased harmful algal blooms and drinking water contamination.
- Higher rates of waterborne illness and exposure to toxic contaminants.
- Damage to fisheries, tourism, and outdoor recreation economies.
- Long-term cleanup costs are borne by taxpayers instead of polluters.

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### **3. Deregulation Disguised as Science**

SB 178 disguises deregulation in the language of science by framing new restrictions as higher evidentiary standards. It claims to elevate “best available science” and the “weight of scientific evidence,” but then attaches rigid, litigation-style proof requirements that make protective action far more difficult. By legally redefining what qualifies as acceptable science and requiring proof of manifested bodily harm, the bill shifts from prevention to reaction. Science becomes a procedural barrier rather than a tool for protection. The result is less regulatory authority, not better science.

#### **Why This Is Troubling**

- It politicizes science by turning evolving scientific judgment into a statutory checklist.
- It makes prevention legally risky and delays action until harm is already occurring.
- It creates new grounds for litigation and regulatory paralysis.
- It allows decision-makers to reject credible evidence while claiming adherence to a “higher standard.”

#### **Potential Outcomes for Kentucky**

- Delayed response to emerging contaminants and environmental health threats.
- Increased rates of preventable illness due to slower regulatory action.
- Greater healthcare and economic costs shifted onto families and communities.
- Weakened state authority to address Kentucky-specific environmental conditions.
- Long-term degradation of water quality, air quality, and public trust in government protection.

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### **4. Feasibility Overrides Science**

SB 178 requires regulations to be “technologically achievable at an applicable scale”. An undefined standard that elevates feasibility over science, and the best example that SB 178 is deregulation disguised as science.

Federal environmental statutes often consider feasibility, but they do so within structured legal frameworks and clear definitions. SB 178 provides no definition, creating ambiguity and inviting litigation. By making technological feasibility a threshold requirement, strong scientific evidence alone would not justify protective action.

### **Why This Is Troubling:**

- It makes science subordinate to industry claims about cost or scale.
- It creates uncertainty and regulatory paralysis.
- It invites lawsuits that delay urgently needed protections.

### **Potential Outcomes for Kentucky:**

- Slower responses to contamination events.
- Increased legal costs and delayed rulemaking.
- Uncertainty for businesses seeking clear regulatory standards.
- Long-term economic harm from degraded environmental resources.

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## **5. Requiring Human Harm Is Morally and Professionally Unconscionable**

Modern public and environmental health practice is grounded in prevention, risk assessment, and exposure modeling. Not waiting for illness to occur. SB 178 would require agencies to demonstrate a direct link to manifested bodily harm before acting.

This abandons decades of scientific practice. Public health relies on hazard identification, dose-response modeling, epidemiology, and precautionary standards to prevent cancer clusters, asthma outbreaks, neurological damage, and contaminated drinking water before irreversible harm occurs. The Centers for Disease Control and Prevention and EPA both rely on risk-based frameworks to regulate emerging contaminants long before widespread harm is visible.

By demanding manifested harm, SB 178 shifts from prevention to reaction.

### **Potential Outcomes for Kentucky:**

- Increased childhood asthma rates in polluted communities.
- Delayed response to PFAS, toxic metals, and emerging contaminants.
- Greater healthcare costs for families and the state.
- Disproportionate impacts on rural and low-income communities.

Prevention is not regulatory excess. Prevention is responsible governance.

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## **6. SB 178 Allows for Less Stringent Than Federal Minimums**

Despite claiming to uphold “best available science,” SB 178 authorizes exemptions that permit regulations less protective than federal minimums, which will risk violating federal law in delegated programs like the Clean Water Act.

### **If Kentucky fails to meet federal minimum requirements:**

- EPA may withdraw delegated authority.
- Permitting could shift to federal control.

- Kentucky businesses could face greater uncertainty and delay.

This undermines both state sovereignty and regulatory stability.

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## 7. SB 178 Picks Profits Over People

By requiring proof of manifested harm and technological feasibility, SB 178 shifts risk away from regulated industries and onto Kentucky families.

**Instead of polluters bearing the cost of prevention, families will bear the cost of:**

- Increased medical bills,
- Lost workdays,
- Contaminated wells,
- Declining property values,
- Degraded natural resources.

Clean water and healthy communities are economic drivers. Outdoor recreation, tourism, agriculture, and drinking water infrastructure all depend on strong protection. Weakening safeguards today, impose higher long-term costs tomorrow.

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## 8. Investing in Prevention Saves Money and Lives

Federal agencies and independent economic analysis consistently show that prevention costs far less than reacting to illness, disaster, and environmental degradation

- \$30-to-\$1 - \$90-to-\$1 return on Clean Air Act protections generating (1990-2020).
  - \$2 trillion in benefits compared to \$65 billion in compliance costs.
- \$8-13-to-\$1 return on Kentucky nature-based flood mitigation
- \$23-to-\$1 returns from drinking water protections.
- \$42.3 billion annual economic benefits of improved river water quality.
- \$11 billion annual ecological benefit of improved water quality.
- \$81.9 billion - national cost of asthma.
- Clean Air Act prevents 1.7 million asthma attacks, 86,000 ER visits, 3.2 million lost school days, and 13 million lost workdays each year, producing billions in avoided health and productivity costs.
- Because Kentucky already has high rates of chronic illness, even small increases in preventable pollution-related health risks could lead to disproportionately greater health harms and financial costs for families, hospitals, Medicaid, and local communities, especially if policy limits delay preventive action.

Preventive public health and environmental safeguards are not economic burdens, they are proven investments that generate measurable returns for families, communities, and state economies.