

**KRC FACT SHEET:  
Senate Bill 178 Is A Real and Present Danger to  
Public Health and Environmental Protection in Kentucky**

**Overview**

SB 178 is a direct threat to the ability of Kentucky's Energy and Environment Cabinet and Cabinet for Health and Family Services to protect public health and the environment. The bill would prohibit these agencies from adopting environmental and public health protections that are stronger than federal standards, making "doing the minimum" our state's policy for protecting air, land, water, and public health, regardless of Kentucky-specific risks, conditions, or emerging threats. Where federal standards don't exist, the bill imposes extreme scientific and evidentiary barriers that require proof of manifest bodily harm before action can be taken. SB 178 endangers public health and environmental quality and weakens the Commonwealth's capacity to protect its people, its environment, and its economy. The bill contains three major provisions:

First, the bill turns minimum environmental health and environmental protection standards in federal regulations into the maximum standards for protecting Kentuckians, declaring: "***any administrative regulation related to setting an applicable environmental requirement shall not be more stringent or extensive in scope, coverage, or effect than any federal law or regulation regarding the same or a substantially similar topic.***" It would constrain nearly every major environmental and public health program in Kentucky, including<sup>1</sup>:

- Hazardous materials
- Local solid waste management districts
- Air pollution
- Water pollution
- Coal mining regulation
- Noncoal mining regulation

---

<sup>1</sup> "Applicable environment requirement" is defined in the bill to include any "environmental requirement or regulatory standard imposed by an administrative regulation or proposed amendment to an existing administrative regulation promulgated under the statutory authority of" KRS Chapter 39E (implementation of federal hazardous materials programs), 109 (local solid waste management), 146 (natural resources), 151 (geology and water resources), 211 (state health programs), 224 (environmental protection), and 350 (surface coal mining).

- Solid waste management
- Hazardous waste management
- Special waste management
- Groundwater protection
- Drinking water protection
- Wild rivers
- Endangered species protection
- Lead poisoning prevention
- Management of radioactive wastes.

It turns the federal floor into Kentucky's ceiling. If federal standards are weakened, outdated, or fail to address emerging risks, Kentucky must follow suit and is barred from maintaining or strengthening its regulations.

Second, where no federal standard exists, SB 178 erects extraordinarily restrictive scientific and technical barriers to adopting environmental regulations. Under the bill, ***“in the absence of a federal law or regulation regarding the same or a substantially similar topic,”*** an environmental regulation ***“shall not be proposed or promulgated unless all scientific and technical information relied on to support the administrative regulation is based upon the best available science and the weight of scientific evidence, and the administrative regulation is technologically achievable at an applicable scale.”***

The bill defines the terms “best available science” and the “weight of scientific evidence” so that regulators will need to wait for near-perfect evidence before acting, even when credible evidence of risk is already known. By unreasonably raising the level of evidence and proof of harm needed before an agency can act to protect public health and the environment, the bill will make Kentuckians sicker and less healthy, and our environment more polluted and damaged.

By also requiring that any regulation be “technologically achievable,” the bill undercuts the “technology-forcing” aspect of environmental health and protection standards, where standards are adopted to protect public health with an adequate margin of safety, and the technology *follows* rather than *leads* the goal-setting, such as with drinking water protections.

Public health protection doesn't wait until bodies pile up before acting to protect the public from environmental harm. Standards are adopted to prevent harm, not respond to it after the fact. They are grounded in the precautionary principle—the idea that when credible evidence shows a risk of serious harm, policymakers should take preventive action even if scientific certainty is not complete. Public health standards are designed to err on the side of caution, preventing illness and injury rather than waiting until harm has already occurred.

Third, where there is no federal standard exists and a regulation is intended to “**protect human health, safety, or welfare,**” the bill makes adoption of the regulation even more difficult. The “best available science: and “weight of scientific evidence” must: (1) “**establish a direct causal link between exposure at or above any standards set forth in the administrative regulation and manifest bodily harm in humans based on generally accepted scientific or technical practices;**” or (2) in the absence of voluntary human studies, the evidence may be based “**on tests performed on experimental animal species or human and animal cells establishing a direct causal link . . . between exposure at or above any standards set forth in the administrative regulation and manifest bodily harm in humans, provided the harm can be extrapolated to humans based upon the best available science and the weight of scientific evidence.**”

Demanding a direct causal link between exposure at or above any standards set forth in the proposed regulation and “manifest bodily harm” based on voluntary human studies or extrapolated animal studies, the bill defeats the purpose of preventive public health regulation.

The effect of such a requirement is to inhibit or prohibit adoption of standards to control many cancer-causing pollutants, for which there is no recognized “safe” level of exposure and where standards are set based on precautionary principles, rather than body counts. The bill requires a level of precision that is absent for many of the thousands of hazardous chemicals in the marketplace. For example, of the 70,000 chemicals in use today, we have adequate information on the adverse effects of human exposure for about 2%, partial data on about 14%, and know virtually nothing about long term exposure impacts for many older chemicals in use. Standards are based on protecting public health and environment with an adequate margin of safety to account for these uncertainties, which this b

SB 178’s evidentiary restrictions are especially problematic for public health protection because it imposes a proof-of-harm standard that is fundamentally incompatible with how environmental and health safeguards should work. Requiring a *direct causal link* between exposure and *manifest bodily harm* means agencies cannot act based on credible risk — they must wait until people are already injured, sick, or dead. That defeats the purpose of preventive public health regulation.

Voluntary human studies that expose people to harmful substances are ethically impermissible. Requiring human-level proof or tests performed on animals or human/animal cells *where the harm can be extrapolated to proof of manifest bodily harm* in humans is equally problematic, creates an impossible evidentiary standard for many hazards, especially emerging contaminants.

Rather than allowing preventive action based on risk, toxicology, and exposure modeling, SB 178 effectively requires documented injury before protective measures can be taken. This abandons the precautionary principle that underpins modern environmental and public health law and replaces prevention with reaction—waiting for harm to occur before acting.

By demanding near-perfect evidence and a direct causal link to diagnosed human injury, SB 178 makes timely, risk-based regulation nearly impossible, invites litigation and regulatory paralysis, and weakens our ability to respond to Kentucky-specific threats.

### **Elimination of State Flexibility and Cooperative Federalism**

SB 178 stands the idea of “cooperative federalism” – the framework that has governed U.S. environmental law for more than 50 years – on its head. All major environmental laws adopted by Congress are intended to operate as a floor, not a ceiling, allowing and encouraging states to adopt stronger protections as needed and tailored to local geologic, climate, and other conditions and risks.. This is intentional: Congress recognized that environmental and public health threats vary by geography, industry, population, and ecosystem, and that states are often best positioned to respond to those unique circumstances.

SB 178 undercuts this model by prohibiting Kentucky’s Energy and Environment Cabinet and Cabinet for Health and Family Services from adopting standards that are more protective than federal law on the same or a “substantially similar” topic. In doing so, it turns the federal floor into Kentucky’s ceiling. If federal standards are repealed, weakened, or fail to address new risks, these state agencies would be legally barred from a regulatory response to fill the gaps. In short, SB 178 gives away to the federal government the power to dictate how much or how little protection Kentuckians deserve from environmental pollution and public health risks, at the expense of our people, environment, and economy.

### **Abandonment of the Precautionary Principle and Incompatibility with Modern Environmental Protection**

Where no federal standard exists, SB 178 erects extraordinarily restrictive scientific and technical barriers to regulation, making it easier to pollute the public's air, land, and water by raising the burden of demonstrating harm before requiring controls on pollution.

Agencies would be required to rely on the “best available science” and the “weight of scientific evidence,” demonstrate technological achievability at scale, and—where regulations are intended to protect human health, safety, or welfare—prove a direct causal link between exposure and manifest bodily harm. Rather than allowing preventive action based on risk, toxicology, and exposure modeling, the bill effectively requires documented injury before protective measures can be taken.

This approach eviscerates the precautionary principle, which places the burden on polluters to demonstrate safety rather than on the public to prove harm. Environmental and public health laws are designed to prevent foreseeable harm using toxicology, risk assessment, and exposure modeling—not to wait for people to become sick or injured. This is especially true for emerging contaminants, new chemicals, and novel pathogens, where our environmental and public health officials must be able to act and protect public health

without the high bar of scientific certainty required under this bill. It also affects existing pollutants such as PFAS (“forever chemicals”) which were used for decades before science caught up to their persistence, bioaccumulation, and links to cancer and other health impacts. Regulatory responses to reduce exposure have relied on toxicology, biomonitoring data (PFAS detected in blood), and risk modeling — not on proof that a specific individual has already developed a diagnosable disease directly traceable to a specific exposure level.

SB 178’s approach is simply incompatible with how environmental protection actually works. Under laws like the Clean Air Act, Clean Water Act, and Safe Drinking Water Act, agencies regulate based on *risk of harm*, not proof of existing disease. Increased cancer risk, developmental risk, and subclinical harm are all sufficient grounds for regulation — long before people are diagnosed. Public health also recognizes the need to avoid harm at earlier stages than when the disease manifests, and most environmental standards (e.g., cancer risk limits like 1-in-100,000) are explicitly based on avoiding exposure in order to lower risk.

For example, under the Clean Water Act, human health criteria are developed using risk-based, precautionary frameworks that assess cancer risk, exposure pathways, and contamination in fish tissue—not by waiting for people to become ill. SB 178 inverts that model, precluding timely intervention and undermining the ability to address both existing pollutants and emerging threats.

Furthermore, “manifest bodily harm” is defined to mean a physical disease or injury that is: presently existing and diagnosable, not based solely on the presence or detection of a substance in the human body, and not based solely on an increased risk of disease. This standard is not found in mainstream environmental or public health regulatory law. It imports a litigation-style injury standard into preventive regulation, making proactive health protection nearly impossible. SB 178 replaces prevention with reaction, putting communities at unnecessary risk.

### **Regulatory Paralysis and Litigation Risk**

SB 178’s vague and subjective standards—such as what qualifies as a “substantially similar” topic or whether evidence meets its heightened thresholds— invite widespread litigation, delay, and regulatory paralysis. Agencies would be forced into constant defensive justification, deterring evidence-based rulemaking and effectively freezing protective action. Rather than enabling thoughtful, evidence-based regulation, SB 178 appears structured to deter rulemaking altogether.

### **A Healthy Environment Supports a Healthy Economy**

Limiting our state agency’s ability to address public health risks in Kentucky, particularly when federal standards are inadequate, is bad for Kentucky’s economy. Strong public health safeguards save money and lives by reducing hospital visits, lost workdays, and premature deaths, delivering massive returns on investment through public health savings. When

pollution is controlled, Medicaid, Medicare, and local clinics see fewer emergency visits, heart attacks, asthma attacks, and costly interventions — directly reducing taxpayer costs. Beyond these measurable benefits, a healthy environment also provides irreplaceable value: clean water, safe air, thriving ecosystems, and healthier children and families — all of which are foundational to Kentucky’s long-term economic stability and quality of life.

### **A Cynical Effort to Gut Environmental Protection**

Kentucky already has a rigorous and transparent process for adopting environmental regulations. State agencies must clearly explain the legal authority and factual basis for each regulation, compare proposed standards to any applicable federal requirements, and justify any provisions that exceed federal minimums. Fiscal impacts must be analyzed, and every regulation, including amendments, is reviewed by two legislative committees. In addition, the General Assembly meets annually and retains full authority to address any regulatory issue where it believes the agency has acted in a manner that is not justified or grounded in law.

SB 178 is not a procedural refinement of that system; it is a sweeping anti-regulatory measure designed to slow or prevent the adoption of standards that require polluters to control emissions and discharges into Kentucky’s air, water, and land — except where the state is explicitly required to do so under federal law. The structure and exemptions in the bill make clear that its purpose is not to ensure sound science, but rather an effort to weaken environmental protection.

The bills also makes it far easier to roll back protections than to strengthen them. If the Energy and Environment Cabinet and Cabinet for Health and Family Services seeks to go beyond federal minimum standards — or to address public health and environmental risks for which no federal standard exists — it must satisfy onerous evidentiary hurdles and demonstrations imposed by the bill. At the same time, the bill does not impose comparable analytical requirements when regulations are weakened, repealed, or narrowed. There is no parallel obligation to evaluate adverse health or environmental impacts from deregulation.

And in justifying the regulation as being based on “best science,” the bill specifically and cynically *excludes* peer-reviewed government publications that have been developed in support of adoption of environmental regulations, such as Science Advisory Board and similar reports.

The result is a one-way street toward weaker protections, locking Kentucky into federal minimums and making proactive, state-specific public health and environmental protection extraordinarily difficult.

### **Sweeping Programmatic Impacts and Consequences**

The scope of this rollback is sweeping. It would constrain nearly every major environmental and public health program in Kentucky, including hazardous materials, solid

waste districts, wild rivers, nature preserves, drinking water, groundwater, air quality, waste management, water protection, coal and noncoal mining, on-site septic systems, lead poisoning prevention, and radioactive materials handling. While framed as applying to new regulations, it is unclear whether it would also affect environmental regulations that are recertified every seven years under existing law.

By eliminating the state's ability to respond to Kentucky-specific conditions—such as legacy coal contamination, karst geology and groundwater vulnerability, rural drinking water challenges, flooding risks, industrial hotspots, and community exposure disparities— SB 178 increases pollution risk, reduces public health safeguards, and diminishes environmental quality for Kentucky's communities and ecosystems.

The bill is not a regulation reform bill; it is a frontal assault on human health and environmental protection. It undermines cooperative federalism, erodes state authority, and sacrifices prevention in favor of reaction. In short, SB 178 weakens the Commonwealth's capacity to protect its people, its environment, and its economy.