

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 321 Release of Balloons

**SPONSOR(S):** Agriculture, Conservation & Resiliency Subcommittee, Chaney, Mooney and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	14 Y, 0 N, As CS	Mamontoff	Moore
2) Criminal Justice Subcommittee	16 Y, 0 N	Leshko	Hall
3) Infrastructure Strategies Committee	23 Y, 0 N	Mamontoff	Harrington

### SUMMARY ANALYSIS

Intentional balloon releases are often included in weddings, sporting events, graduations, retail events, memorials, and funerals; however, balloons are unique in their ability to travel vast distances. As balloons are released, they drift away and eventually fall down somewhere becoming litter. They can be carried by currents and winds; therefore, the negative impacts of balloon litter can occur a significant distance from their point of release.

Balloon litter can pose a significant danger to wildlife and become a nuisance to the environment. Balloons take years to break down and often end up in waterways or the ocean, where they can be swallowed by marine animals. Turtles have been found to selectively eat burst balloons because they look like jellyfish, their natural food. Balloons, along with any ribbons or plastic discs attached, can harm animals by blocking their airways or becoming lodged in their intestines. Ribbons and strings from balloons can also become entangled around birds and other animals, making them unable to move.

Current law prohibits any person from intentionally releasing, organizing the release, or intentionally causing to be released within a 24-hour period 10 or more balloons inflated with a gas that is lighter than air. A person who violates this prohibition is guilty of a noncriminal infraction that is punishable by a \$250 fine.

The Florida Litter Law prohibits a person, unless otherwise authorized by law or permit, from dumping litter on public roads, waterways, and private property. The penalties for violating the law range from noncriminal infractions to third-degree felonies depending on the amount of litter dumped.

The bill revises the penalties for intentionally releasing balloons by specifying that a person commits littering if they intentionally release, organize the release of, or intentionally cause to be released balloons inflated with a gas that is lighter than air. Thus, the person is subject to the Florida Litter Law penalties.

The bill removes the exemption for balloons that have been determined by FWC rules to be biodegradable or photodegradable. The bill also removes the ability of a citizen of a county to petition a circuit court to enjoin the release of 10 or more balloons.

The bill may have an indeterminate fiscal impact on state and local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Senate.<sup>1</sup> Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.<sup>2</sup>

##### Balloons

Balloons are often used during special occasions as decorations and gifts, and millions are intentionally released every year.<sup>3</sup> Balloons are typically made of foil or latex; are inflated with a gas lighter than air; and are sealed with plastic ribbons, valves, tie-off discs, and clips.<sup>4</sup>

Foil balloons, often incorrectly referred to as Mylar<sup>5</sup> balloons, are made with a polyester film.<sup>6</sup> Foil (aluminum) is often added to give the balloon a shiny and colorful finish.<sup>7</sup> The plastics in foil balloons never biodegrade. Instead, they break down into smaller and smaller particles called microplastics.<sup>8</sup>

Latex balloons are made with the sap from a rubber tree.<sup>9</sup> Latex balloons are considered to be more eco-friendly than foil balloons because they are made from natural rather than synthetic material. However, latex balloons still take months or years to begin composting.<sup>10</sup>

The amount of time helium-filled balloons remain suspended in the air varies based on several factors including material, size, altitude, and atmospheric conditions. Helium-filled foil balloons, for example, can float for several days or even weeks if properly inflated and sealed.<sup>11</sup> Latex balloons are more porous than foil balloons and typically float for one or two days.<sup>12</sup>

##### Balloon Litter

While intentional balloon releases are often included in weddings, sporting events, graduations, retail events, memorials, and funerals, the balloons that are released into the air don't just go away. Balloons are unique in their ability to travel vast distances. They can be carried by currents and winds; therefore, the negative impacts of balloon litter can occur at significant distances from their point of release.<sup>13</sup>

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<sup>1</sup> Art. IV, s. 9, Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> Ocean Conservancy, *Be Balloon Aware*, <https://www.oceanconservation.org/be-balloon-aware/> (last visited Jan. 26, 2024).

<sup>4</sup> Prevent Balloon Litter, *Sources of Balloon Litter*, <https://www.preventballoonlitter.org/what-is-balloon-litter> (last visited Feb. 2, 2024).

<sup>5</sup> "Mylar" is a brand name for a special polyester film. Xometry, *What is Mylar®? Definition, Properties, and Uses*, <https://www.xometry.com/resources/sheet/what-is-mylar/> (last visited Jan. 26, 2024).

<sup>6</sup> Prevent Balloon Litter, *supra* at note 4.

<sup>7</sup> Ocean Conservancy, *supra* at note 3.

<sup>8</sup> Microplastics are plastic debris that are less than five millimeters in length. National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, *What are Microplastics?*, <https://oceanservice.noaa.gov/facts/microplastics.html> (last visited Jan. 26, 2024).

<sup>9</sup> Prevent Balloon Litter, *supra* at note 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> NOAA, Marine Debris Program, *What Goes Up, Must Come Down!*, (June 26, 2018), <https://blog.marinedebris.noaa.gov/index.php/what-goes-must-come-down/> (visited Jan. 26, 2024).

### *Danger to Wildlife*

Balloon litter poses a significant danger to wildlife and is a nuisance to the environment.<sup>14</sup> Balloon litter in waterbodies affects more than 260 species worldwide and has been identified as among the five deadliest types of marine debris in terms of the risk that it poses to marine wildlife.<sup>15</sup>

### *Entanglement and Starvation*

Entanglement of marine life is a global problem that results in the death of hundreds of thousands of marine mammals and sea turtles worldwide every year.<sup>16</sup> Entanglement refers to marine and coastal wildlife becoming trapped in items such as fishing line, crab traps, balloons with strings attached, and other marine debris.<sup>17</sup>

Deflated balloons and their strings drift into seagrass beds or snag onto floating vegetation, and similar to fishing lines and nets, seabirds and other marine animals can become helplessly entangled in balloon strings, making them unable to swim, fly, or move. Due to the loss of mobility, entangled animals cannot feed or effectively defend themselves from predators.<sup>18</sup> Many marine animals drown when they become entangled in a trailing ribbon or string.

FWC actively works to prevent entanglement by partnering with other agencies and organizations on the Florida Marine Debris Reduction Guidance Plan; by partnering with local government agencies and non-profit organizations to increase awareness of the harm of behaviors that introduce marine debris into the environment; and by promoting clean-up events.<sup>19</sup>

Starvation is another unintended consequence of balloon litter. Balloons take years to break down, and often end up in waterways or the ocean, where they can be swallowed by marine animals. Like many other forms of synthetic debris, balloons can resemble prey and pose a threat to all kinds of marine organisms, many of which are threatened or endangered.<sup>20</sup> Marine mammals, seabirds, and sea turtles often mistakenly ingest balloons thinking that they are an actual food source. Because they are unable to digest it, the balloon ends up either blocking their digestive system or stuck in their digestive system.<sup>21</sup> In November 2023, for example, a necropsy conducted on a juvenile Gervais' beaked whale found washed ashore in North Carolina revealed a mylar balloon obstructed the whale's stomach, leading to starvation.<sup>22</sup>

Several species of sea turtles and seabirds are particularly threatened by this type of pollution – even more than hard plastic – because balloons and balloon fragments are so easily mistaken for food.<sup>23</sup> Thousands of sea turtles die each year from eating and becoming entangled in plastic bags and balloons floating in the water.<sup>24</sup> Turtles have been found to selectively eat burst balloons because they look like jellyfish, their natural food.<sup>25</sup> A recent study of sea turtles found that of the 41 pieces of rubber

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<sup>14</sup> Section 379.233(1), F.S.

<sup>15</sup> Prevent Balloon Litter, *supra* at note 4.

<sup>16</sup> NOAA, *Entanglement of Marine Life: Risks and Response*, <https://www.fisheries.noaa.gov/insight/entanglement-marine-life-risks-and-response> (last visited Jan. 26, 2024).

<sup>17</sup> FWC, *Entanglement Protection*, <https://myfwc.com/conservation/special-initiatives/cwci/entanglement/> (last visited Jan. 26, 2024).

<sup>18</sup> Ocean Conservancy, *supra* at note 3.

<sup>19</sup> FWC, *supra* at note 17.

<sup>20</sup> Ocean Conservancy, *High-flying Balloons Pose a Definite Downside for Ocean Wildlife*, <https://oceanconservancy.org/blog/2012/08/29/high-flying-balloons-pose-a-definite-downside-for-ocean-wildlife/> (last visited Jan. 26, 2024).

<sup>21</sup> FWC, *supra* at note 17.

<sup>22</sup> NOAA, *Party Balloon Leads to Whale Death*, (Nov. 13, 2023), <https://www.fisheries.noaa.gov/feature-story/party-balloon-leads-whale-death> (last visited Jan. 26, 2024).

<sup>23</sup> Ocean Conservancy, *supra* at note 3.

<sup>24</sup> FWC, *Sea Turtle FAQ*, <https://myfwc.com/research/wildlife/sea-turtles/florida/faq/> (last visited Jan. 26, 2024).

<sup>25</sup> Environmental Protection Agency, *Protect our environment from balloon litter*, <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/litter/20p2679-balloon-information-factsheet.pdf> (last visited Jan. 26, 2024); FWC, *supra* at note 22.

eaten by the turtles studied, 32 pieces (78 percent) were balloon fragments.<sup>26</sup> For seabirds, balloons are the number one cause of death from marine debris-related risks.

### Intentional Release of Balloons

Current Florida law prohibits a person from intentionally releasing, organizing the release, or intentionally causing to be released within a 24-hour period 10 or more balloons inflated with a gas that is lighter than air.<sup>27</sup> Exceptions to this prohibition are:

- Balloons released on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes;
- Hot air balloons that are recovered after launching;
- Balloons released indoors; or
- Balloons that are either biodegradable or photodegradable as determined by the rules of FWC, and are without string, ribbon, or any other attachments.<sup>28</sup>

A person who violates this prohibition is guilty of a noncriminal infraction that is punishable by a \$250 fine.<sup>29</sup>

Balloons that are either biodegradable or photodegradable, as determined by FWC rule, are exempt if a certificate executed by the manufacturer is provided to law enforcement. However, there has not yet been a balloon that FWC recognizes as meeting the exemption requirements for biodegradability or photodegradability.<sup>30</sup>

The law authorizes a citizen of a county to petition the circuit court to enjoin the release of 10 or more balloons.<sup>31</sup>

### Florida Litter Law

The Florida Litter Law<sup>32</sup> prohibits a person, unless otherwise authorized by law or permit, from dumping<sup>33</sup> litter<sup>34</sup> in or on any:

- Public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor;
- Freshwater lake, river, canal, or stream, or tidal or coastal water of the state, including canals;
- Water control district property or canal right-of-way, unless the district board of directors or the district manager or his or her designee has given prior consent; or
- Private property, unless prior consent of the owner has been given and unless the dumping will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

The penalty for littering generally corresponds to the amount of litter discarded, as follows:<sup>35</sup>

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<sup>26</sup> Ocean Conservancy, *supra* at note 20.

<sup>27</sup> Section 379.233(2), F.S.

<sup>28</sup> Section 379.233(2)(a-d), F.S.

<sup>29</sup> Section 379.233(3), F.S.

<sup>30</sup> FWC, Agency Analysis for HB 91, July 1, 2023 (on file with the House Agriculture, Conservation & Resiliency Subcommittee).

<sup>31</sup> Section 379.233(4), F.S.

<sup>32</sup> Section 403.413, F.S.

<sup>33</sup> “Dump” means to dump, throw, discard, place, deposit, drain, discharge, or dispose of. Section 403.413(2)(d), F.S.

<sup>34</sup> “Litter” means any personal property; garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; pharmaceutical of any kind; tire; household item; shed; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part, including a truck, trailer, or motor home; vessel, aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations, but excluding permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater. Section 403.413(2)(f), F.S.

<sup>35</sup> Section 403.413(6), F.S.

Amount of Litter	Penalty
≤ 15 pounds or ≤ 27 cubic feet <sup>36</sup>	Noncriminal infraction, punishable by a civil penalty of \$150 <sup>37</sup>
> 15 pounds but ≤ 500 pounds or > 27 cubic feet but ≤ 100 cubic feet	First-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine <sup>38</sup>
> 500 pounds or > 100 cubic feet	Third-degree felony, punishable by up to five years' imprisonment and a \$5,000 fine <sup>39</sup>

It is the duty of all law enforcement officers<sup>40</sup> to enforce Florida's Litter Law.

### Effect of the Bill

The bill specifies that any person who intentionally releases, organizes the release of, or intentionally causes to be released balloons inflated with a gas that is lighter than air commits littering. Thus, a person who commits such an act is subject to the littering penalties outlined above.

The bill removes the exemption for balloons that have been determined by FWC rules to be biodegradable or photodegradable. The bill also removes the ability of a citizen to petition a circuit court to enjoin the release of 10 or more balloons.

The bill revises the following definitions in s. 403.413, F.S., the Florida Litter Law:

- "Dump," by adding intentional release; and
- "Litter," by adding balloon.

### B. SECTION DIRECTORY:

Section 1. Amends s. 379.233, F.S., relating to the release of balloons.

Section 2. Amends s. 403.413, F.S., relating to Florida Litter Law.

Section 3. Reenacts s. 403.4135, F.S., relating to litter receptacles.

Section 4. Provides an effective date of July 1, 2024.

<sup>36</sup> Not for commercial purposes. Section 403.413(6)(a)1., F.S.

<sup>37</sup> From each civil penalty, \$50 must be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095, F.S. Section 403.413(6)(a)1., F.S.

<sup>38</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.; Additionally, the court must require the offender to pick up litter or perform other community service commensurate with the offense committed. Section 403.413(6)(b), F.S.

<sup>39</sup> Sections 775.082(3)(e) and 775.083(1)(c), F.S.; Additionally, the court may order the offender to remove or render harmless the litter that he or she dumped; repair or restore property damaged by, or pay damages for any damage arising out of, his or her dumping litter; or perform public service relating to the removal of litter or to the restoration of an area polluted by litter. Section 403.413(6)(c)1.-3., F.S.

<sup>40</sup> "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department of Environmental Protection, or FWC. In addition, and solely for the purposes of the Florida Litter Law, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer. Section 403.413(2)(e), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on DEP associated with an increase in funds being deposited into the Solid Waste Management Trust Fund from each civil penalty.<sup>41</sup>

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an indeterminate negative fiscal impact on counties associated with the reduction in fines being deposited into the fine and forfeiture fund of the county clerks of court.<sup>42</sup>

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2023, the Agriculture, Conservation & Resiliency Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

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<sup>41</sup> FWC, Agency Analysis for HB 321, Nov.15, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

<sup>42</sup> *Id.*

- Prohibited any person, firm, or corporation from intentionally releasing any amount of balloons, rather than 10 or more.
- Removed the exemption for balloons determined by FWC rules to be biodegradable or photodegradable.
- Removed the ability of a citizen of a county to petition the circuit court to enjoin the release of 10 or more balloons.

This analysis is drafted to the committee substitute as approved by the Agriculture, Conservation & Resiliency Subcommittee.