

Office of Policy and Legal Analysis

Date: April 14, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 618, An Act Regarding the Outdoor Release or Abandonment of Balloons (Rep. Blume)
LD 1023, An Act To Define Intentional Balloon Releases as Litter (Rep. McDonald)

Summary of bills

LD 618 amends the State's litter control law to clarify that waste materials resulting from the outdoor release or abandonment of a balloon constitute litter under that law. It also provides that it is a violation of the litter law for a person to intentionally release outdoors a balloon that is inflated or filled with a gas that is lighter than air, except for a balloon carrying scientific instrumentation, a balloon used for meteorological observation by a governmental or scientific organization or a hot air balloon that is recovered after launching. It applies a civil penalty of not less than \$100 and not more than \$500 for the illegal intentional release of up to 10 balloons and a civil penalty of not less than \$500 for the illegal intentional release of more than 10 balloons.

LD 1023 amends the State's litter control law to include a definition for "balloon," to add the term "balloon" to the list of waste materials described under the definition for "litter," to add the act of releasing litter to the list of prohibited acts under that law and to specify that it is a violation of the law for a person to intentionally release or cause to be released outdoors a balloon.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Rep. Blume, Rep. McDonald, Sen. Sanborn, Blue Ocean Society for Marine Conservation, BalloonsBlow.org, Blue Planet Strategy, Conservation Law Foundation, Friends of Casco Bay, Humane Society, Maine Audubon, Maine Conservation Voters, Natural Resources Council of Maine, Surfrider Foundation, additional members of the public.

Opponents – None.

Neither for nor against – None.

LD 937 (2019) – Additional background

As noted by multiple speakers, LD 618 is essentially a reintroduction of the majority report amendment to LD 937, An Act Regarding the Sale and Release or Abandonment of Balloons, which was considered by ENR in 2019 but which ultimately died in non-concurrence.

In its original form, LD 937 included in the litter laws a definition for "balloon" that is identical to that in LD 1023 as well as an amendment to the definition of "litter" to include waste materials from outdoor balloon releases. The bill also included a requirement that any person selling balloons registers with the DEP and displays signage with warning information about balloons.

Notes, issues and proposed amendments

1. *Other state/local action* – testimony suggested that at least 5 states (CA, CT, FL, TN, VA) and a number of cities and towns in the US have adopted similar balloon release restrictions.
2. *Definition of “balloon” in LD 1023* – during the hearing on LD 937 in 2019, which contained an identical definition for “balloon,” the committee heard concerns that the definition might be overly broad and could include items not generally thought of as “balloons,” such as latex gloves. The majority report to LD 937 opted to remove the definition entirely.
3. *Balloon release penalties* – LD 1023 amends the litter laws to include the following language: “It is a violation of this chapter for a person to intentionally release or cause to be released outdoors a balloon.” LD 618 contains slightly different language but with largely the same intent – to establish a violation of the litter laws based solely on an intentional release of balloons.

Under the litter laws, penalties for violations are based upon the size or weight of the litter. Even a massive release of balloons might only result in a very small amount of litter by weight. The tiered penalty structure in LD 618 that focuses on the number of balloons released would provide for greater penalties for so-called mass balloon releases (i.e., releases of greater than 10 balloons), whereas the penalty for a release under LD 1023 would likely be dependent upon the weight of the resulting litter, assuming that litter could be located.

4. *Rep. McDonald, proposed amendment to LD 1023* – proposes to incorporate an exception for the release of a balloon carrying a scientific instrument, a balloon for meteorological observation by a government or scientific organization or a hot air balloon.

A similar amendment was proposed to LD 1023 by the Conservation Law Foundation.

5. *Surfrider Foundation, proposed amendment to LD 618* – proposes to incorporate the definition of “balloon” from LD 1023 into LD 618.

Requests made of analyst for work session

At the end of the public hearing, two information requests were made of myself by committee members relating to the current state of littering violations in Maine. The littering statute provides for civil penalties only for littering violations (i.e., no criminal violations).

I was asked to (1) consult the Judicial Branch regarding the number of such littering violations recorded in its system and (2) consult with the Kennebec County DA’s office regarding the number of such violations it has imposed within its prosecutorial district. The information I received in response is as follows.

1. Since July 2004, the Judicial Department has recorded 2,208 violations for littering under Title 17 into its computer system. Information on how many of those instances resulted in court hearings vs. an uncontested payment of the requisite fine was not readily available. For what it’s worth, the vast majority of those 2,208 violations (1,893 or 85%) were for violations of 17 MRSA s. 2264-A(1), which is the base (i.e. lowest) \$100-\$500 fine for disposal of 15 pounds or less of litter.

2. Since 2003, the Kennebec County DA's office has only inputted a charge for littering under Title 17 into its computer system 11 times. That being said, DA Maloney noted to me that up until the beginning of this year, if a littering charge resulted in the payment of a fine only by the offender (i.e., no restitution needed and no court hearing), that violation would not have been entered into the office's computer system.

Fiscal information

Not yet available from OFPR.

Note that the fiscal note for LD 937, as amended, reflected minor General Fund cost and revenue increases and a minor Other Special Revenue Funds cost increase with the following description:

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional fine revenue will increase the General Fund and dedicated revenue by minor amounts.