

REFERENCE TITLE: hot air balloons; gliders; recovery

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

## **SB 1368**

Introduced by  
Senator Shooter

AN ACT

AMENDING SECTIONS 9-500.04, 9-500.27, 28-1177, 28-1178, 28-8411, 37-1153 AND 49-457.03, ARIZONA REVISED STATUTES; RELATING TO AIRCRAFT RECOVERY VEHICLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-500.04, Arizona Revised Statutes, is amended to  
3 read:

4 9-500.04. Air quality control; definitions

5 A. The governing body of a city or town in area A or area B as defined  
6 in section 49-541 shall:

7 1. If the city has a population exceeding fifty thousand persons  
8 according to the 1995 special census, adjust the work hours of at least  
9 eighty-five per cent of municipal employees each year beginning October 1 and  
10 ending April 1 in order to reduce the level of carbon monoxide, ozone and  
11 particulate matter concentrations caused by vehicular travel.

12 2. In area A, in consultation with the designated metropolitan  
13 planning organization, synchronize traffic control signals on all existing  
14 and new roadways, within and across jurisdictional boundaries, that have  
15 average daily trips exceeding fifteen thousand motor vehicles per day.

16 3. In area A, beginning on January 1, 2008, develop and implement  
17 plans to stabilize targeted unpaved roads, alleys and unpaved shoulders on  
18 targeted arterials. The plans shall address the performance goals, the  
19 criteria for targeting the roads, alleys and shoulders, a schedule for  
20 implementation, funding options and reporting requirements. Priority shall  
21 be given to the following:

22 (a) Unpaved roads with more than one hundred average daily trips.

23 (b) Unpaved shoulders on arterial roads and other road segments where  
24 vehicle use on unpaved shoulders is evident or anticipated due to projected  
25 traffic volume.

26 4. In area A, acquire or utilize vacuum systems or other dust removal  
27 technology to reduce the particulates attributable to conventional crack  
28 sealing operations as existing equipment is retired.

29 5. In area A, in order to reduce particulate matter in ambient air:

30 (a) Beginning March 31, 2008, on any high pollution advisory day  
31 forecast by the department of environmental quality prohibit employees or  
32 contractors of that city or town from operating leaf blowers except while in  
33 vacuum mode and prohibit those employees or contractors from blowing  
34 landscape debris into public roadways at any time.

35 (b) No later than March 31, 2008, adopt, implement and enforce an  
36 ordinance that bans the blowing of landscape debris into public roadways at  
37 any time by any person.

38 6. In area A, no later than March 31, 2008, adopt or amend codes or  
39 ordinances and, no later than October 1, 2008, commence enforcement of those  
40 codes or ordinances as necessary to require that parking, maneuvering,  
41 ingress and egress areas at developments other than residential buildings  
42 with four or fewer units are maintained with one or more of the following  
43 dustproof paving methods:

1 (a) Asphaltic concrete.

2 (b) Cement concrete.

3 (c) Penetration treatment of bituminous material and seal coat of  
4 bituminous binder and a mineral aggregate.

5 (d) A stabilization method approved by the city or town.

6 7. In area A, no later than March 31, 2008, adopt or amend codes or  
7 ordinances and, no later than October 1, 2009, commence enforcement of those  
8 codes or ordinances as necessary to require that parking, maneuvering,  
9 ingress and egress areas that are three thousand square feet or more in size  
10 at residential buildings with four or fewer units are maintained with a  
11 paving or stabilization method authorized by the city or town by code,  
12 ordinance or permit.

13 8. In area A, ~~no later than March 31, 2008,~~ adopt or amend codes or  
14 ordinances as necessary to restrict vehicle parking and use on unpaved or  
15 unstabilized vacant lots. THIS PARAGRAPH DOES NOT APPLY TO VEHICLES USED ON  
16 STATE TRUST LANDS TO LAUNCH, LAND OR RECOVER HOT AIR BALLOONS OR TO LAND AND  
17 RECOVER GLIDERS.

18 9. In area A, no later than March 31, 2008, require that new or  
19 renewed contracts for street sweeping on city streets must be conducted with  
20 street sweepers that meet the south coast air quality management district  
21 rule 1186 street sweeper certification specifications for pick up efficiency  
22 and PM-10 emissions in effect on January 1, 2007.

23 10. In area B, synchronize traffic control signals on all roadways that  
24 have average daily trips exceeding fifteen thousand motor vehicles per day.

25 B. The governing body of a city or town in area B as defined in  
26 section 49-541 may make and enforce ordinances to reduce or encourage the  
27 reduction of the commuter use of motor vehicles by employees of the city or  
28 town and employees whose place of employment is within the city or town.

29 C. Except as provided in subsection F of this section, the governing  
30 body of a city or town in area A as defined in section 49-541 in a county  
31 with a population of more than one million two hundred thousand persons  
32 according to the most recent United States decennial census shall develop and  
33 implement a vehicle fleet plan for the purpose of encouraging and  
34 progressively increasing the use of alternative fuels and clean burning fuels  
35 in city or town owned vehicles. The plan shall include a timetable for  
36 increasing the use of alternative fuels and clean burning fuels in fleet  
37 vehicles either through purchase or conversion.

38 D. The timetable shall reflect the following schedule and percentage  
39 of vehicles that operate on alternative fuels and clean burning fuels:

40 1. At least eighteen per cent of the total fleet by December 31, 1995.

41 2. At least twenty-five per cent of the total fleet by December 31,  
42 1996.

43 3. At least fifty per cent of the total fleet by December 31, 1998.

44 4. At least seventy-five per cent of the total fleet by December 31,  
45 2000 and each year thereafter.

1 E. The requirements of subsections C and D of this section may be  
2 waived on receipt of evidence acceptable to the city or town council that the  
3 city or town is unable to acquire or be provided equipment or refueling  
4 facilities necessary to operate vehicles using alternative fuels or clean  
5 burning fuels at a projected cost that is reasonably expected to result in  
6 net costs of no greater than ten per cent more than the net costs associated  
7 with the continued use of conventional gasoline or diesel fuels measured over  
8 the expected useful life of the equipment or facilities supplied.  
9 Applications for waivers shall be filed with the department of environmental  
10 quality pursuant to section 49-412. An entity that receives a waiver  
11 pursuant to this section shall retrofit fleet heavy duty diesel vehicles with  
12 a gross vehicle weight of eight thousand five hundred pounds or more, that  
13 were manufactured in or before model year 1993 and that are the subject of  
14 the waiver with a technology that is effective at reducing particulate matter  
15 emissions at least twenty-five per cent or more and that has been approved by  
16 the United States environmental protection agency pursuant to the urban bus  
17 engine retrofit/rebuild program. The entity shall comply with the  
18 implementation schedule pursuant to section 49-555.

19 F. The plan prescribed by subsection C of this section shall include  
20 provisions for the use of alternative fuels and clean burning fuels in the  
21 bus fleet operated by that city or town or a regional public transportation  
22 authority, except that all newly purchased buses shall use alternative fuel  
23 or clean burning fuel. The bus fleet shall comply with the timetable  
24 prescribed by subsection D of this section, except that the requirements of  
25 subsections C and D of this section may be waived on receipt of certification  
26 supported by evidence acceptable to the department of environmental quality  
27 that the city or town is unable to acquire or be provided equipment or  
28 refueling facilities necessary to operate vehicles using alternative fuels or  
29 clean burning fuels at a projected cost that is reasonably expected to result  
30 in net costs of no greater than twenty per cent more than the net costs  
31 associated with the continued use of conventional gasoline or diesel fuels  
32 measured over the expected useful life of the equipment or facilities  
33 supplied.

34 G. If the requirements of subsections C, D and F of this section are  
35 met by the use of clean burning fuel, vehicle equivalents under those  
36 requirements shall be calculated as follows:

37 1. One vehicle equivalent for every four hundred fifty gallons of neat  
38 biodiesel or two thousand two hundred fifty gallons of a diesel fuel  
39 substitute prescribed in section 1-215, paragraph 7, subdivision (b).

40 2. One vehicle equivalent for every five hundred thirty gallons of the  
41 fuel prescribed in section 1-215, paragraph 7, subdivision (d).

42 H. Subsection A, paragraphs 5 through 8 of this section do not apply  
43 to any site that has a permit issued by a control officer as defined in  
44 section 49-471 for the control of fugitive dust from dust generating  
45 operations.

1 I. For the purposes of this section, "alternative fuel" and "clean  
2 burning fuel" have the same meanings prescribed in section 1-215.

3 Sec. 2. Section 9-500.27, Arizona Revised Statutes, is amended to  
4 read:

5 9-500.27. Off-road vehicle ordinance; applicability; violation;  
6 classification

7 A. No later than March 31, 2008, in area A, as defined in section  
8 49-541, a city or town shall adopt, implement and enforce an ordinance that  
9 prohibits the operation of any vehicle, including an off-highway vehicle, an  
10 all-terrain vehicle or an off-road recreational motor vehicle, on an unpaved  
11 surface that is not a public or private road, street or lawful easement and  
12 that is closed by the landowner by rule or regulation of a federal agency,  
13 this state, a county or a municipality or by proper posting if the land is  
14 private land.

15 B. This section does not apply to the operation of vehicles used in  
16 the normal course of business, ~~or~~ the normal course of government operations  
17 OR THE RECOVERY OF HOT AIR BALLOONS OR GLIDERS.

18 C. This section does not prohibit or preempt the enforcement of any  
19 similar ordinance that is adopted by a city or town in area A, as defined in  
20 section 49-541, before March 31, 2008 for purposes of dust abatement.

21 D. A person who violates an ordinance adopted pursuant to subsection A  
22 of this section is guilty of a class 3 misdemeanor.

23 E. In addition to or in lieu of a fine pursuant to this section, a  
24 judge may order the person to perform at least eight but not more than  
25 twenty-four hours of community restitution or to complete an approved safety  
26 course related to the off-highway operation of motor vehicles, or both.

27 Sec. 3. Section 28-1177, Arizona Revised Statutes, is amended to read:

28 28-1177. Off-highway vehicle user fee; indicia; registration;  
29 state trust land recreational permit; exception

30 A. A person shall not operate an all-terrain vehicle or an off-highway  
31 vehicle in this state without an off-highway vehicle user indicia issued by  
32 the department if the all-terrain vehicle or off-highway vehicle meets both  
33 of the following criteria:

34 1. Is designed by the manufacturer primarily for travel over  
35 unimproved terrain.

36 2. Has an unladen weight of eighteen hundred pounds or less.

37 B. A person shall apply to the department of transportation for the  
38 off-highway vehicle user indicia by submitting an application prescribed by  
39 the department of transportation and a user fee for the indicia in an amount  
40 to be determined by the director of the department of transportation in  
41 cooperation with the director of the Arizona game and fish department and the  
42 Arizona state parks board. The user indicia is valid for one year from the  
43 date of issuance and may be renewed. The department shall prescribe by rule  
44 the design and placement of the indicia.

1 C. When a person pays for an off-highway vehicle user indicia pursuant  
2 to this section, the person may request a motor vehicle registration if the  
3 vehicle meets all equipment requirements to be operated on a highway pursuant  
4 to article 16 of this chapter. If a person submits a signed affidavit to the  
5 department affirming that the vehicle meets all of the equipment requirements  
6 for highway use and that the vehicle will be operated primarily off of  
7 highways, the department shall register the vehicle for highway use and the  
8 vehicle owner is not required to pay the registration fee prescribed in  
9 section 28-2003. This subsection does not apply to vehicles that as produced  
10 by the manufacturer meet the equipment requirements to be operated on a  
11 highway pursuant to article 16 of this chapter.

12 D. The director shall deposit, pursuant to sections 35-146 and 35-147,  
13 seventy per cent of the user fees collected pursuant to this section in the  
14 off-highway vehicle recreation fund established by section 28-1176 and thirty  
15 per cent of the user fees collected pursuant to this section in the Arizona  
16 highway user revenue fund.

17 E. An occupant of an off-highway vehicle with a user indicia issued  
18 pursuant to this section who crosses state trust lands must comply with all  
19 of the rules and requirements under a state trust land recreational permit.  
20 All occupants of an off-highway vehicle with a user indicia shall obtain a  
21 state trust land recreational permit from the state land department for all  
22 other authorized recreational activities on state trust land.

23 F. This section does not apply to off-highway vehicles, all-terrain  
24 vehicles or off-road recreational motor vehicles that are used off-highway  
25 exclusively for agricultural, ranching, construction, mining or building  
26 trade purposes **OR FOR THE PURPOSES OF RECOVERING AIRCRAFT.**

27 Sec. 4. Section 28-1178, Arizona Revised Statutes, is amended to read:  
28 **28-1178. Operation of off-highway vehicles; exceptions**

29 A person may operate an all-terrain vehicle or an off-highway vehicle  
30 in this state without an off-highway vehicle user indicia issued pursuant to  
31 section 28-1177 if any of the following applies:

- 32 1. The person is participating in an off-highway special event.
- 33 2. The person is operating an all-terrain vehicle or an off-highway  
34 vehicle on private land.
- 35 3. The person is loading or unloading an all-terrain vehicle or an  
36 off-highway vehicle from a vehicle.
- 37 4. During a period of emergency or if the operation is directed by a  
38 peace officer or other public authority.
- 39 5. All of the following apply:
  - 40 (a) The person is not a resident of this state.
  - 41 (b) The person owns the vehicle.
  - 42 (c) The vehicle displays a current off-highway vehicle user indicia or  
43 registration from the person's state of residency.
  - 44 (d) The vehicle is not in this state for more than thirty consecutive  
45 days.

1           6. THE VEHICLE IS AN AIRCRAFT RECOVERY VEHICLE IN THE PROCESS OF  
2 LAUNCHING OR RECOVERING A GLIDER OR HOT AIR BALLOON. FOR THE PURPOSES OF  
3 THIS PARAGRAPH, "AIRCRAFT RECOVERY VEHICLE" MEANS A MOTOR VEHICLE USED FOR  
4 CARRYING OR TOWING A TRAILER THAT IS DESIGNED TO CARRY A GLIDER OR HOT AIR  
5 BALLOON.

6           Sec. 5. Section 28-8411, Arizona Revised Statutes, is amended to read:  
7           28-8411. Authority of cities, towns and counties; limitations

8           A. The governing body of a city or town or the board of supervisors of  
9 a county may:

10           1. Acquire, establish, construct, own, control, lease, equip, improve,  
11 maintain, operate and regulate airports for the use of aircraft within or  
12 outside the limits of the city, town or county.

13           2. For the purpose described in paragraph 1 of this subsection, use  
14 property that is suitable and that is or may hereafter be owned or controlled  
15 by the city, town or county.

16           B. THE GOVERNING BODY OF A CITY OR TOWN OR THE BOARD OF SUPERVISORS OF  
17 A COUNTY MAY NOT RESTRICT THE LAUNCHING OR LANDING OF A HOT AIR BALLOON, THE  
18 LANDING OF GLIDERS AND THE ACCESS OF VEHICLES FOR RECOVERY OF GLIDERS AND HOT  
19 AIR BALLOONS FROM STATE TRUST LANDS OR OTHER PUBLIC OR PRIVATE LAND IF  
20 PERMISSION HAS BEEN GRANTED BY THE LANDOWNER.

21           ~~B.~~ C. This section does not:

22           1. Authorize the governing body of a city or town or the board of  
23 supervisors of a county to restrict or limit the length or width of an  
24 airstrip or runway used for the landing and takeoff of aircraft, and any such  
25 restriction or limitation is void.

26           2. Affect the zoning authority of a county, city or town pursuant to  
27 other provisions of law.

28           3. AUTHORIZE THE GOVERNING BODY OF A CITY OR TOWN OR THE BOARD OF  
29 SUPERVISORS OF A COUNTY TO RESTRICT THE LAUNCHING OR LANDING OF A HOT AIR  
30 BALLOON OR THE LANDING OF A GLIDER ON STATE TRUST LAND OR OTHER PUBLIC LAND  
31 IF PERMISSION HAS BEEN GRANTED BY THE LANDOWNER.

32           4. AUTHORIZE THE GOVERNING BODY OF A CITY OR TOWN OR THE BOARD OF  
33 SUPERVISORS OF A COUNTY TO RESTRICT OR PROHIBIT THE ACCESS OF VEHICLES TO  
34 RECOVER HOT AIR BALLOONS OR GLIDERS ON STATE TRUST LAND OR OTHER PUBLIC LAND  
35 IF PERMISSION HAS BEEN GRANTED BY THE LANDOWNER.

36           Sec. 6. Section 37-1153, Arizona Revised Statutes, is amended to read:  
37           37-1153. Permit to use public trust lands

38           A. On application, the department may permit the use of public trust  
39 lands by a public entity or private person or entity if the department  
40 determines that such use will be consistent with, and in the best interests  
41 of, the public trust. The use may continue only as long as the lands are  
42 used for the purposes for which the permit is granted. The permit shall  
43 contain terms and conditions that are necessary or appropriate to assure  
44 protection of the public trust interests associated with the lands. The user

1 shall pay due compensation to the department that shall be used for the  
2 purposes prescribed by this chapter.

3 B. At least thirty days before issuing a permit under this section,  
4 the department shall provide written notice of the proposed action and an  
5 opportunity to comment to any person who has previously requested written  
6 notice of actions under this section. The department shall provide  
7 contemporaneous written notice of the final decision to any person who filed  
8 a comment.

9 C. The department may lease rights-of-way in public trust lands for  
10 nonexclusive uses for a term of not more than ten years without a public  
11 auction, if the conditions prescribed by subsection A are met.

12 D. The department shall adopt rules relating to granting the use  
13 permits and maintaining the public trust land that is subject to permit under  
14 this section. **THE RULES SHALL NOT PROHIBIT OR LIMIT THE LAUNCHING OR  
15 RECOVERY OF HOT AIR BALLOONS OR THE RECOVERY OF GLIDERS FROM STATE TRUST  
16 LAND.**

17 Sec. 7. Section 49-457.03, Arizona Revised Statutes, is amended to  
18 read:

19 **49-457.03. Off-road vehicles; pollution advisory days;**  
20 **applicability; penalties**

21 A. In area A, as defined in section 49-541, a person shall not operate  
22 an off-highway vehicle, an all-terrain vehicle or an off-road recreational  
23 motor vehicle on an unpaved surface that is not a public or private road,  
24 street or lawful easement during any high pollution advisory day forecast for  
25 particulate matter by the department.

26 B. This section does not apply to:

27 1. An event that is intended for off-highway vehicles, all terrain  
28 vehicles or off-road recreational motor vehicles and that is endorsed,  
29 authorized, permitted or sponsored by a public agency, that occurs on a  
30 designated route or area and that includes dust abatement measures at all  
31 staging areas, parking areas and entrances.

32 2. An event that occurs at a facility for which an admission or user  
33 fee is charged and that includes dust abatement measures.

34 3. A closed course that is maintained with dust abatement measures.

35 4. An off-highway vehicle, all-terrain vehicle or off-road  
36 recreational motor vehicle **THAT IS** used in the normal course of business or  
37 the normal course of government operations.

38 5. Golf carts that are used as part of a private or public golf course  
39 operation.

40 **6. AIRCRAFT RECOVERY VEHICLES THAT ARE OPERATED ONLY FOR THE PURPOSES  
41 OF LAUNCHING AND RETRIEVING A HOT AIR BALLOON OR RETRIEVING A GLIDER AND  
42 PASSENGERS OF THESE AIRCRAFT IF THE RECOVERY VEHICLE SPEED DOES NOT EXCEED  
43 TEN MILES PER HOUR.**

1 C. A person who violates this section is subject to:

2 1. A warning for the first violation.

3 2. The imposition of a civil penalty of fifty dollars for the second  
4 violation.

5 3. The imposition of a civil penalty of one hundred dollars for the  
6 third violation.

7 4. The imposition of a civil penalty of two hundred fifty dollars for  
8 the fourth or any subsequent violation.

9 D. For violations of this section, the control officer or other  
10 enforcement officer shall use a uniform civil ticket and complaint  
11 substantially similar to a uniform traffic ticket and complaint prescribed by  
12 the rules of procedure in civil traffic cases adopted by the supreme court.  
13 The control officer or other enforcement officer may issue citations to  
14 persons in violation of this section.

15 Sec. 8. Short title

16 This act may be cited as the "Aviation Sustainability Act".