

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: **channelization districts; interim zoning protection**

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

## **SB 1502**

Introduced by  
Senators Jarrett: Arzberger, Johnson, Soltero, Verschoor; Representatives  
Biggs, Brown, Pierce

**AN ACT**

**AMENDING SECTIONS 9-471 AND 11-830, ARIZONA REVISED STATUTES; RELATING TO LOCAL ZONING.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-471, Arizona Revised Statutes, is amended to  
3 read:

4 9-471. Annexation of territory; procedures; notice; petitions;  
5 access to information; restrictions

6 A. The following procedures are required to extend and increase the  
7 corporate limits of a city or town by annexation:

8 1. A city or town shall file in the office of the county recorder of  
9 the county in which the annexation is proposed a blank petition required by  
10 paragraph 4 of this subsection setting forth a description and an accurate  
11 map of all the exterior boundaries of the territory contiguous to the city or  
12 town proposed to be annexed. Notice and a copy of the filing shall be given  
13 to the clerk of the board of supervisors and to the county assessor. The  
14 accurate map shall include all county rights-of-way and roadways with no  
15 taxable value that are within or contiguous to the exterior boundaries of the  
16 area of the proposed annexation. If state land, other than state land  
17 utilized as state rights-of-way or land held by the state by tax deed, is  
18 included in the territory, written approval of the state land commissioner  
19 and the selection board established by section 37-202 shall also be filed.

20 2. Signatures on petitions filed for annexation shall not be obtained  
21 for a waiting period of thirty days after filing the blank petition.

22 3. After filing the blank petition pursuant to paragraph 1 of this  
23 subsection, the governing body of the city or town shall hold a public  
24 hearing within the last ten days of the thirty day waiting period to discuss  
25 the annexation proposal. The public hearing shall be held in accordance with  
26 ~~the provisions of~~ title 38, chapter 3, article 3.1, except that,  
27 notwithstanding ~~the provisions of~~ section 38-431.02, subsections C and D, the  
28 following notices of the public hearing to discuss the annexation proposal  
29 shall be given at least six days before the hearing:

30 (a) Publication at least once in a newspaper of general circulation,  
31 which is published or circulated in the city or town and the territory  
32 proposed to be annexed, at least fifteen days before the end of the waiting  
33 period.

34 (b) Posting in at least three conspicuous public places in the  
35 territory proposed to be annexed.

36 (c) Notice by first class mail sent to the chairman of the board of  
37 supervisors of the county in which the territory proposed to be annexed is  
38 located.

39 (d) Notice by first class mail with an accurate map of the territory  
40 proposed to be annexed sent to each owner of the real and personal property  
41 as shown on the list furnished pursuant to subsection G of this section that  
42 would be subject to taxation by the city or town in the event of annexation  
43 in the territory proposed to be annexed. For the purposes of this  
44 subdivision, real and personal property includes mobile, modular and

1 manufactured homes and trailers only if the owner also owns the underlying  
2 real property.

3 4. Within one year after the last day of the thirty day waiting period  
4 a petition in writing signed by the owners of one-half or more in value of  
5 the real and personal property and more than one-half of the persons owning  
6 real and personal property that would be subject to taxation by the city or  
7 town in the event of annexation, as shown by the last assessment of the  
8 property, may be circulated and filed in the office of the county recorder.  
9 For the purposes of this paragraph, real and personal property includes  
10 mobile, modular and manufactured homes and trailers only if the owner also  
11 owns the underlying real property.

12 5. No alterations increasing or reducing the territory sought to be  
13 annexed shall be made after a petition has been signed by a property owner.

14 6. The petitioner shall determine and submit a sworn affidavit  
15 verifying that no part of the territory for which the filing is made is  
16 already subject to an earlier filing for annexation. The county recorder  
17 shall not accept a filing for annexation without the sworn affidavit.

18 B. All information contained in the filings, the notices, the  
19 petition, tax and property rolls and other matters regarding a proposed or  
20 final annexation shall be made available by the appropriate official for  
21 public inspection during regular office hours.

22 C. Any city or town, the attorney general, the county attorney, or any  
23 other interested party may upon verified petition move to question the  
24 validity of the annexation for failure to comply with ~~the provisions of~~ this  
25 section. The petition shall set forth the manner in which it is alleged the  
26 annexation procedure was not in compliance with ~~the provisions of~~ this  
27 section and shall be filed within thirty days after adoption of the ordinance  
28 annexing the territory by the governing body of the city or town and not  
29 otherwise. The burden of proof shall be upon the petitioner to prove the  
30 material allegations of his verified petition. No action shall be brought to  
31 question the validity of an annexation ordinance unless brought within the  
32 time and for the reasons provided in this subsection. All hearings provided  
33 by this section and all appeals therefrom shall be preferred and heard and  
34 determined in preference to all other civil matters, except election actions.  
35 In the event more than one petition questioning the validity of an annexation  
36 ordinance is filed, all such petitions shall be consolidated for hearing. If  
37 two or more cities or towns show the court that they have demonstrated an  
38 active interest in annexing any or all of the area proposed for annexation,  
39 the court shall consider any oral or written agreements or understandings  
40 between or among the cities and towns in making its determination pursuant to  
41 this subsection.

42 D. The annexation shall become final after the expiration of thirty  
43 days from the adoption of the ordinance annexing the territory by the city or  
44 town governing body, provided the annexation ordinance has been finally  
45 adopted in accordance with procedures established by statute, charter

1 provisions, or local ordinances, whichever is applicable, subject to the  
2 review of the court to determine the validity thereof if petitions in  
3 objection have been filed.

4 E. For the purpose of determining the sufficiency of the percentage of  
5 the value of property under this section, such values of property shall be  
6 determined as follows:

7 1. In the case of property assessed by the county assessor, values  
8 shall be the same as shown by the last assessment of the property.

9 2. In the case of property valued by the department of revenue, values  
10 shall be appraised by the department in the manner provided by law for  
11 municipal assessment purposes.

12 F. For the purpose of determining the sufficiency of the percentage of  
13 persons owning property under this section, the number of persons owning  
14 property shall be determined as follows:

15 1. In the case of property assessed by the county assessor, the number  
16 of persons owning property shall be as shown on the last assessment of the  
17 property.

18 2. In the case of property valued by the department of revenue, the  
19 number of persons owning property shall be as shown on the last valuation of  
20 the property.

21 3. If an undivided parcel of property is owned by multiple owners,  
22 such owners shall be deemed as one owner for the purposes of this section.

23 4. If a person owns multiple parcels of property, such owner shall be  
24 deemed as one owner for the purposes of this section.

25 G. The county assessor and the department of revenue, respectively,  
26 shall furnish to the city or town proposing an annexation within thirty days  
27 after a request therefor a statement in writing showing the owner, the  
28 address of each owner and the appraisal and assessment of all such property.

29 H. Territory is not contiguous for the purposes of subsection A,  
30 paragraph 1 of this section unless:

31 1. It adjoins the exterior boundary of the annexing city or town for  
32 at least three hundred feet.

33 2. It is, at all points, at least two hundred feet in width, excluding  
34 rights-of-way and roadways.

35 3. The distance from the existing boundary of the annexing city or  
36 town where it adjoins the annexed territory to the furthest point of the  
37 annexed territory from such boundary is no more than twice the maximum width  
38 of the annexed territory.

39 I. A city or town shall not annex territory if as a result of such  
40 annexation unincorporated territory is completely surrounded by the annexing  
41 city or town.

42 J. Notwithstanding any provisions of this article to the contrary, any  
43 town incorporated prior to 1950 which had a population of less than two  
44 thousand persons by the 1970 census and which is bordered on at least three  
45 sides by Indian lands may annex by ordinance territory owned by the state

1 within the same county for a new townsite which is not contiguous to the  
2 existing boundaries of the town.

3 K. ~~The provisions of~~ Subsections H and I of this section shall not  
4 apply to territory which is surrounded by the same city or town or which is  
5 bordered by the same city or town on at least three sides.

6 L. A city or town annexing an area shall adopt zoning classifications  
7 which permit densities and uses no greater than those permitted by the county  
8 immediately before annexation. Subsequent changes in zoning of the annexed  
9 territory shall be made according to existing procedures established by the  
10 city or town for the rezoning of land. **CHANGES IN ZONING SHALL NOT BE MADE  
11 TO ANY TERRITORY BEING ANNEXED THAT HAS STARTED OR COMPLETED FORMATION AS A  
12 RECREATIONAL CORRIDOR CHANNELIZATION DISTRICT PURSUANT TO TITLE 48,  
13 CHAPTER 35.**

14 M. The annexation of territory within six miles of territory included  
15 in a pending incorporation petition filed with the county recorder pursuant  
16 to section 9-101.01, subsection C shall not cause an urbanized area to exist  
17 pursuant to section 9-101.01 which did not exist prior to the annexation.

18 N. As an alternative to the procedures established in this section, a  
19 county right-of-way or roadway with no taxable real property may be annexed  
20 to an adjacent city or town by mutual consent of the governing bodies of the  
21 county and city or town if the property annexed is adjacent to the annexing  
22 city or town for the entire length of the annexation and if the city or town  
23 and county each approve the proposed annexation as a published agenda item at  
24 a regular public meeting of their governing bodies.

25 O. On or before the date the governing body adopts the ordinance  
26 annexing territory, the governing body shall have approved a plan, policy or  
27 procedure to provide the annexed territory with appropriate levels of  
28 infrastructure and services to serve anticipated new development within ten  
29 years after the date when the annexation becomes final pursuant to subsection  
30 D of this section.

31 P. If a property owner prevails in any action to challenge the  
32 annexation of the property owner's property, the court shall allow the  
33 property owner reasonable attorney fees and costs relating to the action from  
34 the annexing municipality.

35 Q. A city or town may annex territory that is a county owned park or a  
36 park operated on public lands by a county as part of a management agreement  
37 if otherwise agreed to by the board of supervisors. If the board of  
38 supervisors does not agree to the annexation, the county owned park or park  
39 operated on public lands by a county as part of a management agreement shall  
40 be excluded from the annexation area, notwithstanding subsections H and I of  
41 this section. A county owned park or park operated on public lands by a  
42 county as part of a management agreement that is excluded from the annexation  
43 area pursuant to this subsection may subsequently be annexed with the  
44 permission of the board of supervisors notwithstanding any other provision of  
45 this section. For the purposes of this subsection, "public lands":

- 1           1. Has the same meaning prescribed in section 37-901.  
2           2. Does not include lands owned by a flood control district.  
3           Sec. 2. Section 11-830, Arizona Revised Statutes, is amended to read:  
4           11-830. Restriction on regulation; exceptions; aggregate mining  
5                                   regulation; definitions  
6           A. Nothing contained in any ordinance authorized by this chapter  
7 shall:  
8           1. Affect existing uses of property or the right to its continued use  
9 or the reasonable repair or alteration thereof for the purpose for which used  
10 at the time the ordinance affecting the property takes effect. **CHANGES IN**  
11 **ZONING SHALL NOT BE MADE TO ANY TERRITORY THAT HAS STARTED OR COMPLETED**  
12 **FORMATION AS A RECREATIONAL CORRIDOR CHANNELIZATION DISTRICT PURSUANT TO**  
13 **TITLE 48, CHAPTER 35.**  
14           2. Prevent, restrict or otherwise regulate the use or occupation of  
15 land or improvements for railroad, mining, metallurgical, grazing or general  
16 agricultural purposes, if the tract concerned is five or more contiguous  
17 commercial acres. For the purposes of this paragraph, "mining" has the same  
18 meaning prescribed in section 27-301.  
19           3. Prevent, restrict or otherwise regulate the use or occupation of  
20 land or improvements for agricultural composting, if the tract is five or  
21 more contiguous commercial acres. An agricultural composting operation shall  
22 notify in writing the board of supervisors and the nearest fire department of  
23 the location of the composting operation. If the nearest fire department is  
24 located in a city, town or fire district where the agricultural composting is  
25 not located, the agricultural composting operation shall also notify in  
26 writing the fire district in which the operation is located. Agricultural  
27 composting is subject to the provisions of sections 3-112 and 49-141. For  
28 the purposes of this paragraph, "agricultural composting" has the same  
29 meaning prescribed in section 9-462.01, subsection G.  
30           B. A nonconforming business use within a district may expand if such  
31 expansion does not exceed one hundred per cent of the area of the original  
32 business.  
33           C. For the purposes of subsection A, paragraph 2 of this section,  
34 mining does not include aggregate mining operations in an aggregate mining  
35 operations zoning district established pursuant to this section. The board  
36 of supervisors of any county with a population of more than two million  
37 persons shall designate and establish the boundaries of an aggregate mining  
38 operations zoning district on the petition of at least one hundred persons  
39 who reside within one-half mile of an existing aggregate mining  
40 operation. In addition, the board of supervisors of any county may  
41 establish, in its discretion and on the board's initiative, one or more  
42 aggregate mining operations zoning districts. Aggregate mining operations  
43 zoning districts may only be located in areas that are inventoried and mapped  
44 as areas of known reserves or in areas with existing aggregate mining  
45 operations. Subject to subsections E and F of this section, a county and the

1 state mine inspector may jointly adopt, as internal administrative  
2 regulations, reasonable aggregate mining operations zoning district standards  
3 limited to permitted uses, procedures for approval of property development  
4 plans and site development standards for dust control, height regulations,  
5 setbacks, days and hours of operation, off-street parking, screening, noise,  
6 vibration and air pollution control, signs, roadway access lanes, arterial  
7 highway protection and property reclamation for which aggregate mining  
8 operations are not otherwise subject to federal, state or local regulation or  
9 a governmental contractual obligation. Regulations jointly adopted pursuant  
10 to this subsection by the county and the state mine inspector shall not  
11 prohibit the activities included in the definition of mine pursuant to  
12 section 27-301, paragraph 8 or duplicate, conflict with or be more stringent  
13 than applicable federal, state or local laws.

14 D. The board of supervisors of any county that establishes an  
15 aggregate mining operations zoning district shall appoint an aggregate mining  
16 operations recommendation committee for the district. The committee shall  
17 consist of not more than seven operators, or representatives of operators, of  
18 active aggregate mining operations in any district within the county and an  
19 equal number of property owners, who are not operators, who are not employed  
20 by operators and who do not represent operators, residing within one mile of  
21 the boundaries of aggregate mining operations or a proposed aggregate mining  
22 operation in the district for which the committee is established. An  
23 aggregate mining operator may serve on more than one committee in the same  
24 county. The board of supervisors shall determine the length of terms of  
25 members of the committee and shall stagger the initial appointments so that  
26 not all members' terms expire at the same time. Members of the committee who  
27 no longer qualify for membership as provided by this subsection are subject  
28 to removal and replacement by the board of supervisors. The committee shall  
29 elect a member who is an aggregate mining operator to serve as chairman for  
30 the first year in which the committee is created. For each year thereafter,  
31 the chairman shall be elected by the members of the committee with a member  
32 who is a property owner and a member who is an aggregate mining operator  
33 serving as chairman in alternate years. The committee is subject to the open  
34 meeting requirements of title 38, chapter 3, article 3.1.

35 E. Within ninety days after an aggregate mining operations  
36 recommendation committee is established, it shall notify all existing  
37 aggregate mining operators in the district of the application of this section  
38 and title 27, chapter 3, article 6 to the aggregate mining operation. In  
39 addition, the committee shall:

40 1. By a majority vote of all members make recommendations to the board  
41 of supervisors for aggregate mining zoning districts and administrative  
42 regulations as provided in this section. The board of supervisors may adopt  
43 or reject such recommendations but may not make any modifications to the  
44 recommendations unless such modification is approved by a majority of the  
45 members of the recommendation committee.

1           2. Serve as a forum for mediation of disputes between members of the  
2 public and aggregate mining owners or operators. If the committee is unable  
3 to resolve a dispute, the committee shall transmit the matter to the state  
4 mine inspector, with written findings and recommendations, for further  
5 action.

6           3. Hear written complaints filed with the state mine inspector  
7 regarding alleged material deviations from approved community notices for  
8 aggregate mining operations and make written recommendations to the state  
9 mine inspector pursuant to section 27-446.

10          F. Any administrative regulations adopted by a board of supervisors  
11 pursuant to this section shall not be effective until they are approved by  
12 the state mine inspector. The inspector may disapprove the administrative  
13 regulations adopted by the board of supervisors only if they duplicate,  
14 conflict with or are more stringent than applicable federal, state or local  
15 laws, rules or regulations. If the inspector disapproves the administrative  
16 regulations, the inspector must provide written reasons for the disapproval.  
17 The inspector shall not make any modification to the administrative  
18 regulations as adopted by the board of supervisors unless the modification is  
19 approved by a majority of the members of the board of supervisors.

20          G. A person or entity is subject to the provisions of this chapter if  
21 the use or occupation of land or improvements by the person or entity  
22 consists of or includes changing, remanufacturing or treating human sewage or  
23 sludge for distribution or resale. These activities are not exempt from this  
24 chapter under subsection A, paragraph 2 of this section.

25          H. A county shall not require as a condition for a permit or for any  
26 approval, or otherwise cause, an owner or possessor of property to waive the  
27 right to continue an existing nonconforming outdoor advertising use or  
28 structure without acquiring the use or structure by purchase or condemnation  
29 and paying just compensation unless the county, at its option, allows the use  
30 or structure to be relocated to a comparable site in the county with the same  
31 or a similar zoning classification, or to another site in the county  
32 acceptable to both the county and the owner of the use or structure, and the  
33 use or structure is relocated to the other site. The county shall pay for  
34 relocating the outdoor advertising use or structure including the cost of  
35 removing and constructing the new use or structure that is at least the same  
36 size and height. This subsection does not apply to county rezoning of  
37 property at the request of the property owner to a more intensive zoning  
38 district.

39           I. For **THE** purposes of this section:

40           1. "Aggregate" has the same meaning prescribed in section 27-441.

41           2. "Aggregate mining" has the same meaning prescribed in section  
42 27-441.

43           3. "Aggregate mining operation" means property that is owned, operated  
44 or managed by the same person for aggregate mining.



1           4. "Operators" means persons who are actively engaged in aggregate  
2 mining operations within the zoning district or proposed zoning district and  
3 who have given notice to the state mine inspector pursuant to section 27-303.