State of Arkansas

As Engrossed: H2/21/19

A Bill

SENATE BILL 170

By: Senator Hester
By: Representative Cozart

For An Act To Be Entitled

AN ACT CONCERNING COUNTY AND MUNICIPAL REGULATION OF RESIDENTIAL BUILDING DESIGN ELEMENTS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING COUNTY AND MUNICIPAL REGULATION OF RESIDENTIAL BUILDING DESIGN ELEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 14, Chapter 17, Subchapter 2, is amended to add an additional section to read as follows:

14-17-212. County regulation of residential building design elements prohibited — Findings — Exceptions — Definition.

(a) The General Assembly finds that:

(1) The Fair Housing Act, 42 U.S.C. § 3601 et seq., decisions of the United States Supreme Court, and other provisions of federal law establish the principles and standards in this section;

(2) It is difficult and expensive for citizens to readily access fundamental property rights protection in federal court; and

(3) This section is necessary to ensure property rights protection is accessible and to ensure state law is consistent with federal law.

(b) A county shall not regulate residential building design elements.

(c)(1) As used in this section, "residential building design elements"
means:

(A) Exterior building color;
(B) Type or style of exterior cladding material;
(C) Style or materials of roof structures, roof pitches, or porches;
(D) Exterior nonstructural architectural ornamentation;
(E) Location, design, placement, or architectural styling of windows and doors, including garage doors and garage structures;
(F) The number and types of rooms;
(G) The interior layout of rooms; and
(H) The minimum square footage of a structure.

(2) As used in this section, "residential building design elements" does not include:

(A) The height, bulk, orientation, or location of a structure on a lot; or
(B) Buffering or screening used to:
   (i) Minimize visual impacts;
   (ii) Mitigate the impacts of light and noise; or
   (iii) Protect the privacy of neighbors.

(d) This section does not apply to:

(1) A structure located in an area designated as a local historic district under applicable state law;
(2) A structure located in an area designated as a historic district on the National Register of Historic Places;
(3) A structure designated as a local, state, or national historic landmark;
(4) A regulation created by a valid private covenant or other contractual agreement among property owners relating to residential building design elements, including without limitation a cooperative contractual agreement between a property owner and a county;
(5) A regulation directly and substantially related to the requirements of applicable state or federal building or safety codes;
(6) A regulation applied to manufactured housing in a manner consistent with applicable law;
(7) A regulation adopted as a condition for participation in the National Flood Insurance Program;
(8) A central business improvement district under the Central Business Improvement District Act, § 14-184-101 et seq.;

(9) A multifamily residential structure or other nonsingle-family dwelling;

(10) The application of a county policy, regulation, or ordinance affecting residential building design elements on an existing property on or before February 28, 2019, but not as to any other property thereafter;

(11) A county policy, regulation, or ordinance derived from the county’s police power and directly related to an established immediate public health or safety hazard;

(12) A valid exercise of express statutory authority to regulate residential building design elements under § 14-95-101 et seq., concerning urban service districts; or

(13) A policy or regulation of an overlay district, if before the policy or regulation is implemented:

   (A) Notice is provided to property owners of an overlay district under § 14-56-422;

   (B) A petition to support the policy or regulation is attached with signatures of a majority of property owners in the proposed overlay district; and

   (C) The overlay district makes a determination that the policy or regulation complies with the Private Property Protection Act, § 18-15-1701 et seq.

SECTION 2. Arkansas Code Title 14, Chapter 56, Subchapter 2, is amended to add an additional section to read as follows:


(a) The General Assembly finds that:

   (1) The Fair Housing Act, 42 U.S.C. § 3601 et seq., decisions of the United States Supreme Court, and other provisions of federal law establish the principles and standards in this section;

   (2) It is difficult and expensive for citizens to readily access fundamental property rights protection in federal court; and

   (3) This section is necessary to ensure property rights protection is accessible and to ensure state law is consistent with federal
law.

(b) A municipality shall not regulate residential building design elements.

(c)(1) As used in this section, "residential building design elements" means:

(A) Exterior building color;
(B) Type or style of exterior cladding material;
(C) Style or materials of roof structures, roof pitches, or porches;
(D) Exterior nonstructural architectural ornamentation;
(E) Location, design, placement, or architectural styling of windows and doors, including garage doors and garage structures;
(F) The number and types of rooms;
(G) The interior layout of rooms; and
(H) The minimum square footage of a structure.

(2) As used in this section, "residential building design elements" does not include:

(A) The height, bulk, orientation, or location of a structure on a lot; or
(B) Buffering or screening used to:
   (i) Minimize visual impacts;
   (ii) Mitigate the impacts of light and noise; or
   (iii) Protect the privacy of neighbors.

(d) This section does not apply to:

(1) A structure located in an area designated as a local historic district under applicable state law;
(2) A structure located in an area designated as a historic district on the National Register of Historic Places;
(3) A structure designated as a local, state, or national historic landmark;
(4) A regulation created by a valid private covenant or other contractual agreement among property owners relating to residential building design elements, including without limitation a cooperative contractual agreement between a property owner and a municipality;
(5) A regulation directly and substantially related to the requirements of applicable state or federal building or safety codes;
(6) A regulation applied to manufactured housing in a manner consistent with applicable law;

(7) A regulation adopted as a condition for participation in the National Flood Insurance Program;

(8) A central business improvement district under the Central Business Improvement District Act, § 14-184-101 et seq.;

(9) A multifamily residential structure or other nonsingle-family dwelling;

(10) The application of a municipal policy, regulation, or ordinance affecting residential building design elements on an existing property on or before February 28, 2019, but not as to any other property thereafter;

(11) A municipal policy, regulation, or ordinance derived from the municipality’s police power and directly related to an established immediate public health or safety hazard;

(12) A valid exercise of express statutory authority to regulate residential building design elements under § 14-95-101 et seq., concerning urban service districts; or

(13) A policy or regulation of an overlay district, if before the policy or regulation is implemented:

(A) Notice is provided to property owners of an overlay district under § 14-56-422;

(B) A petition to support the policy or regulation is attached with signatures of a majority of property owners in the proposed overlay district; and

(C) The overlay district makes a determination that the policy or regulation complies with the Private Property Protection Act, § 18-15-1701 et seq.

/s/Hester

APPROVED: 3/13/19