

Stricken language would be deleted from and underlined language would be added to present law.  
Act 446 of the Regular Session

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

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:

14-56-204. Municipal regulation of residential building design elements prohibited – Findings – Exceptions – Definitions.

(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