

The House Committee on State Planning & Community Affairs offers the following substitute to HB 714:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,  
2 so as to amend the "Local Government Code Enforcement Boards Act"; to define a certain  
3 term; to provide requirements for an order to comply issued by a local code enforcement  
4 board; to provide for the specificity of fines; to repeal certain provisions relative to an  
5 administrative fine; to repeal certain provisions relative to an environmental court; to specify  
6 the venue and form of appeals; to provide for the delivery of notice; to provide for  
7 applicability of the foregoing; to make editorial revisions; to repeal conflicting laws; and for  
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
12 by striking in its entirety Chapter 74, the "Local Government Code Enforcement Boards  
13 Act," and inserting in lieu thereof the following:

14 **"CHAPTER 74**  
15 **ARTICLE 1**

16 36-74-1.

17 This chapter shall be known and may be cited as the "Local Government Code  
18 Enforcement Boards Act" and is enacted to provide assistance to inferior courts with  
19 jurisdiction over county or municipal ordinances.

20 36-74-2.

21 It is the intent of this chapter to promote, protect, and improve the health, safety, and  
22 welfare of the citizens of the counties and municipalities of this state by authorizing the  
23 creation of administrative boards with authority to impose administrative fines and other

1 noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive  
 2 method of enforcing any codes and ordinances in force in counties and municipalities,  
 3 where a pending or repeated violation continues to exist.

4 36-74-3.

5 (a) Each county or municipality may, at its option, create or abolish by ordinance local  
 6 government code enforcement boards as provided in this chapter.

7 (b) A county or a municipality may, by ordinance, adopt an alternate code enforcement  
 8 system which gives code enforcement boards the authority to hold hearings and assess fines  
 9 against violators of the respective county or municipal codes and ordinances.

## 10 ARTICLE 2

11 36-74-20.

12 The provisions of this article shall apply to enforcement boards created on or after July 1,  
 13 2003.

14 ~~36-74-4~~ 36-74-21.

15 As used in this ~~chapter~~ article, the term:

16 (1) 'Code inspector' means any authorized agent or employee of the county or  
 17 municipality whose duty it is to assure code compliance.

18 (2) 'County or municipal codes and ordinances' means zoning ordinances and resolutions,  
 19 ordinances and resolutions enacting subdivision regulations, environmental ordinances  
 20 and resolutions, state minimum standard codes provided for in Code Section 8-2-25,  
 21 ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and  
 22 resolutions regulating the development of real property, and ordinances and regulations  
 23 providing for control of litter and debris, control of junked or abandoned vehicles, and  
 24 control of overgrown vegetation. Notwithstanding the above, the term 'county and  
 25 municipal codes and ordinances' shall not include:

26 (A) Those codes and ordinances requiring a permit, unless the alleged violator has  
 27 failed to secure all necessary valid permits under said codes and ordinances; or

28 (B) Any local amendments to the state minimum standard codes provided for in Code  
 29 Section 8-2-25 that have not been adopted in conformity with the requirements of  
 30 subsection (c) of Code Section 8-2-25.

31 (3) 'Enforcement board' means a local government code enforcement board.

32 (4) 'Local governing body' means the governing authority of the county or municipality,  
 33 however designated.

1 (5) 'Local governing body attorney' means the legal counselor for the county or  
2 municipality.

3 (6) 'Violation involving the health or safety of a third party' means a violation that  
4 creates a legitimate concern for the health and safety of a ~~third party~~ third-party occupant  
5 of a dwelling place or that creates an immediate and substantial danger to the  
6 environment.

7 ~~36-74-5~~ 36-74-22.

8 (a) The local governing body may appoint one or more code enforcement boards and legal  
9 counsel for the enforcement boards. The local governing body may appoint code  
10 enforcement boards consisting of three, five, or seven members. The local governing body  
11 may appoint up to two alternate members for each code enforcement board to serve on the  
12 board in the absence of board members.

13 (b) Members of the enforcement boards shall be residents of the municipality, in the case  
14 of municipal enforcement boards, or residents of the county, in the case of county  
15 enforcement boards. In making appointments to an enforcement board, the local governing  
16 body shall make good faith efforts to appoint one or more individuals who have experience  
17 or expertise relevant to one or more of the county or municipal codes that are within the  
18 subject matter jurisdiction of the respective enforcement board, including individuals with  
19 property management and litter control experience; provided, however, that the authority  
20 and jurisdiction of an enforcement board shall not in any way be limited due to the absence  
21 from its membership of one or more individuals with such experience or expertise.

22 (c)(1) The initial appointments to a seven-member code enforcement board shall be as  
23 follows:

24 (A) Three members appointed for a term of two years each; and

25 (B) Four members appointed for a term of four years each.

26 (2) The initial appointments to a five-member code enforcement board shall be as  
27 follows:

28 (A) Two members appointed for a term of two years each; and

29 (B) Three members appointed for a term of four years each.

30 (3) The initial appointments to a three-member code enforcement board shall be as  
31 follows:

32 (A) One member appointed for a term of two years; and

33 (B) Two members appointed for a term of four years each.

34 (4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this  
35 subsection all terms shall be for three years.

1 (5) The local governing body of a county or a municipality may reduce a seven-member  
 2 code enforcement board to five members, or a five-member code enforcement board to  
 3 three members, upon the simultaneous expiration of the terms of office of two members  
 4 of the board.

5 (6) A member may be reappointed upon approval of the local governing body.

6 (7) An appointment to fill any vacancy on an enforcement board shall be for the  
 7 remainder of the unexpired term of office. If any member fails to attend two of three  
 8 successive meetings without cause and without prior approval of the chairperson, the  
 9 enforcement board shall declare the member's office vacant, and the local governing  
 10 body shall promptly fill such vacancy.

11 (8) The members shall serve in accordance with ordinances of the local governing body  
 12 and may be suspended and removed for cause as provided in such ordinances for removal  
 13 of members of boards. A local governing body may, with or without cause, refuse to  
 14 reappoint any member of an enforcement board at the expiration of his or her term of  
 15 office.

16 (d) The members of an enforcement board shall elect a chairperson, who shall be a voting  
 17 member, from among the members of the board. The presence of four or more members  
 18 shall constitute a quorum of any seven-member enforcement board, the presence of three  
 19 or more members shall constitute a quorum of any five-member enforcement board, and  
 20 the presence of two or more members shall constitute a quorum of any three-member  
 21 enforcement board. Members shall serve without compensation; but may be reimbursed for  
 22 such travel, mileage, and per diem expenses as may be authorized by the local governing  
 23 body or as otherwise provided by law.

24 (e) The local governing body attorney shall either be counsel to an enforcement board or  
 25 shall represent the municipality or county by presenting cases before the enforcement  
 26 board; but in no case shall the local governing body attorney serve in both capacities.

27 ~~36-74-6~~ 36-74-23.

28 (a) It shall be the duty of the code inspector to initiate enforcement proceedings pursuant  
 29 to the various codes; however, no member of a board shall have the power to initiate such  
 30 enforcement proceedings.

31 (b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any  
 32 code or ordinance is found, the code inspector shall notify the violator and give him or her  
 33 a reasonable time to correct the violation. Should the violation continue beyond the time  
 34 specified for correction, the code inspector shall proceed with enforcement through the  
 35 appropriate court or shall proceed with enforcement through the appropriate code  
 36 enforcement board. If the code inspector proceeds through a code enforcement board, the

1 code inspector shall notify an enforcement board and request a hearing. The code  
 2 enforcement board shall schedule a hearing, and written notice of such hearing shall be  
 3 hand delivered or made as provided in Code Section ~~36-74-12~~ 36-74-29 to said violator.

4 At the option of the code enforcement board, notice may additionally be served by  
 5 publication or posting as provided in Code Section ~~36-74-12~~ 36-74-29. If the violation is  
 6 corrected and then recurs or if the violation is not corrected by the time specified for  
 7 correction by the code inspector, the case may be presented to the enforcement board even  
 8 if the violation has been corrected prior to the board hearing, and the notice shall so state.

9 (c) If a repeat violation is found, the code inspector shall notify the violator but is not  
 10 required to give the violator a reasonable time to correct the violation. The code inspector,  
 11 upon notifying the violator of a repeat violation, shall notify an enforcement board and  
 12 request a hearing. The code enforcement board shall schedule a hearing and shall provide  
 13 written notice pursuant to Code Section ~~36-74-12~~ 36-74-29. The case may be presented to  
 14 the enforcement board even if the repeat violation has been corrected prior to the board  
 15 hearing, and the notice shall so state.

16 (d) If the code inspector has substantial reason to believe a violation presents a serious  
 17 threat to the public health, safety, and welfare or if the violation is irreparable or  
 18 irreversible in nature, the code inspector shall make a reasonable effort to notify the  
 19 violator and may immediately notify the enforcement board and request a hearing.

20 ~~36-74-7~~ 36-74-24.

21 (a) Upon request of the code inspector, or at such other times as may be necessary, the  
 22 chairperson of an enforcement board may call a hearing of an enforcement board; a hearing  
 23 also may be called by written notice signed by at least three members of a seven-member  
 24 enforcement board or signed by at least two members of a five-member enforcement board.  
 25 Minutes shall be kept of all hearings by each enforcement board, and all hearings and  
 26 proceedings shall be open to the public. The local governing body may provide or assign  
 27 clerical and administrative personnel to assist the enforcement board in the proper  
 28 performance of its duties.

29 (b) Each case before an enforcement board shall be presented by the local governing body  
 30 attorney or by a code inspector or other member of the administrative staff of the local  
 31 governing body.

32 (c) An enforcement board shall proceed to hear the cases on the agenda for that day. All  
 33 testimony shall be under oath and shall be recorded. The enforcement board shall take  
 34 testimony from the code inspector and alleged violator. Formal rules of evidence shall not  
 35 apply, but fundamental due process shall be observed and shall govern the proceedings.

1 (d) At the conclusion of the hearing, the enforcement board shall issue findings of fact,  
 2 based on evidence of record and conclusions of law, and shall issue an order affording the  
 3 proper relief consistent with powers granted in this ~~chapter~~ article. The findings and  
 4 conclusions shall be by motion approved by a majority of those members present and  
 5 voting, except that at least four members of a seven-member enforcement board, ~~or~~ three  
 6 members of a five-member enforcement board, or two members of a three-member  
 7 enforcement board; must vote in order for the action to be official. The order may include  
 8 a notice that it must be complied with by a specified date and that a fine may be imposed  
 9 if the order is not complied with by said date. A certified copy of such order may be  
 10 recorded in the public records of the county and shall constitute notice to any subsequent  
 11 purchasers, successors in interest, or assigns if the violation concerns real property, and the  
 12 findings therein shall be binding upon the violator and, if the violation concerns real  
 13 property, any subsequent purchasers, successors in interest, or assigns. If an order is  
 14 recorded in the public records pursuant to this subsection and the order is complied with  
 15 by the date specified in the order, the enforcement board shall issue an order  
 16 acknowledging compliance that shall be recorded in the public records. A hearing is not  
 17 required to issue such an order acknowledging compliance.

18 ~~36-74-8~~ 36-74-25.

19 Each enforcement board shall have the power to:

- 20 (1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure  
 21 that each side has an equal opportunity to present evidence and argument in support of  
 22 its case;
- 23 (2) Subpoena alleged violators and witnesses to its hearings, with the approval of the  
 24 court with jurisdiction over a criminal violator of the county or municipal code or  
 25 ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the  
 26 county or by the police department of the municipality or by any other individual  
 27 authorized by Code Section 24-10-23 to serve subpoenas;
- 28 (3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of  
 29 this Code section, with the approval of the court with jurisdiction over a criminal violator  
 30 of the county or municipal code or ordinance;
- 31 (4) Take testimony under oath; and
- 32 (5) Issue orders having the force of law to command whatever steps are necessary to  
 33 bring a violation into compliance.

1 ~~36-74-9~~ 36-74-26.

2 (a) An enforcement board, upon notification by the code inspector that an order of the  
3 enforcement board has not been complied with by the set time may order the violator to  
4 pay an administrative fine in an amount specified in this Code section.

5 (b)(1) An administrative fine imposed pursuant to this Code section for a violation  
6 involving the health or safety of a third party shall not exceed ~~\$1000.00~~ \$1,000.00 per  
7 day.

8 (2) An administrative fine imposed pursuant to this Code section for a violation that is  
9 not a violation involving the health or safety of a third party shall not exceed a total of  
10 \$1,000.00.

11 (3) In determining the amount of the fine, if any, the enforcement board shall consider  
12 the following factors:

13 (A) The gravity of the violation;

14 (B) Any actions taken by the violator to correct the violation; and

15 (C) Any previous violations committed by the violator.

16 (4) An enforcement board may reduce a fine imposed pursuant to this Code section.

17 (c) A certified copy of an order imposing an administrative fine may be recorded in the  
18 public records of any county and thereafter shall constitute a lien against the land on which  
19 the violation exists and upon any real or personal property owned by the violator. Upon  
20 petition to the superior court, such order may be enforced in the same manner as a court  
21 judgment by the sheriffs of this state, including levy against the personal property, but such  
22 order shall not be deemed to be a court judgment except for enforcement purposes. After  
23 three months from the filing of any such lien which remains unpaid, the enforcement board  
24 may request the local governing body attorney to foreclose on the lien.

25 (d) If an environmental court is in existence with jurisdiction over ordinances subject to  
26 the jurisdiction of the enforcement board, the violator may object to the fine imposed and  
27 submit to the jurisdiction of the environmental court. The case shall be transferred to the  
28 environmental court and handled de novo as an ordinance violation.

29 ~~36-74-10~~ 36-74-27.

30 No lien imposed under this ~~chapter~~ article shall continue for a period longer than 20 years  
31 after the certified copy of an order imposing a fine has been recorded, unless within that  
32 time an action to foreclose on the lien is commenced in a court of competent jurisdiction.  
33 In an action to foreclose on a lien, the prevailing party is entitled to recover all costs,  
34 including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of  
35 the lien effected by the commencement of the action shall not be good against creditors or

1 subsequent purchasers for valuable consideration without notice, unless a notice of lis  
2 pendens is recorded.

3 ~~36-74-11~~ 36-74-28.

4 An aggrieved party, including the local governing body, may appeal a final administrative  
5 order of an enforcement board to the superior court. Such an appeal shall be a hearing de  
6 novo. An appeal shall be filed within 30 days of the execution of the order to be appealed.

7 ~~36-74-12~~ 36-74-29.

8 (a) All notices required by this ~~chapter~~ article shall be provided to the alleged violator by  
9 certified mail or statutory overnight delivery, return receipt requested; by hand delivery by  
10 the sheriff or other law enforcement officer, code inspector, or other person designated by  
11 the local governing body; or by leaving the notice at the violator's usual place of residence  
12 with any person residing therein who is above 15 years of age and informing such person  
13 of the contents of the notice.

14 (b) In addition to providing notice as set forth in subsection (a) of this Code section, at the  
15 option of the code enforcement board, notice may also be served by publication or posting,  
16 as follows:

17 (1) Notice may be published once during each week for four consecutive weeks (four  
18 publications being sufficient) in the newspaper in which the sheriff's advertisements are  
19 printed in the county where the code enforcement board is located. Proof of publication  
20 shall be made by affidavit of a duly authorized representative of the newspaper;

21 (2) If there is no newspaper of general circulation in the county where the code  
22 enforcement board is located, three copies of such notice shall be posted for at least 28  
23 days in three different and conspicuous places in such county, one of which shall be at  
24 the front door of the courthouse in said county. Proof of posting shall be by affidavit of  
25 the person posting the notice, which affidavit shall include a copy of the notice posted  
26 and the date and places of its posting; or

27 (3) Notice by publication or posting may run concurrently with, or may follow, an  
28 attempt or attempts to provide notice by hand delivery, mail, or statutory overnight  
29 delivery as required under subsection (a) of this Code section. Evidence that an attempt  
30 has been made to deliver notice by hand, mail, or statutory overnight delivery as provided  
31 in subsection (a) of this Code section, together with proof of publication or posting as  
32 provided in this subsection, shall be sufficient to show that the notice requirements of this  
33 Code section have been met, without regard to whether or not the alleged violator  
34 actually received such notice.

1 ~~36-74-13~~ 36-74-30.

2 It is the intent of this ~~chapter~~ article to provide an additional or supplemental means of  
 3 obtaining compliance with local codes. Nothing contained in this ~~chapter~~ article shall  
 4 prohibit a local governing body through its code inspector from enforcing its codes by any  
 5 other lawful means including criminal and civil proceedings; provided, however, that a  
 6 local governing body shall not pursue a specific instance of an alleged violation of an  
 7 ordinance against one violator before both a code enforcement board and a magistrate,  
 8 municipal, or other court authorized to hear ordinance violations.

9 ARTICLE 3

10 36-74-40.

11 The provisions of this article shall apply to enforcement boards created prior to July 1,  
 12 2003.

13 36-74-41.

14 As used in this article, the term:

15 (1) 'Code inspector' means any authorized agent or employee of the county or  
 16 municipality whose duty it is to assure code compliance.

17 (2) 'County or municipal codes and ordinances' means zoning ordinances and resolutions,  
 18 ordinances and resolutions enacting subdivision regulations, environmental ordinances  
 19 and resolutions, state minimum standard codes provided for in Code Section 8-2-25,  
 20 ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and  
 21 resolutions regulating the development of real property, and ordinances and regulations  
 22 providing for control of litter and debris, control of junked or abandoned vehicles, and  
 23 control of overgrown vegetation. Notwithstanding the above, the term 'county and  
 24 municipal codes and ordinances' shall not include:

25 (A) Those codes and ordinances requiring a permit, unless the alleged violator has  
 26 failed to secure all necessary valid permits under said codes and ordinances; or

27 (B) Any local amendments to the state minimum standard codes provided for in Code  
 28 Section 8-2-25 that have not been adopted in conformity with the requirements of  
 29 subsection (c) of Code Section 8-2-25.

30 (3) 'Enforcement board' means a local government code enforcement board.

31 (4) 'Local governing body' means the governing authority of the county or municipality,  
 32 however designated.

33 (5) 'Local governing body attorney' means the legal counselor for the county or  
 34 municipality.

1 (6) 'Repeat violation' means any violation of county or municipal codes or ordinances  
 2 by an owner or co-owner whom the enforcement board has previously found to be in  
 3 violation of a code or ordinance within one year prior to such violation.

4 (7) 'Violation involving the health or safety of a third party' means a violation that  
 5 creates a legitimate concern for the health and safety of a third-party occupant of a  
 6 dwelling place or that creates an immediate and substantial danger to the environment or  
 7 members of the community at large, especially minor children.

8 36-74-42.

9 (a) The local governing body may appoint one or more code enforcement boards and legal  
 10 counsel for the enforcement boards. The local governing body may appoint code  
 11 enforcement boards consisting of three, five, or seven members. The local governing body  
 12 may appoint up to two alternate members for each code enforcement board to serve on the  
 13 board in the absence of board members.

14 (b) Members of the enforcement boards shall be residents of the municipality, in the case  
 15 of municipal enforcement boards, or residents of the county, in the case of county  
 16 enforcement boards. In making appointments to an enforcement board, the local governing  
 17 body shall make good faith efforts to appoint one or more individuals who have experience  
 18 or expertise relevant to one or more of the county or municipal codes that are within the  
 19 subject matter jurisdiction of the respective enforcement board, including individuals with  
 20 property management and litter control experience; provided, however, that the authority  
 21 and jurisdiction of an enforcement board shall not in any way be limited due to the absence  
 22 from its membership of one or more individuals with such experience or expertise.

23 (c)(1) The initial appointments to a seven-member code enforcement board shall be as  
 24 follows:

25 (A) Three members appointed for a term of two years each; and

26 (B) Four members appointed for a term of four years each.

27 (2) The initial appointments to a five-member code enforcement board shall be as  
 28 follows:

29 (A) Two members appointed for a term of two years each; and

30 (B) Three members appointed for a term of four years each.

31 (3) The initial appointments to a three-member code enforcement board shall be as  
 32 follows:

33 (A) One member appointed for a term of two years; and

34 (B) Two members appointed for a term of four years each.

35 (4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this  
 36 subsection all terms shall be for three years.

1 (5) The local governing body of a county or a municipality may reduce a seven-member  
2 code enforcement board to five members, or a five-member code enforcement board to  
3 three members, upon the simultaneous expiration of the terms of office of two members  
4 of the board.

5 (6) A member may be reappointed upon approval of the local governing body.

6 (7) An appointment to fill any vacancy on an enforcement board shall be for the  
7 remainder of the unexpired term of office. If any member fails to attend two of three  
8 successive meetings without cause and without prior approval of the chairperson, the  
9 enforcement board shall declare the member's office vacant, and the local governing  
10 body shall promptly fill such vacancy.

11 (8) The members shall serve in accordance with ordinances of the local governing body  
12 and may be suspended and removed for cause as provided in such ordinances for removal  
13 of members of boards. A local governing body may, with or without cause, refuse to  
14 reappoint any member of an enforcement board at the expiration of his or her term of  
15 office.

16 (d) The members of an enforcement board shall elect a chairperson, who shall be a voting  
17 member, from among the members of the board. The presence of four or more members  
18 shall constitute a quorum of any seven-member enforcement board, the presence of three  
19 or more members shall constitute a quorum of any five-member enforcement board, and  
20 the presence of two or more members shall constitute a quorum of any three-member  
21 enforcement board. Members shall serve without compensation but may be reimbursed for  
22 such travel, mileage, and per diem expenses as may be authorized by the local governing  
23 body or as otherwise provided by law.

24 (e) The local governing body attorney shall either be counsel to an enforcement board or  
25 shall represent the municipality or county by presenting cases before the enforcement board  
26 but in no case shall the local governing body attorney serve in both capacities.

27 36-74-43.

28 (a) It shall be the duty of the code inspector to initiate enforcement proceedings pursuant  
29 to the various codes; however, no member of a board shall have the power to initiate such  
30 enforcement proceedings.

31 (b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any  
32 code or ordinance is found, the code inspector shall notify the violator and give him or her  
33 a reasonable time to correct the violation. Should the violation continue beyond the time  
34 specified for correction, the code inspector shall proceed with enforcement through the  
35 appropriate court or shall proceed with enforcement through the appropriate code  
36 enforcement board. If the code inspector proceeds through a code enforcement board, the

1 code inspector shall notify an enforcement board and request a hearing. The code  
2 enforcement board shall schedule a hearing, and written notice of such hearing shall be  
3 hand delivered or made as provided in Code Section 36-74-49 to said violator. At the  
4 option of the code enforcement board, notice may additionally be served by publication or  
5 posting as provided in Code Section 36-74-49. If the violation is corrected and then recurs  
6 or if the violation is not corrected by the time specified for correction by the code inspector,  
7 the case may be presented to the enforcement board even if the violation has been corrected  
8 prior to the board hearing, and the notice shall so state.

9 (c) If a repeat violation is found, the code inspector shall notify the violator but is not  
10 required to give the violator a reasonable time to correct the violation. The code inspector,  
11 upon notifying the violator of a repeat violation, shall notify an enforcement board and  
12 request a hearing. The code enforcement board shall schedule a hearing and shall provide  
13 written notice pursuant to Code Section 36-74-49. The case may be presented to the  
14 enforcement board even if the repeat violation has been corrected prior to the board  
15 hearing, and the notice shall so state.

16 (d) If the code inspector has substantial reason to believe a violation presents a serious  
17 threat to the public health, safety, and welfare or if the violation is irreparable or  
18 irreversible in nature, the code inspector shall make a reasonable effort to notify the  
19 violator and may immediately notify the enforcement board and request a hearing.

20 36-74-44.

21 (a) Upon request of the code inspector, or at such other times as may be necessary, the  
22 chairperson of an enforcement board may call a hearing of an enforcement board; a hearing  
23 also may be called by written notice signed by at least three members of a seven-member  
24 enforcement board or signed by at least two members of a five-member enforcement board.  
25 Minutes shall be kept of all hearings by each enforcement board, and all hearings and  
26 proceedings shall be open to the public. The local governing body may provide or assign  
27 clerical and administrative personnel to assist the enforcement board in the proper  
28 performance of its duties.

29 (b) Each case before an enforcement board shall be presented by the local governing body  
30 attorney or by a code inspector or other member of the administrative staff of the local  
31 governing body.

32 (c) An enforcement board shall proceed to hear the cases on the agenda for that day. All  
33 testimony shall be under oath and shall be recorded. The enforcement board shall take  
34 testimony from the code inspector and alleged violator. Formal rules of evidence shall not  
35 apply, but fundamental due process shall be observed and shall govern the proceedings.

1 (d) At the conclusion of the hearing, the enforcement board shall issue findings of fact,  
2 based on evidence of record and conclusions of law, and shall issue an order to comply or  
3 an order to pay an administrative fine consistent with powers granted in this article. The  
4 findings and conclusions and any order imposed shall be by motion approved by a majority  
5 of those members present and voting, except that at least four members of a seven-member  
6 enforcement board, three members of a five-member enforcement board, or two members  
7 of a three-member enforcement board must vote in order for the action to be official.

8 (e) An order to comply shall include notice that it must be complied with by a specified  
9 date and that an administrative fine may be imposed if the order is not complied with by  
10 such date.

11 (f) An order to pay a fine shall specify the amount of the fine as determined and voted  
12 upon by the enforcement board, as well as the date and time the fine is due. A certified  
13 copy of such order may be recorded in the public records of the county and shall constitute  
14 notice to any subsequent purchaser, successor in interest, or assign if the violation concerns  
15 real property, and the findings therein shall be binding upon the violator and, if the  
16 violation concerns real property, and subsequent purchaser, successor in interest, or assign.  
17 If an order is recorded in the public records pursuant to this subsection and the fine is paid  
18 by the date and time specified in the order, the enforcement board shall issue an order  
19 acknowledging that the fine has been paid in full and such order shall be recorded in the  
20 public records. A hearing is not required to issue such an order acknowledging the  
21 payment of a fine.

22 (g) The enforcement board may issue an order to pay a fine against the violator if the cited  
23 violation was not corrected within the time specified on the code inspector's notice or if  
24 an order to comply was not satisfied within the time specified in the order, even if said  
25 violation was corrected and brought into compliance prior to the hearing at which the fine  
26 is imposed.

27 36-74-45.

28 Each enforcement board shall have the power to:

29 (1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure  
30 that each side has an equal opportunity to present evidence and argument in support of  
31 its case;

32 (2) Subpoena alleged violators and witnesses to its hearings, with the approval of the  
33 court with jurisdiction over a criminal violator of the county or municipal code or  
34 ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the  
35 county or by the police department of the municipality or by any other individual  
36 authorized by Code Section 24-10-23 to serve subpoenas;

1 (3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of  
 2 this Code section, with the approval of the court with jurisdiction over a criminal violator  
 3 of the county or municipal code or ordinance;

4 (4) Take testimony under oath; and

5 (5) Issue orders having the force of law to command whatever steps are necessary to  
 6 bring a violation into compliance.

7 36-74-46.

8 (a)(1) An administrative fine imposed pursuant to this Code section for a violation  
 9 involving the health or safety of a third party shall not exceed \$1,000.00 per day.

10 (2) An administrative fine imposed pursuant to this Code section for a violation that is  
 11 not a violation involving the health or safety of a third party shall not exceed a total of  
 12 \$1,000.00.

13 (3) In determining the amount of the fine, if any, the enforcement board shall consider  
 14 the following factors:

15 (A) The gravity of the violation;

16 (B) Any actions taken by the violator to correct the violation; and

17 (C) Any previous violations committed by the violator.

18 (4) An enforcement board may reduce a fine imposed pursuant to this Code section.

19 (b) A certified copy of an order imposing an administrative fine may be recorded in the  
 20 public records of any county and thereafter shall constitute a lien against the land on which  
 21 the violation exists and upon any real or personal property owned by the violator. Upon  
 22 petition to the superior court, such order may be enforced in the same manner as a court  
 23 judgment by the sheriffs of this state, including levy against the personal property, but such  
 24 order shall not be deemed to be a court judgment except for enforcement purposes. After  
 25 three months from the filing of any such lien which remains unpaid, the enforcement board  
 26 may request the local governing body attorney to foreclose on the lien.

27 36-74-47.

28 No lien imposed under this article shall continue for a period longer than 20 years after the  
 29 certified copy of an order imposing a fine has been recorded, unless within that time an  
 30 action to foreclose on the lien is commenced in a court of competent jurisdiction. In an  
 31 action to foreclose on a lien, the prevailing party is entitled to recover all costs, including  
 32 a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien  
 33 effected by the commencement of the action shall not be good against creditors or  
 34 subsequent purchasers for valuable consideration without notice, unless a notice of lis  
 35 pendens is recorded.

1 36-74-48.

2 An aggrieved party, including the local governing body, may appeal a final administrative  
3 order of an enforcement board to the superior court of the county in which the subject  
4 property is located. Such an appeal shall be in the form of a writ of certiorari governed by  
5 Chapter 4 of Title 5 and shall be heard on the record. An appeal shall be filed within 30  
6 days of the execution of the order to be appealed.

7 36-74-49.

8 (a) All notices required by this article shall be provided to the alleged violator by certified  
9 mail or statutory overnight delivery, return receipt requested; by hand delivery by the  
10 sheriff or other law enforcement officer, code inspector, or other person designated by the  
11 local governing body; by leaving the notice at the violator's usual place of residence with  
12 any person residing therein who is over 15 years of age and informing such person of the  
13 contents of the notice; or by leaving the notice at the violator's usual place of business with  
14 a manager or other upper-level employee who is over 15 years of age and informing such  
15 person of the contents of the notice.

16 (b) In addition to providing notice as set forth in subsection (a) of this Code section, at the  
17 option of the code enforcement board, notice may also be served by publication or posting,  
18 as follows:

19 (1) Notice may be published once during each week for four consecutive weeks (four  
20 publications being sufficient) in the newspaper in which the sheriff's advertisements are  
21 printed in the county where the code enforcement board is located. Proof of publication  
22 shall be made by affidavit of a duly authorized representative of the newspaper;

23 (2) If there is no newspaper of general circulation in the county where the code  
24 enforcement board is located, three copies of such notice shall be posted for at least 28  
25 days in three different and conspicuous places in such county, one of which shall be at  
26 the front door of the courthouse in said county. Proof of posting shall be by affidavit of  
27 the person posting the notice, which affidavit shall include a copy of the notice posted  
28 and the date and places of its posting; or

29 (3) Notice by publication or posting may run concurrently with, or may follow, an  
30 attempt or attempts to provide notice by hand delivery, mail, or statutory overnight  
31 delivery as required under subsection (a) of this Code section. Evidence that an attempt  
32 has been made to deliver notice by hand, mail, or statutory overnight delivery as provided  
33 in subsection (a) of this Code section, together with proof of publication or posting as  
34 provided in this subsection, shall be sufficient to show that the notice requirements of this  
35 Code section have been met, without regard to whether or not the alleged violator  
36 actually received such notice.

1 36-74-50.

2 It is the intent of this article to provide an additional or supplemental means of obtaining  
3 compliance with local codes. Nothing contained in this article shall prohibit a local  
4 governing body through its code inspector from enforcing its codes by any other lawful  
5 means including criminal and civil proceedings; provided, however, that a local governing  
6 body shall not pursue a specific instance of an alleged violation of an ordinance against one  
7 violation before both a code enforcement board and a magistrate, municipal, or other court  
8 authorized to hear ordinance violations."

9 **SECTION 2.**

10 All laws and parts of laws in conflict with this Act are repealed.