

Senate Bill 261

By: Senators Harp of the 16th, Tolleson of the 18th, Squires of the 5th, Brown of the 26th  
and Collins of the 6th

**AS PASSED**

**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 provide for additional procedures and requirements with respect to zoning decisions;  
3 to amend the "Local Government Code Enforcement Boards Act"; to define a certain term;  
4 to provide requirements for an order to comply issued by a local code enforcement board;  
5 to provide for the specificity of fines; to repeal certain provisions relative to an administrative  
6 fine; to repeal certain provisions relative to an environmental court; to specify the venue and  
7 form of appeals; to provide for the delivery of notice; to provide for applicability of the  
8 foregoing; to make editorial revisions; to provide an effective date; to repeal conflicting laws;  
9 and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
13 by adding a new Code section at the end of Chapter 66, relating to zoning procedures, to be  
14 designated Code Section 36-66-6, to read as follows:

15 "36-66-6.

16 (a) In any local government which has established a planning department or other similar  
17 agency charged with the duty of reviewing zoning proposals, such planning department or  
18 other agency shall with respect to each proposed zoning decision involving land that is  
19 adjacent to or within 3,000 feet of any military base or military installation or within the  
20 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed in  
21 the definition of an Air Installation Compatible Use Zone of a military airport investigate  
22 and make a recommendation with respect to each of the matters enumerated in subsection  
23 (b) of this Code section, in addition to any other duties with which the planning department  
24 or agency is charged by the local government. The planning department or other agency  
25 shall request from the commander of such military base, military installation, or military  
26 airport a written recommendation and supporting facts relating to the use of the land being  
27 considered in the proposed zoning decision at least 30 days prior to the hearing required

1 by subsection (a) of Code Section 36-66-4. If the base commander does not submit a  
 2 response to such request by the date of the public hearing, there shall be a presumption that  
 3 the proposed zoning decision will not have any adverse effect relative to the matters  
 4 specified in subsection (b) of this Code section. Any such information provided shall  
 5 become a part of the public record.

6 (b) The matters with which the planning department or agency shall be required to make  
 7 such investigation and recommendation shall be:

8 (1) Whether the zoning proposal will permit a use that is suitable in view of the use of  
 9 adjacent or nearby property within 3,000 feet of a military base, military installation, or  
 10 military airport;

11 (2) Whether the zoning proposal will adversely affect the existing use or usability of  
 12 nearby property within 3,000 feet of a military base, military installation, or military  
 13 airport;

14 (3) Whether the property to be affected by the zoning proposal has a reasonable  
 15 economic use as currently zoned;

16 (4) Whether the zoning proposal will result in a use which will or could cause a safety  
 17 concern with respect to excessive or burdensome use of existing streets, transportation  
 18 facilities, utilities, or schools due to the use of nearby property as a military base, military  
 19 installation, or military airport;

20 (5) If the local government has an adopted land use plan, whether the zoning proposal  
 21 is in conformity with the policy and intent of the land use plan; and

22 (6) Whether there are other existing or changing conditions affecting the use of the  
 23 nearby property as a military base, military installation, or military airport which give  
 24 supporting grounds for either approval or disapproval of the zoning proposal."  
 25

## 26 **SECTION 2.**

27 Said title is further amended by striking in its entirety Chapter 74, the "Local Government  
 28 Code Enforcement Boards Act," and inserting in lieu thereof the following:

### 29 "CHAPTER 74

#### 30 ARTICLE 1

31 36-74-1.

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

1 36-74-2.

2 It is the intent of this chapter to promote, protect, and improve the health, safety, and  
 3 welfare of the citizens of the counties and municipalities of this state by authorizing the  
 4 creation of administrative boards with authority to impose administrative fines and other  
 5 noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive  
 6 method of enforcing any codes and ordinances in force in counties and municipalities,  
 7 where a pending or repeated violation continues to exist.

8 36-74-3.

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

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

14 ARTICLE 2

15 36-74-20.

16 The provisions of this article shall apply to enforcement boards created on or after Jan. 1,  
 17 2003.

18 ~~36-74-4~~ 36-74-21.

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

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

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

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

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

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

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

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

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

13 ~~36-74-5~~ 36-74-22.

14 (a) The local governing body may appoint one or more code enforcement boards and legal  
 15 counsel for the enforcement boards. The local governing body may appoint code  
 16 enforcement boards consisting of three, five, or seven members. The local governing body  
 17 may appoint up to two alternate members for each code enforcement board to serve on the  
 18 board in the absence of board members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~36-74-6~~ 36-74-23.

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

1 (b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any  
 2 code or ordinance is found, the code inspector shall notify the violator and give him or her  
 3 a reasonable time to correct the violation. Should the violation continue beyond the time  
 4 specified for correction, the code inspector shall proceed with enforcement through the  
 5 appropriate court or shall proceed with enforcement through the appropriate code  
 6 enforcement board. If the code inspector proceeds through a code enforcement board, the  
 7 code inspector shall notify an enforcement board and request a hearing. The code  
 8 enforcement board shall schedule a hearing, and written notice of such hearing shall be  
 9 hand delivered or made as provided in Code Section ~~36-74-12~~ 36-74-29 to said violator.  
 10 At the option of the code enforcement board, notice may additionally be served by  
 11 publication or posting as provided in Code Section ~~36-74-12~~ 36-74-29. If the violation is  
 12 corrected and then recurs or if the violation is not corrected by the time specified for  
 13 correction by the code inspector, the case may be presented to the enforcement board even  
 14 if the violation has been corrected prior to the board hearing, and the notice shall so state.

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

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

26 ~~36-74-7~~ 36-74-24.

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

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

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

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

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

26 Each enforcement board shall have the power to:

- 27 (1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure  
 28 that each side has an equal opportunity to present evidence and argument in support of  
 29 its case;
- 30 (2) Subpoena alleged violators and witnesses to its hearings, with the approval of the  
 31 court with jurisdiction over a criminal violator of the county or municipal code or  
 32 ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the  
 33 county or by the police department of the municipality or by any other individual  
 34 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 ~~36-74-9~~ 36-74-26.

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

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

14 (2) An administrative fine imposed pursuant to this Code section for a violation that is  
 15 not a violation involving the health or safety of a third party shall not exceed a total of  
 16 \$1,000.00.

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

19 (A) The gravity of the violation;

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

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

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

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

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

1 ~~36-74-10~~ 36-74-27.

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

10 ~~36-74-11~~ 36-74-28.

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

14 ~~36-74-12~~ 36-74-29.

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

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

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

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

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

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

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

### ARTICLE 3

36-74-40.

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

36-74-41.

As used in this article, the term:

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

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

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

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

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

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

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

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

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

18 36-74-42.

19 (a) The local governing body may appoint one or more code enforcement boards and legal  
 20 counsel for the enforcement boards. The local governing body may appoint code  
 21 enforcement boards consisting of three, five, or seven members. The local governing body  
 22 may appoint up to two alternate members for each code enforcement board to serve on the  
 23 board in the absence of board members.

24 (b) Members of the enforcement boards shall be residents of the municipality, in the case  
 25 of municipal enforcement boards, or residents of the county, in the case of county  
 26 enforcement boards. In making appointments to an enforcement board, the local governing  
 27 body shall make good faith efforts to appoint one or more individuals who have experience  
 28 or expertise relevant to one or more of the county or municipal codes that are within the  
 29 subject matter jurisdiction of the respective enforcement board, including individuals with  
 30 property management and litter control experience; provided, however, that the authority  
 31 and jurisdiction of an enforcement board shall not in any way be limited due to the absence  
 32 from its membership of one or more individuals with such experience or expertise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) The members of an enforcement board shall elect a chairperson, who shall be a voting  
27 member, from among the members of the board. The presence of four or more members  
28 shall constitute a quorum of any seven-member enforcement board, the presence of three  
29 or more members shall constitute a quorum of any five-member enforcement board, and  
30 the presence of two or more members shall constitute a quorum of any three-member  
31 enforcement board. Members shall serve without compensation but may be reimbursed for  
32 such travel, mileage, and per diem expenses as may be authorized by the local governing  
33 body or as otherwise provided by law.

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

1 36-74-43.

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

5 (b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any  
6 code or ordinance is found, the code inspector shall notify the violator and give him or her  
7 a reasonable time to correct the violation. Should the violation continue beyond the time  
8 specified for correction, the code inspector shall proceed with enforcement through the  
9 appropriate court or shall proceed with enforcement through the appropriate code  
10 enforcement board. If the code inspector proceeds through a code enforcement board, the  
11 code inspector shall notify an enforcement board and request a hearing. The code  
12 enforcement board shall schedule a hearing, and written notice of such hearing shall be  
13 hand delivered or made as provided in Code Section 36-74-49 to said violator. At the  
14 option of the code enforcement board, notice may additionally be served by publication or  
15 posting as provided in Code Section 36-74-49. If the violation is corrected and then recurs  
16 or if the violation is not corrected by the time specified for correction by the code inspector,  
17 the case may be presented to the enforcement board even if the violation has been corrected  
18 prior to the board hearing, and the notice shall so state.

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

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

30 36-74-44.

31 (a) Upon request of the code inspector, or at such other times as may be necessary, the  
32 chairperson of an enforcement board may call a hearing of an enforcement board; a hearing  
33 also may be called by written notice signed by at least three members of a seven-member  
34 enforcement board or signed by at least two members of a five-member enforcement board.  
35 Minutes shall be kept of all hearings by each enforcement board, and all hearings and  
36 proceedings shall be open to the public. The local governing body may provide or assign

1 clerical and administrative personnel to assist the enforcement board in the proper  
2 performance of its duties.

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

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

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

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

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

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

36-74-45.

Each enforcement board shall have the power to:

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

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

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

(4) Take testimony under oath; and

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

36-74-46.

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

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

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

(A) The gravity of the violation;

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

(C) Any previous violations committed by the violator.

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

(b) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After

1 three months from the filing of any such lien which remains unpaid, the enforcement board  
2 may request the local governing body attorney to foreclose on the lien.

3 36-74-47.

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

12 36-74-48.

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

18 36-74-49.

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

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

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

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

7 (3) Notice by publication or posting may run concurrently with, or may follow, an  
 8 attempt or attempts to provide notice by hand delivery, mail, or statutory overnight  
 9 delivery as required under subsection (a) of this Code section. Evidence that an attempt  
 10 has been made to deliver notice by hand, mail, or statutory overnight delivery as provided  
 11 in subsection (a) of this Code section, together with proof of publication or posting as  
 12 provided in this subsection, shall be sufficient to show that the notice requirements of this  
 13 Code section have been met, without regard to whether or not the alleged violator  
 14 actually received such notice.

15 36-74-50.

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

23 **SECTION 3.**

24 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 25 without such approval.

26 **SECTION 4.**

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