

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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"36-66-6.

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

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.

36-74-2.

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

36-74-3.

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

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

ARTICLE 2

36-74-20.

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

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

As used in this chapter 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:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has 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.

1 36-74-45.

2 Each enforcement board shall have the power to:

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

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

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

14 (4) Take testimony under oath; and

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

17 36-74-46.

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

20 (2) An administrative fine imposed pursuant to this Code section for a violation that is
21 not a violation involving the health or safety of a third party shall not exceed a total of
22 \$1,000.00.

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

25 (A) The gravity of the violation;

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

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

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

29 (b) A certified copy of an order imposing an administrative fine may be recorded in the
30 public records of any county and thereafter shall constitute a lien against the land on which
31 the violation exists and upon any real or personal property owned by the violator. Upon
32 petition to the superior court, such order may be enforced in the same manner as a court
33 judgment by the sheriffs of this state, including levy against the personal property, but such
34 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;

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

36-74-50.

It is the intent of this article to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in this 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."

SECTION 3.

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

SECTION 4.

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