

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 538

Short Title: Incorporate Lake James. (Local)

Sponsors: Senator Jacumin.

Referred to: Finance.

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF LAKE JAMES.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Village of Lake James is enacted to read:

"CHARTER OF THE VILLAGE OF LAKE JAMES.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Lake James are a body corporate and politic under the name 'Village of Lake James.' The Village of Lake James has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Lake James are as follows:

1780 Boundary to 126 to Canal and back to Canal: Beginning at a 5/8" rebar as shown on Plat Book 30 page 37 in Burke County Register of Deeds and located on the Duke Power Project Boundary of Lake James, elev. 1200 ft. and also on the McDowell and Burke County Line, said rebar located S 46°09'38" E a distance of 25059.54' from the county line corner located on Dobson Knob with NAD 83 coordinates N-761953.51', E-1114344.03":thence along the 1200 ft contour Duke Power Project Boundary in a north-easterly direction and along the boundary of 1780 LLC as shown Plat Book 30 page 37 approximately 1692 feet to a 5/8" Rebar with cap located on the 1200 foot contour and located in a cove; thence N 25°11'57" E a distance of 270.06' to the SW corner of Delane Moss recorded in deed book 831 page 1684: thence S 84°59'42" E a distance of 354.42' along the Northern 1780 LLC boundary to a 1.5 inch iron pipe:thence S 84°40'12" E a distance of 361.38' along the line of Fredrick McMahan as described in DB 952 page 1136:thence S 85°17'18" E a distance of 296.23' to a concrete monument: thence S 80°47'05" E a distance of 245.94' to a nail in a poplar and being the SW corner of Dennis Canova:thence S 87°51'09" E a distance of 415.14' to an iron pipe: thence S 58°18'07" E a distance of 362.28': thence S 02°42'25" W a distance of 358.69' to an iron pipe found at a fence corner: thence S 87°04'44" E a distance of 33.84' to an iron pipe found at a fence corner: thence S 02°39'17" W a distance of 344.94' to a 1" iron which is the SW corner of Canova as described in DB 929 page 1762: thence N 87°22'22" E a distance of 430.67' to the Western boundary of a private r/w with road name Campbell's Trace: thence continuing in an North Easterly direction along the Northern right of way of Campbell's Trace until it intersects with NC 126 at the entrance to 1780 subdivision: thence continuing in a South Easterly Direction down encompassing the NC 126 bridge to where it intersects with the Duke Power Project Boundary 1200 foot contour of Lake James. This intersection is in the vicinity of



1 Mountain Harbor Marina Property: thence beginning in a South Westerly direction along the
2 Duke Power Project Boundary 1200 foot contour interval to the point and place of beginning.

3 Benfield's Landing Road to Powerhouse Rd to Laurel Ridge road to 1200' contour to
4 beginning: Beginning at the intersection of Duke Power Project Boundary 1200' contour
5 interval at its intersection with NC126 at the bridge known as Canal Bridge: thence going
6 South along the center of NC 126 approximately 450 feet to the center of SR 1234 also known
7 as Benfield's Landing Road: thence continuing along the center of Benfield's Landing Road in
8 an Easterly Direction approximately 2.2 miles to the intersection of Benfield's Landing Road
9 with SR 1233 also known as North Powerhouse Road: thence turning in a Northerly Direction
10 and continuing along the center of North Powerhouse Road, crossing the Paddy's Creek Dam,
11 then the Duke Power Lake James Spillway, then crossing the Linville Dam with Power Plant:
12 thence continuing Northerly along North Powerhouse Road to where the intersection of North
13 Powerhouse Road would intersect with the Eastern Right of Way of Laurel Ridge Court if
14 extended, a private right of way: thence continuing in a Northerly Direction along the Eastern
15 Right of Way of Laurel Ridge Court to a pipe in the Southern lot line of Lot 6 of Laurel Ridge
16 Subdivision recorded in Plat book 16 Page 248: thence S 53°24'39" E a distance of 64.43' to the
17 SE corner of Lot 6 Plat 16 page 248: thence N 54°18'11" E a distance of 208.98' to a point in
18 the land leased by Mimosa: thence continuing in a Western direction along the Northern line of
19 lot 6 to the point where Lot 6 intersects the Duke Power Project Boundary 1200' contour
20 interval as shown on Plat 16 Page 248: thence in a general Westerly direction along the Duke
21 Power Project Boundary 1200' contour interval, to the point and place of beginning.

22 East Shores: Beginning at a Northern Point in Lot 56 of East Shores Subdivision phase 6, as
23 recorded in the Burke County Register of Deeds plat Book 11 page 39, said point also being the
24 Duke Power Project Boundary 1200' contour interval at its intersection with lot 56 and property
25 owned by Stephen McCall deed book 665 page 496: thence proceeding in a Easterly direction
26 to the South Eastern corner of McCall as described in Deed Book 665 page 496: thence
27 proceeding South along the eastern line of Lot 53 of East Shores Subdivision, a boundary with
28 Ora Lee Love as described in Deed Book 127 page 558 to the South Western corner of Love:
29 thence turning East along the line of Love and Lots 69A, 70A, and 71A of East Shores to a
30 North Eastern corner of East Shores Subdivision: thence in a general South Western Direction
31 along the Easternmost boundary of East Shores subdivision to a point where it joins Mimosa
32 Fishing Club Incorporated at the Duke Power Project Boundary 1200 ft contour interval: thence
33 to close and fully encompass all of East Shores Subdivision by proceeding along the Duke
34 Power Project Boundary 1200 ft. contour interval and the Western Side of East Shores
35 Subdivision to the point and place of beginning.

36 SouthPointe: Beginning at the North-Western corner of Lot 63 SouthPointe Subdivision
37 Phase 8 as shown on Plat Book 34 page 56-57, said point also being the Duke Power Power
38 Project Boundary 1200 ft contour interval: thence in a North Eastern direction along the
39 Northern boundary of Lots 63, 64 and COS 10 as shown on Plat Book 34 page 56-57 to the
40 North Eastern corner of COS 10, said point being in vicinity of the Southern right of way of
41 NC 126: thence in a South-Eastern direction and parallel with the right of way of NC 126 to a
42 point in the Eastern right of way of SouthPointe Drive: thence in a Southerly direction along
43 the Eastern right of way of SouthPointe Drive to the South Western corner of Lot 260 of
44 SouthPointe Subdivision, phase 4, as shown in plat book 25 page 84: thence N 51°00'42" E a
45 distance of 231.74' to the Northern corner of Lot 260: thence S 77°00'05" E a distance of
46 171.58' to a point in the line of Lot 259: thence N 47°35'38" E a distance of 28.12' to the North
47 Western corner of Lot 259, said point located on the Duke Power Project Boundary 1200 ft
48 contour interval: thence proceeding in a South Easterly direction along the Duke Power Project
49 Boundary 1200 ft contour interval around and including all phases of SouthPointe subdivision
50 to the point and place of beginning.

51 "ARTICLE III. GOVERNING BODY.

1 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing body
2 of the Village of Lake James is the Village Council, which shall have seven members.

3 "Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial
4 election in 2009 provided for by Section 4.2 of this Charter, Clifford Becktel, Charles Hoffman,
5 Steven Lian, Howard Morgan, James Peterson, Denice Rechiene, and John Stiene are
6 appointed council members of the Village of Lake James, and they shall possess and exercise
7 the powers granted to the governing body until their successors are elected or appointed and
8 qualified pursuant to this Charter. The temporary officers shall elect persons to serve as Interim
9 Mayor and Interim Mayor Pro Tempore. If any person named in this section is unable to serve,
10 the remaining temporary officers shall, by majority vote, appoint a person to serve until the
11 initial election is held in 2009.

12 "Section 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters
13 of the entire Village shall elect the members of the Village Council and, except as provided in
14 this section, they shall serve four-year terms. In 2009, the four candidates receiving the highest
15 numbers of votes shall be elected to four-year terms, and the three candidates receiving the next
16 highest numbers of votes shall be elected to two-year terms. In 2011, and quadrennially
17 thereafter, three members shall be elected to four-year terms. In 2013, and quadrennially
18 thereafter, four members shall be elected to four-year terms. Vacancies on the Village Council
19 shall be filled in accordance with G.S. 160A-63.

20 "Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The Mayor shall be
21 elected from among the members of the Village Council at the organizational meeting after the
22 initial election in 2009 and shall serve for a term of two years. Thereafter, a Mayor shall be
23 elected biennially as provided in this section. The Mayor shall attend and preside over meetings
24 of the Village Council, shall advise the Village Council from time to time as to matters
25 involving the Village of Lake James, and shall have the right to vote as a member of the
26 Village Council on all matters before the Council, but shall have no right to break a tie vote in
27 which the Mayor has participated. In the case of a vacancy in the office of Mayor, the
28 remaining members of the Village Council shall choose from their own number a successor for
29 the unexpired term. In the case of a vacancy in the office of Mayor, the remaining members of
30 the Village Council shall choose from their own number a successor for the unexpired term.

31 "Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
32 Mayor Pro Tempore shall be elected from among the members of the Village Council at the
33 organizational meeting after the initial election in 2009 and shall serve for a term of two years.
34 Thereafter, a Mayor Pro Tempore shall be elected biennially as provided in this section. The
35 Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor
36 Pro Tempore are both absent from a meeting of the Village Council, the members of the
37 Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro
38 Tempore shall have the right to vote on all matters before the Village Council and shall be
39 considered a member of the Village Council for all purposes.

40 "Section 3.6. **Compensation of Mayor and Village Council.** The Mayor and members of
41 the Village Council shall be reimbursed for ordinary and necessary expenses and may receive
42 salary and honoraria only upon a majority vote of the qualified voters of the Village who vote
43 on the question in a special referendum.

44 "ARTICLE IV. ELECTIONS.

45 "Section 4.1. **Conduct of Village Elections.** Elections shall be conducted on a nonpartisan
46 basis and results determined by a plurality as provided in G.S. 163-292.

47 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
48 163 of the General Statutes, with the first regular municipal election to be held on November 3,
49 2009.

50 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
51 held only as provided by general law or applicable local acts of the General Assembly.

1 "ARTICLE V. ORGANIZATION AND ADMINISTRATION.

2 "Section 5.1. **Form of Government.** The Village shall operate under the Mayor-Council
3 form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

4 "Section 5.2. **Village Attorney.** The Village Council shall appoint a Village Attorney
5 licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to
6 represent the Village, advise Village officials, and perform other duties as required by law or as
7 directed by the Village Council. The Village Attorney shall serve at the pleasure of the Village
8 Council.

9 "Section 5.3. **Village Clerk.** The Village Council shall appoint a Village Clerk who shall
10 perform duties as required by law or as directed by the Village Council. The Village Clerk shall
11 serve at the pleasure of the Village Council.

12 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

13 "Section 6.1. **Powers of the Village Council.** The Village Council may levy those taxes
14 and fees authorized by general law. An affirmative vote equal to a majority of all the members
15 of the Village Council shall be required to change the ad valorem tax rate from the rate
16 established during the prior fiscal year.

17 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2009, the citizens
18 and property in the Village of Lake James shall be subject to municipal taxes levied for the year
19 beginning July 1, 2009, and for that purpose the Village shall obtain from Burke County a
20 record of property in the area herein incorporated which was listed for property taxes as of
21 January 1, 2009.

22 "Section 6.3. **Budget.** The Village may adopt a budget ordinance for fiscal year 2009-2010
23 without following the timetable in the Local Government Budget and Fiscal Control Act, but
24 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
25 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of
26 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
27 taxes had been due and payable on September 1, 2009. If the effective date of the incorporation
28 is prior to July 1, 2009, the Village may adopt a budget ordinance for fiscal year 2008-2009
29 without following the timetable in the Local Government Budget and Fiscal Control Act, but
30 shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem
31 taxes may be levied for the 2008-2009 fiscal year.

32 "Section 6.4. **Ad Valorem Taxes.** Notwithstanding Section 6.1 of this Charter, the Village
33 Council shall not approve an ad valorem tax rate greater than seven and one-half cents (7 1/2¢)
34 per one hundred dollars (\$100.00) valuation unless the tax rate is approved by an affirmative
35 vote of two-thirds of the qualified voters of the Village of Lake James. The procedures of
36 G.S. 160A-209 shall be followed for any such election.

37 "ARTICLE VII. ORDINANCES.

38 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Village of Lake
39 James is authorized to adopt such ordinances as the Village Council deems necessary for the
40 governance of the Village.

41 "ARTICLE VIII. SPECIAL PROVISIONS.

42 "Section 8.1. **Extraterritorial Jurisdiction.** Notwithstanding any other provision of law,
43 the Village of Lake James shall not exercise any powers of extraterritorial jurisdiction as
44 provided in Article 19 of Chapter 160A of the General Statutes.

45 "Section 8.2. **Annexation.** Notwithstanding any other provision of law, the Village of Lake
46 James shall not annex any territory within Burke County involuntarily, and shall not annex any
47 territory within McDowell County either voluntarily or involuntarily.

48 "Section 8.3. **Zoning.** Notwithstanding any other provision of law, any zoning ordinance
49 adopted by the Village of Lake James shall provide regulations and restrictions on matters
50 authorized in Part 3 of Article 19 of Chapter 160A of the General Statutes that are equal to or

1 greater than the regulations and restrictions that are in the Shoreline Protection Plan of the
2 Burke County zoning ordinance that was in effect on January 1, 2009.

3 "Section 8.4. **Public Access to Lake James.** Notwithstanding any other provision of law,
4 the Village of Lake James shall not adopt any ordinances, resolutions, or rules that restrict
5 public access to Lake James.

6 "Section 8.5. **Federal Energy Regulatory Commission Relicensing.** Notwithstanding any
7 other provision of law, the Village of Lake James shall not engage in any activity that interferes
8 with the Federal Energy Regulatory Commission (FERC) relicensing process for the
9 Catawba-Wateree Hydroelectric Project (Commission Project No. 2232). Prohibited activities
10 include intervening in the relicensing process, filing documents or otherwise advocating for
11 license conditions inconsistent with the Catawba-Wateree Comprehensive Relicensing
12 Agreement (CRA), or enlisting the support of any other entity or elected official to advocate for
13 license conditions or other changes that are inconsistent with the CRA. Upon the issuance of a
14 New License by FERC for the Catawba-Wateree Hydroelectric Project, the Village shall not
15 engage in activities or enlist the support of any other entity or elected official to seek changes
16 that are inconsistent with the provisions of the New License or CRA. Upon the expiration of
17 the New License for the Catawba-Wateree Hydroelectric Project, nothing in this section shall
18 be construed as prohibiting the Village from participating in any subsequent relicensing process
19 for the Catawba-Wateree Hydroelectric Project.

20 "Section 8.6. **Greenways; Other Public Areas.** Notwithstanding any other provision of
21 law, the Village of Lake James shall not adopt any ordinances, resolutions, or rules that restrict,
22 repeal, or interfere in any way with the terms of any agreements between Burke County and the
23 federal government or any other entity that are: (i) related to greenways, bicycle or walking
24 trails, and parking areas; and (ii) in existence or being negotiated on March 11, 2009.

25 "Section 8.7. **Alcoholic Beverages.** Notwithstanding any other provision of law, the
26 Village of Lake James shall not hold a malt beverage, unfortified wine, ABC store, or mixed
27 beverage election under Chapter 18B of the General Statutes or any other general or local law.

28 "Section 8.8. **Eminent Domain.** Notwithstanding any other provision of law, the Village of
29 Lake James may exercise the power of eminent domain as provided in Chapter 40A of the
30 General Statutes only for the public use or benefit. The Village shall not take private property
31 for the purpose of thereafter conveying an interest in the property to a third party for economic
32 development."

33 **SECTION 2.** This act is effective when it becomes law.