

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 256

Short Title: Incorporate Lake James. (Local)

Sponsors: Representative Blackwell (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Government.

March 9, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF LAKE JAMES.

3 The General Assembly of North Carolina enacts:

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

5 "CHARTER OF THE VILLAGE OF LAKE JAMES.

6 "ARTICLE I. INCORPORATION AND CORPORATE POWERS.

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

11 "ARTICLE II. CORPORATE BOUNDARIES.

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

14 1780 Boundary to 126 to Canal and back to Canal: Beginning at a 5/8" rebar as shown on
15 Plat Book 30 page 37 in Burke County Register of Deeds and located on the Duke Power
16 Project Boundary of Lake James, elev. 1200 ft., and also on the McDowell and Burke County
17 Line, said rebar located S 46°09'38" E a distance of 25059.54' from the county line corner
18 located on Dobson Knob with NAD 83 coordinates N-761953.51', E-1114344.03": thence
19 along the 1200 foot contour Duke Power Project Boundary in a northeasterly direction and
20 along the boundary of 1780 LLC as shown on Plat Book 30 page 37 approximately 1692 feet to
21 a 5/8" rebar with cap located on the 1200 foot contour and located in a cove: thence N
22 25°11'57" E a distance of 270.06' to the SW corner of Delane Moss recorded in Deed Book 831
23 page 1684: thence S 84°59'42" E a distance of 354.42' along the northern 1780 LLC boundary
24 to a 1.5 inch iron pipe: thence S 84°40'12" E a distance of 361.38' along the line of Fredrick
25 McMahon as described in DB 952 page 1136: thence S 85°17'18" E a distance of 296.23' to a
26 concrete monument: thence S 80°47'05" E a distance of 245.94' to a nail in a poplar and being
27 the SW corner of Dennis Canova: thence S 87°51'09" E a distance of 415.14' to an iron pipe:
28 thence S 58°18'07" E a distance of 362.28': thence S 02°42'25" W a distance of 358.69' to an
29 iron pipe found at a fence corner: thence S 87°04'44" E a distance of 33.84' to an iron pipe
30 found at a fence corner: thence S 02°39'17" W a distance of 344.94' to a 1" iron which is the
31 SW corner of Canova as described in DB 929 page 1762: thence N 87°22'22" E a distance of
32 430.67' to the Western boundary of a private r/w with road name Campbell's Trace: thence
33 continuing in a northeasterly direction along the northern right-of-way of Campbell's Trace
34 until it intersects with NC 126 at the entrance to 1780 subdivision: thence continuing in a
35 southeasterly direction down encompassing the NC 126 bridge to where it intersects with the



1 Duke Power Project Boundary 1200 foot contour of Lake James. This intersection is in the
2 vicinity of Mountain Harbor Marina Property: thence beginning in a southwesterly direction
3 along the Duke Power Project Boundary 1200 foot contour interval to the point and place of
4 beginning.

5 Benfield's Landing Road to Powerhouse Rd to Laurel Ridge road to 1200' contour to
6 beginning: Beginning at the intersection of Duke Power Project Boundary 1200' contour
7 interval at its intersection with NC 126 at the bridge known as Canal Bridge: thence going
8 South along the center of NC 126 approximately 450 feet to the center of SR 1234 also known
9 as Benfield's Landing Road: thence continuing along the center of Benfield's Landing Road in
10 an easterly direction approximately 2.2 miles to the intersection of Benfield's Landing Road
11 with SR 1233 also known as North Powerhouse Road: thence turning in a northerly direction
12 and continuing along the center of North Powerhouse Road, crossing the Paddy's Creek Dam,
13 then the Duke Power Lake James Spillway, then crossing the Linville Dam with Power Plant:
14 thence continuing northerly along North Powerhouse Road to where the intersection of North
15 Powerhouse Road would intersect with the eastern right-of-way of Laurel Ridge Court if
16 extended, a private right-of-way: thence continuing in a northerly direction along the eastern
17 right-of-way of Laurel Ridge Court to a pipe in the southern lot line of Lot 6 of Laurel Ridge
18 Subdivision recorded in Plat Book 16 page 248: thence S 53°24'39" E a distance of 64.43' to the
19 SE corner of Lot 6 recorded in Plat Book 16 page 248: thence N 54°18'11" E a distance of
20 208.98' to a point in the land leased by Mimosa: thence continuing in a westerly direction along
21 the northern line of Lot 6 to the point where Lot 6 intersects the Duke Power Project Boundary
22 1200' contour interval as shown on Plat Book 16 page 248: thence in a general westerly
23 direction along the Duke Power Project Boundary 1200' contour interval, to the point and place
24 of beginning.

25 East Shores: Beginning at a northern Point in Lot 56 of East Shores Subdivision, phase 6, as
26 recorded in the Burke County Register of Deeds Plat Book 11 page 39, said point also being the
27 Duke Power Project Boundary 1200' contour interval at its intersection with Lot 56 and
28 property owned by Stephen McCall as described in Deed Book 665 page 496: thence
29 proceeding in an easterly direction to the southeastern corner of McCall as described in Deed
30 Book 665 page 496: thence proceeding South along the eastern line of Lot 53 of East Shores
31 Subdivision, a boundary with Ora Lee Love as described in Deed Book 127 page 558 to the
32 southwestern corner of Love: thence turning East along the line of Love and Lots 69A, 70A,
33 and 71A of East Shores to a northeastern corner of East Shores Subdivision: thence in a general
34 southwesterly direction along the easternmost boundary of East Shores subdivision to a point
35 where it joins Mimosa Fishing Club Incorporated at the Duke Power Project Boundary 1200 ft.
36 contour interval: thence to close and fully encompass all of East Shores Subdivision by
37 proceeding along the Duke Power Project Boundary 1200 ft. contour interval and the western
38 side of East Shores Subdivision to the point and place of beginning.

39 SouthPointe: Beginning at the northwestern corner of Lot 63 SouthPointe Subdivision,
40 phase 8, as shown on Plat Book 34 pages 56-57, said point also being the Duke Power Project
41 Boundary 1200 ft. contour interval: thence in a northeasterly direction along the northern
42 boundary of Lots 63, 64, and COS 10 as shown on Plat Book 34 pages 56-57 to the
43 northeastern corner of COS 10, said point being in vicinity of the southern right-of-way of NC
44 126: thence in a southeasterly direction and parallel with the right-of-way of NC 126 to a point
45 in the eastern right-of-way of SouthPointe Drive: thence in a southerly direction along the
46 eastern right-of-way of SouthPointe Drive to the southwestern corner of Lot 260 of
47 SouthPointe Subdivision, phase 4, as shown in Plat Book 25 page 84: thence N 51°00'42" E a
48 distance of 231.74' to the northern corner of Lot 260: thence S 77°00'05" E a distance of
49 171.58' to a point in the line of Lot 259: thence N 47°35'38" E a distance of 28.12' to the
50 northwestern corner of Lot 259, said point located on the Duke Power Project Boundary 1200
51 ft. contour interval: thence proceeding in a southeasterly direction along the Duke Power

1 Project Boundary 1200 ft. contour interval around and including all phases of SouthPointe
2 subdivision to the point and place of beginning. Excluded from the above description, however,
3 is any territory in McDowell County.

4 "ARTICLE III. GOVERNING BODY.

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

7 "Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial
8 election in 2011 provided for by Section 4.2 of this Charter, Charles Hoffman, Steven Lian,
9 Howard Morgan, James Peterson, and John Stiene are appointed council members of the
10 Village of Lake James, and they shall possess and exercise the powers granted to the governing
11 body until their successors are elected or appointed and qualified pursuant to this Charter. The
12 temporary officers shall elect persons to serve as Interim Mayor and Interim Mayor Pro
13 Tempore. If any person named in this section is unable to serve, the remaining temporary
14 officers shall, by majority vote, appoint a person to serve until the initial election is held in
15 2011.

16 "Section 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters
17 of the entire Village shall elect the members of the Village Council and, except as provided in
18 this section, they shall serve four-year terms. In 2011, the three candidates receiving the highest
19 numbers of votes shall be elected to four-year terms, and the two candidates receiving the next
20 highest numbers of votes shall be elected to two-year terms. In 2013, and quadrennially
21 thereafter, two members shall be elected to four-year terms. In 2015, and quadrennially
22 thereafter, three members shall be elected to four-year terms. Vacancies on the Village Council
23 shall be filled in accordance with G.S. 160A-63.

24 "Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The Mayor shall be
25 elected from among the members of the Village Council at the organizational meeting after the
26 initial election in 2011, and shall serve for a term of two years. Thereafter, a Mayor shall be
27 elected biennially as provided in this section. The Mayor shall attend and preside over meetings
28 of the Village Council, shall advise the Village Council from time to time as to matters
29 involving the Village of Lake James, and shall have the right to vote as a member of the
30 Village Council on all matters before the Council, but shall have no right to break a tie vote in
31 which the Mayor has participated. In the case of a vacancy in the office of Mayor, the
32 remaining members of the Village Council shall choose from their own number a successor for
33 the unexpired term.

34 "Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
35 Mayor Pro Tempore shall be elected from among the members of the Village Council at the
36 organizational meeting after the initial election in 2011, and shall serve for a term of two years.
37 Thereafter, a Mayor Pro Tempore shall be elected biennially as provided in this section. The
38 Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor
39 Pro Tempore are both absent from a meeting of the Village Council, the members of the
40 Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro
41 Tempore shall have the right to vote on all matters before the Village Council and shall be
42 considered a member of the Village Council for all purposes.

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

47 "ARTICLE IV. ELECTIONS.

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

1 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
2 163 of the General Statutes, with the first regular municipal election to be held on November 8,
3 2011.

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

6 "ARTICLE V. ORGANIZATION AND ADMINISTRATION.

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

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

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

17 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

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

22 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens
23 and property in the Village of Lake James shall be subject to municipal taxes levied for the year
24 beginning July 1, 2011, and for that purpose the Village shall obtain from Burke County a
25 record of property in the area herein incorporated which was listed for property taxes as of
26 January 1, 2011.

27 "Section 6.3. **Budget.** The Village may adopt a budget ordinance for fiscal year 2011-2012
28 without following the timetable in the Local Government Budget and Fiscal Control Act, but
29 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
30 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of adoption of
31 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
32 taxes had been due and payable on September 1, 2011. If the effective date of the incorporation
33 is prior to July 1, 2011, the Village may adopt a budget ordinance for fiscal year 2010-2011
34 without following the timetable in the Local Government Budget and Fiscal Control Act, but
35 shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem
36 taxes may be levied for the 2010-2011 fiscal year.

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

42 "ARTICLE VII. ORDINANCES.

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

46 "ARTICLE VIII. SPECIAL PROVISIONS.

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

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

4 "Section 8.3. **Zoning.** Notwithstanding any other provision of law, any zoning ordinance
5 adopted by the Village of Lake James shall provide regulations and restrictions on matters
6 authorized in Part 3 of Article 19 of Chapter 160A of the General Statutes that are equal to or
7 greater than the regulations and restrictions that are in the Shoreline Protection Plan of the
8 Burke County zoning ordinance that was in effect on January 1, 2009.

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

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

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

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

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

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