

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

FILED SENATE  
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S.B. 312  
PRINCIPAL CLERK

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SENATE DRS85087-LMx-89A\* (03/01)

Short Title: Referendum on Incorporating Lake James. (Local)

Sponsors: Senator Daniel (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT REQUIRING A REFERENDUM ON WHETHER TO INCORPORATE THE  
3 VILLAGE OF LAKE JAMES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The Burke County Board of Elections shall conduct an election on  
6 November 5, 2013, for the purpose of submission to the qualified voters for the area described  
7 in Section 2.1 of the proposed Charter of the Village of Lake James the question of whether or  
8 not the area shall be incorporated as the Village of Lake James. Registration for the election  
9 shall be conducted in accordance with G.S. 163-288.2.

10 **SECTION 2.** In the election, the question on the ballot shall be:

11 "[ ] FOR [ ] AGAINST

12 Incorporation of the Village of Lake James."

13 **SECTION 3.** In the election, if a majority of the votes are cast "FOR Incorporation  
14 of the Village of Lake James," Section 5 of this act shall become effective on the date that the  
15 Burke County Board of Elections certifies the results of the election. Otherwise, Section 5 of  
16 this act shall have no force and effect.

17 **SECTION 4.** At the same time as the election held under Section 1 of this act, the  
18 Burke County Board of Elections shall hold an election for the initial Village Council as  
19 provided in Articles III and IV of the proposed Charter of the Village of Lake James. If the  
20 majority of votes is not cast "FOR Incorporation of the Village of Lake James," the election of  
21 officers is null and void. The filing period for candidacies is the same as provided by  
22 G.S. 163-294.2.

23 **SECTION 5.** A Charter for the Village of Lake James is enacted to read:

24 "CHARTER OF THE VILLAGE OF LAKE JAMES.

25 "ARTICLE I. INCORPORATION AND CORPORATE POWERS.

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

30 "ARTICLE II. CORPORATE BOUNDARIES.

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

33 1780 Boundary to 126 to Canal and back to Canal: Beginning at a 5/8" rebar as shown on  
34 Plat Book 30 page 37 in Burke County Register of Deeds and located on the Duke Power  
35 Project Boundary of Lake James, elev. 1200 ft., and also on the McDowell and Burke County  
36 Line, said rebar located S 46°09'38" E a distance of 25059.54' from the county line corner



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1 located on Dobson Knob with NAD 83 coordinates N-761953.51', E-1114344.03": thence  
2 along the 1200 foot contour Duke Power Project Boundary in a northeasterly direction and  
3 along the boundary of 1780 LLC as shown on Plat Book 30 page 37 approximately 1692 feet to  
4 a 5/8" rebar with cap located on the 1200 foot contour and located in a cove: thence N  
5 25°11'57" E a distance of 270.06' to the SW corner of Delane Moss recorded in Deed Book 831  
6 page 1684: thence S 84°59'42" E a distance of 354.42' along the northern 1780 LLC boundary  
7 to a 1.5 inch iron pipe: thence S 84°40'12" E a distance of 361.38' along the line of Fredrick  
8 McMahon as described in DB 952 page 1136: thence S 85°17'18" E a distance of 296.23' to a  
9 concrete monument: thence S 80°47'05" E a distance of 245.94' to a nail in a poplar and being  
10 the SW corner of Dennis Canova: thence S 87°51'09" E a distance of 415.14' to an iron pipe:  
11 thence S 58°18'07" E a distance of 362.28': thence S 02°42'25" W a distance of 358.69' to an  
12 iron pipe found at a fence corner: thence S 87°04'44" E a distance of 33.84' to an iron pipe  
13 found at a fence corner: thence S 02°39'17" W a distance of 344.94' to a 1" iron which is the  
14 SW corner of Canova as described in DB 929 page 1762: thence N 87°22'22" E a distance of  
15 430.67' to the Western boundary of a private r/w with road name Campbell's Trace: thence  
16 continuing in a northeasterly direction along the northern right-of-way of Campbell's Trace  
17 until it intersects with NC 126 at the entrance to 1780 subdivision: thence continuing in a  
18 southeasterly direction down encompassing the NC 126 bridge to where it intersects with the  
19 Duke Power Project Boundary 1200 foot contour of Lake James. This intersection is in the  
20 vicinity of Mountain Harbor Marina Property: thence beginning in a southwesterly direction  
21 along the Duke Power Project Boundary 1200 foot contour interval to the point and place of  
22 beginning.

23 Benfield's Landing Road to Powerhouse Rd to Laurel Ridge road to 1200' contour to  
24 beginning: Beginning at the intersection of Duke Power Project Boundary 1200' contour  
25 interval at its intersection with NC 126 at the bridge known as Canal Bridge: thence going  
26 South along the center of NC 126 approximately 450 feet to the center of SR 1234 also known  
27 as Benfield's Landing Road: thence continuing along the center of Benfield's Landing Road in  
28 an easterly direction approximately 2.2 miles to the intersection of Benfield's Landing Road  
29 with SR 1233 also known as North Powerhouse Road: thence turning in a northerly direction  
30 and continuing along the center of North Powerhouse Road, crossing the Paddy's Creek Dam,  
31 then the Duke Power Lake James Spillway, then crossing the Linville Dam with Power Plant:  
32 thence continuing northerly along North Powerhouse Road to where the intersection of North  
33 Powerhouse Road would intersect with the eastern right-of-way of Laurel Ridge Court if  
34 extended, a private right-of-way: thence continuing in a northerly direction along the eastern  
35 right-of-way of Laurel Ridge Court to a pipe in the southern lot line of Lot 6 of Laurel Ridge  
36 Subdivision recorded in Plat Book 16 page 248: thence S 53°24'39" E a distance of 64.43' to the  
37 SE corner of Lot 6 recorded in Plat Book 16 page 248: thence N 54°18'11" E a distance of  
38 208.98' to a point in the land leased by Mimosa: thence continuing in a westerly direction along  
39 the northern line of Lot 6 to the point where Lot 6 intersects the Duke Power Project Boundary  
40 1200' contour interval as shown on Plat Book 16 page 248: thence in a general westerly  
41 direction along the Duke Power Project Boundary 1200' contour interval, to the point and place  
42 of beginning.

43 East Shores: Beginning at a northern Point in Lot 56 of East Shores Subdivision, phase 6, as  
44 recorded in the Burke County Register of Deeds Plat Book 11 page 39, said point also being the  
45 Duke Power Project Boundary 1200' contour interval at its intersection with Lot 56 and  
46 property owned by Stephen McCall as described in Deed Book 665 page 496: thence  
47 proceeding in an easterly direction to the southeastern corner of McCall as described in Deed  
48 Book 665 page 496: thence proceeding South along the eastern line of Lot 53 of East Shores  
49 Subdivision, a boundary with Ora Lee Love as described in Deed Book 127 page 558 to the  
50 southwestern corner of Love: thence turning East along the line of Love and Lots 69A, 70A,  
51 and 71A of East Shores to a northeastern corner of East Shores Subdivision: thence in a general

1 southwesterly direction along the easternmost boundary of East Shores subdivision to a point  
2 where it joins Mimosa Fishing Club Incorporated at the Duke Power Project Boundary 1200 ft.  
3 contour interval: thence to close and fully encompass all of East Shores Subdivision by  
4 proceeding along the Duke Power Project Boundary 1200 ft. contour interval and the western  
5 side of East Shores Subdivision to the point and place of beginning.

6 SouthPointe: Beginning at the northwestern corner of Lot 63 SouthPointe Subdivision,  
7 phase 8, as shown on Plat Book 34 pages 56-57, said point also being the Duke Power Project  
8 Boundary 1200 ft. contour interval: thence in a northeasterly direction along the northern  
9 boundary of Lots 63, 64, and COS 10 as shown on Plat Book 34 pages 56-57 to the  
10 northeastern corner of COS 10, said point being in vicinity of the southern right-of-way of NC  
11 126: thence in a southeasterly direction and parallel with the right-of-way of NC 126 to a point  
12 in the eastern right-of-way of SouthPointe Drive: thence in a southerly direction along the  
13 eastern right-of-way of SouthPointe Drive to the southwestern corner of Lot 260 of  
14 SouthPointe Subdivision, phase 4, as shown in Plat Book 25 page 84: thence N 51°00'42" E a  
15 distance of 231.74' to the northern corner of Lot 260: thence S 77°00'05" E a distance of  
16 171.58' to a point in the line of Lot 259: thence N 47°35'38" E a distance of 28.12' to the  
17 northwestern corner of Lot 259, said point located on the Duke Power Project Boundary 1200  
18 ft. contour interval: thence proceeding in a southeasterly direction along the Duke Power  
19 Project Boundary 1200 ft. contour interval around and including all phases of SouthPointe  
20 subdivision to the point and place of beginning. Excluded from the above description, however,  
21 is any territory in McDowell County.

#### 22 "ARTICLE III. GOVERNING BODY.

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

25 "Section 3.2. **Manner of Electing Village Council; Term of Office.** The qualified voters  
26 of the entire Village shall elect the members of the Village Council and, except as provided in  
27 this section, they shall serve four-year terms. In 2013, the three candidates receiving the highest  
28 numbers of votes shall be elected to four-year terms, and the two candidates receiving the next  
29 highest numbers of votes shall be elected to two-year terms. In 2015, and quadrennially  
30 thereafter, two members shall be elected to four-year terms. In 2017, and quadrennially  
31 thereafter, three members shall be elected to four-year terms. Vacancies on the Village Council  
32 shall be filled in accordance with G.S. 160A-63.

33 "Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** The Mayor shall be  
34 elected from among the members of the Village Council at the organizational meeting after the  
35 initial election in 2013, and shall serve for a term of two years. Thereafter, a Mayor shall be  
36 elected biennially as provided in this section. The Mayor shall attend and preside over meetings  
37 of the Village Council, shall advise the Village Council from time to time as to matters  
38 involving the Village of Lake James, and shall have the right to vote as a member of the  
39 Village Council on all matters before the Council, but shall have no right to break a tie vote in  
40 which the Mayor has participated. In the case of a vacancy in the office of Mayor, the  
41 remaining members of the Village Council shall choose from their own number a successor for  
42 the unexpired term.

43 "Section 3.4. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The  
44 Mayor Pro Tempore shall be elected from among the members of the Village Council at the  
45 organizational meeting after the initial election in 2013, and shall serve for a term of two years.  
46 Thereafter, a Mayor Pro Tempore shall be elected biennially as provided in this section. The  
47 Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor  
48 Pro Tempore are both absent from a meeting of the Village Council, the members of the  
49 Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro  
50 Tempore shall have the right to vote on all matters before the Village Council and shall be  
51 considered a member of the Village Council for all purposes.

1 "Section 3.5. **Compensation of Mayor and Village Council.** The Mayor and members of  
2 the Village Council shall be reimbursed for ordinary and necessary expenses and may receive  
3 salary and honoraria only upon a majority vote of the qualified voters of the Village who vote  
4 on the question in a special referendum.

5 "ARTICLE IV. ELECTIONS.

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

8 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter  
9 163 of the General Statutes, with the first regular municipal election to be held on November 5,  
10 2013.

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

13 "ARTICLE V. ORGANIZATION AND ADMINISTRATION.

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

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

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

24 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

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

29 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2013, the citizens  
30 and property in the Village of Lake James shall be subject to municipal taxes levied for the year  
31 beginning July 1, 2013, and for that purpose the Village shall obtain from Burke County a  
32 record of property in the area herein incorporated which was listed for property taxes as of  
33 January 1, 2013.

34 "Section 6.3. **Budget.** The Village may adopt a budget ordinance for fiscal year 2013-2014  
35 without following the timetable in the Local Government Budget and Fiscal Control Act, but  
36 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year  
37 2013-2014, ad valorem taxes may be paid at par or face amount within 90 days of adoption of  
38 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the  
39 taxes had been due and payable on September 1, 2013. If the effective date of the incorporation  
40 is prior to July 1, 2013, the Village may adopt a budget ordinance for fiscal year 2012-2013  
41 without following the timetable in the Local Government Budget and Fiscal Control Act, but  
42 shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem  
43 taxes may be levied for the 2012-2013 fiscal year.

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

49 "ARTICLE VII. ORDINANCES.

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

4 "ARTICLE VIII. SPECIAL PROVISIONS.

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

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

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

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

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

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

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

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

46 **SECTION 6.** This act is effective when it becomes law.