

**Article XII of the Alabama Constitution**  
**Sections 229-246 (Private Corporations, Railroads, and Canals)<sup>1</sup>**

Revised November 3, 2011

<b>Sec. 229. Special laws conferring corporate powers prohibited; general law as to grant or amendment of corporate charters; corporation franchise taxes to be paid; exemption of benevolent, educational or religious corporations and federal building and loan associations from franchise taxes.<sup>2</sup></b>	
<b>Current</b>	<b>Proposed</b>
<p>The legislature shall pass no special act conferring corporate powers, but it shall pass general laws under which corporations may be organized and corporate powers obtained, subject, nevertheless, to repeal at the will of the legislature; and shall pass general laws under which charters may be altered or amended. The legislature shall, by general laws, provide for the payment to the state of Alabama of a franchise tax by corporations organized under the laws of this state which shall be in proportion to the amount of capital stock; but strictly benevolent, educational or religious corporations or federal building and loan associations organized pursuant to an act of congress known as the Home Owners' Loan Act of 1933, as amended, and as the same may hereafter be amended, or building and loan associations organized under or authorized to do business by the laws of Alabama shall not be required to pay such a tax on their withdrawable or repurchasable shares. The charter of any corporation shall be subject to amendment, alteration, or repeal under general laws. Exemption of the shares of building and loan associations from franchise taxes heretofore provided by statute is ratified.</p>	<p><u>The Legislature shall pass general laws under which corporations and other entities may be organized, authorized to do business or conduct their affairs, operated, dissolved, and regulated; such laws, now existing or hereafter passed, shall be subject to amendment or repeal by general law. The Legislature, by general law, shall provide for the payment to the State of Alabama of a tax on the privilege of doing business in Alabama or being organized, incorporated, qualified, or registered under the laws of Alabama. Strictly benevolent, educational, or religious corporations shall not be required to pay such tax on their withdrawable or repurchasable shares to the extent they have such shares.</u></p>

<sup>1</sup> As a point of information, Article 12, in addition to dealing with Private Corporations, Railroads, and Canals, also includes sections 220-228.01, "Municipal Corporations." Since the scope of those sections deals primarily with finance, they appear to be beyond the scope of this Commission's charge.

<sup>2</sup> Section titles are generally inserted in the legislative and codification process and are not considered law. If the proposed language in the right hand column (which was the language of the bills to revise Art. 12 introduced in the most recent Regular Session of the Legislature) were adopted the title to this section would be changed appropriately.

- Comments:**
1. **Proposed Language.** The proposed language in the right hand column of the chart is identical to that of HB-21 and SB-29 of the 2011 Legislative Session. Earlier bills corresponding to HB-21 and SB-28 were introduced in the 2007, 2008, 2009, and 2010 Regular Sessions. The last sentence of the proposed language has been “shadowed”; it does not appear to be necessary.
  2. **The First Sentence of Present 229.** The first sentence of the present Section 229 served several important and related functions in the 1901 Constitution.

**Eliminate Special Act Corporate Chartering.** First, it eliminated the business and legislative practice of chartering corporations by special act. The 1875 Constitution (Art. IV, sec. 1), permitted corporations to be created by special act for “manufacturing, mining [and] industrial ... purposes, or for constructing canals, or improving navigable rivers and harbors”, i.e. for most of the economically significant purposes in the time period when the “industrial revolution” was occurring in the state. The first phrase of section 229’s first sentence was intended to eliminate this practice. Delegate (and later Governor) Emmett O’Neal spoke at length on the floor of the convention against the practice of special laws overall and particularly against special bills to form corporations. 2 Const. Conv. 1901 Off. Proceedings 1779-1780. Thus, like the provisions of sections 104-110 of Article IV, it was part and parcel of the 1901 Convention’s efforts to control the legislative practice of enacting local and special laws, an effort that had a high priority in the 1901 Convention. Interestingly, subsection (6) of section 104 prohibits any special act “[g]ranting a charter to any corporation [or] association” and thus appears to overlap with section 229 and is not restated here.

In this one instance, the Constitution of 1901 was successful in eliminating this aspect of the practice of legislating through local or special laws. See also section 231, which in some ways serves as a transition section with regard to existing special-act corporations by requiring that if the Legislature “remits the forfeiture” (probably because the duration of existence was expiring) such a corporation shall thereafter be subject to the general corporate laws. See also Section 239, in which the Legislature retains the power to “revoke” the charter of existing corporations.

**Mandate That General Corporate Laws Be Enacted.** Second, section 229, in the same first sentence, mandates the enactment of general corporate laws. Two years after the adoption of the 1901 Constitution, in 1903, the Legislature in fact adopted a comprehensive general corporate statute, which ultimately evolved, through the legislative process, into our present Business and NonProfit Entity Code, the corporate features of which are drawn largely from the Model Business Corporations Act, widely adopted thorough out the country. Thus, this aspect of the first sentence of section 229 was a smashing success. However it was a success that the delegates to the 1901 Convention could not necessarily foresee. Since they could not be certain that the legislative mandate would be carried out, they adopted as part of Art. XII a number of sections that are really “statutory” and address subjects now addressed by the corporate statutory provisions. This is true as to sections 232, 233, 234, and 237.

**Additional Legislative Powers as to Corporations (And Other Entities).** More specifically, the first sentence of section 229 mandated general laws “under which corporations may be organized and corporate powers conferred” and was also specific that the legislature retained the power to repeal such general laws, and also address the alteration, amendment, and (in the last sentence) repeal of charters. The second sentence mandated that the legislature provide for “franchise taxes . . . in proportion to capital stock.”

The proposed language retains but updates the legislative powers under present sec. 229. For one thing, it recognizes that the legislature has power to adopt laws with regard to “other entities,” since there now exist a number of non-corporate entities under Alabama law. It also uses the term “privilege tax” rather than “franchise tax”, since the “privilege tax” was adopted in 1999 to replace the franchise tax after the latter was declared unconstitutional. See Alabama Business Privilege and Corporations Shares Tax Act of 1999, Alabama Code sec. 40-14A-1 through sec. 40-14A-43 and comments under sec. 234 below).

**Retention of Exemption for “Strictly Benevolent, Educational or Religious Corporations.** The proposal retains the exemption for “strictly benevolent, educational or religious corporations.” Such corporations were exempted in the original 1901 version of section 229. In any event, a statutory exemption in sec. 40-14A-43 of the Alabama Business Privilege And Corporation Shares Tax Act of 1999 covers those entities described by the constitutional exemption for “strictly benevolent, educational or religious corporations. The reference to “building and loan associations” which was added by Amendment 27 in 1935 has not been retained. “Building and loan associations,” along with other “financial institutions” are statutorily exempt under Alabama Code sec. 40-14A-32(1) from the “shares tax” levied by section 40-14A-32. It should be noted that the Amendment 27 exemption arose from the fact that building and loan association deposit accounts were sometimes referred to as “shares” even though they were in reality not the same as corporate shares but were instead the equivalent of a typical bank account. The purpose of the exemption in Amendment 27 was simply to make clear that they were not to be considered “shares” for purposes of the “franchise tax” originally provided for by section 229. With the deletion of the language in section 220 imposing a corporate “franchise tax” in proportion to “capital stock” and with the enactment of the Business Privilege and Corporation Shares Tax in lieu of the old franchise tax, and with the exemption of financial institutions from the shares tax, this no longer seems necessary.

<b>Sec. 230. Cancellation of certain corporate charters.</b>	
<b>Current</b>	<b>Proposed</b>
All existing charters, under which a bona fide organization shall not have taken place and business commenced in good faith within twelve months from the time of the ratification of this Constitution, shall thereafter have no validity.	Repealed
<b>Comments:</b> This section became moot 12 months after the ratification of the 1901 Alabama Constitution.	

**Sec. 231. Limitation on remitting forfeiture of corporate charters.**

<b>Current</b>	<b>Proposed</b>
The legislature shall not remit the forfeiture of the charter of any corporation now existing or alter or amend the same, nor pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.	Repealed

**Comments:** This provision is archaic and is proposed to be repealed. As noted above, under the 1875 Constitution, were formed by special acts of the Legislature, which sometimes provided for only a limited existence. When that time period ended the charter granted by the special act was “forfeited” and had to be renewed by the legislature (which, technically, would “remit” the forfeiture). This provision may be thought of as a “transition” provision as the corporate chartering procedure moved from “special-act-corporations” to “general-law-corporations.”

<b>Sec. 232. Foreign corporations doing business in state.<sup>3</sup></b>	
<b>Current</b>	<b>Proposed</b>
No foreign corporation shall do business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Any foreign corporation, whether or not such corporation has qualified to do business in this state by filing with the secretary of state a certified copy of its articles of incorporation or association, may be sued only in those counties where such suit would be allowed if the said foreign corporation were a domestic corporation. The legislature shall, by general law, provide for the payment to the state of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax. (As amended by Amendment 473).	Repealed

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<sup>3</sup> For those who may not be familiar with the nomenclature, “foreign corporation” refers to a corporation formed under the laws of any jurisdiction other than Alabama. Thus a Tennessee corporation is a “foreign corporation.”

**Comments:** Alabama has adopted the Model Business Corporation Act since the Constitution was ratified, and thus the first sentence of this section is unnecessary because Ala. Code § 10A-1-5.31 requires foreign corporations to have a registered office and agent, Ala. Code § 10A-2-15.01 requires foreign corporations to register with the Secretary of State to transact business in Alabama and Ala. Code § 10A-2-7.01(b) specifies the information to be set forth in the application for registration.

The second sentence of existing section 232 is also unnecessary because Ala. Code § 6-3-7(a) subjects foreign corporations to the availability for suit in Alabama.

The third sentence has been ruled unconstitutional by the United States Supreme Court as an impermissible discrimination against interstate commerce. *South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160 (1999). At one time that sentence seemed to offer an advantage to the state and to domestic Alabama corporations, since it allowed, indeed mandated, that foreign corporations pay the tax on their actual capital. Domestic corporations, on the other hand, paid a franchise tax based on their stated capital, which could be a nominal amount. However, the invalidation of that discriminatory system not only required the legislature to replace the foreign franchise tax, which was actually made a fairly significant contribution to the state general fund, but also deal with the problem of refunds. Ultimately the Legislature replaced the foreign and domestic franchise tax with a new corporate “privilege tax” (which explains why the term “privilege tax” has replaced “franchise tax” in sec. 229 above, applicable to both domestic and foreign corporations.

With the third sentence of the present section 232 deleted, the fourth sentence, which operated as an exception to the third sentence, is also deleted.

**Sec. 233. Corporations restricted to business authorized by charter.**

<b>Current</b>	<b>Proposed</b>
No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation.	Repealed

**Comments:** Alabama has adopted the Model Business Corporation Act since the Constitution was ratified, under which corporations are not required to enumerate their purposes in their articles of incorporation they can be organized “for any lawful purpose” (Ala. Code § 10A-2-3.01). This section’s limitation to authorized business is unnecessary because the Code authorizes all lawful business to corporations.

**Sec. 234. Restrictions on issuance of corporate stock and bonds.**

<b>Current</b>	<b>Proposed</b>
No corporation shall issue stocks or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice, given in pursuance of law.	Repealed

**Comments:** Ala. Code § 10A-2-6.21(b) of the Alabama Corporation Code essentially tracks Section 234's requirement as to consideration, rendering the requirement of section 234's first sentence unnecessary.

Moreover, the Corporation Code requires a majority vote at a proper meeting to amend articles of incorporation. Ala. Code § 10A-2-10.03. Since the articles of incorporation must state the number of authorized shares (Ala. Code § 10A-2-6.01(a)), the net result is that a majority vote is required to change the number of authorized shares. Thus the section 234’s second sentence is unnecessary as well.

**Sec. 235. Taking of property for public use by municipal and other corporations.**

<b>Current</b>	<b>Proposed</b>
<p>Municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation, to be ascertained as may be provided by law, for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The legislature is hereby prohibited from denying the right of appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise, but such appeal shall not deprive those who have obtained the judgment of condemnation from a right of entry, provided the amount of damages assessed shall have been paid into court in money, and a bond shall have been given in not less than double the amount of the damages assessed, with good and sufficient sureties, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party, be determined by a jury according to law.</p>	<p>Not Changed</p>
<p><b>Comments:</b> This provision is regarded as remedial in character, giving owners of property taken by eminent domain an assurance of payment of compensation.</p>	

<b>Sec. 236. Security for dues from private corporations; liability of stockholders.</b>	
<b>Current</b>	<b>Proposed</b>
Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.	“Repealed”, but only to be re-located without change to section 240.
<b>Comments:</b> The text Section 236 is re-located to Section 240, where it appears as the second sentence of that Section. The reason for the re-location was simply a matter of consolidation.	

<b>Sec. 237. Issuance of preferred stock by corporations.</b>	
<b>Current</b>	<b>Proposed</b>
No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.	Repealed
<p><b>Comments:</b> The Corporation Code does not provide different requirements for the issuance of different classes of stock. Ala. Code § 10A-2-6.21 allows the board to <i>issue</i> stock without shareholder approval, unless the articles require shareholder approval. Notably, a majority of shareholders must approve an increase in <i>authorized</i> shares because such an increase requires amendment to the articles, which requires a majority shareholder vote according to Ala. Code §§ 10A-2-6.01, 10.01.</p>	

**Sec. 238. Authority of legislature to revoke charters of incorporation.**

<b>Current</b>	<b>Proposed</b>
The legislature shall have the power to alter, amend, or revoke any charter of incorporation now existing and revocable at the ratification of this Constitution, or any that may be hereafter created, whenever, in its opinion, such charter may be injurious to the citizens of this state, in such manner, however, that no injustice shall be done to the stockholders.	Not Changed
<p><b>Comments:</b> Under the case of <u>Dartmouth College v Woodward</u>, 17 US 518 (1819), the express reservation of the power of the Legislature under this section assures that the power has been reserved. In that it applies to corporations existing and revocable at the ratification of this Constitution, the provision is looks backward to the many corporations formed by special act in the period from 1875 to 1901. In that regard it is entirely appropriate. Since corporations formed by special act were sometimes given special franchises and concessions, naturally the legislature would retain the power to alter, amend, or revoke their charter if they abused in some way the special benefits they had received.</p> <p>The retention of such a power as to corporations that may hereafter be created is less appropriate since they are formed under general laws.</p>	

<b>Sec. 239. Telegraphs and telephone companies.</b>	
<b>Current</b>	<b>Proposed</b>
<p>Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and connect the same with other lines; and the legislature shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning a complete [competing] line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.</p>	<p>Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and connect the same with other lines; and the legislature shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. <del>No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning a complete [competing] line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.</del></p>
<p><b>Comments:</b> This section, which essentially recognizes the power of the Legislature with regard to this subject, was not changed in HB-21.</p> <p>As to the last sentence, it seems clear from research carried out for the Commission that it can be deleted. This sentence first entered the Alabama Constitution in 1875, before the adoption of the Sherman and Clayton anti-trust acts at the federal level, or of state anti-trust laws such as Alabama Code sec. 8-10-1 et seq. addressing this subject. The Sherman Anti-Trust Act was adopted in 1890, and the state provision just referred to first appeared in the Alabama Code of 1896. The legal staff at the Alabama Public Service Commission confirmed that the provision is now a dead letter.</p>	

<b>Sec. 240. Corporations may sue and be sued like natural persons.</b>	
<b>Current</b>	<b>Proposed</b>
All corporations shall have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons.	<p><u>All corporations shall have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons.</u></p> <p><u>Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.</u></p>
<p><b>Comments:</b> The proposed language retains the text of the present section 240. The proposed amendment adds the second sentence regarding shareholder liability. This sentence is extracted verbatim from current Section 236 (which this bill would repeal). Ala. Code § 10A-2-6.22 also addresses stockholder liability. This was simply a matter of consolidation. While a number of provisions of the present Art. XII that are now covered by Alabama’s Corporation Code are proposed to be deleted, the principles of present section 236 (shareholder limited liability) and section 240 (a corporation is a separate legal entity) seemed so fundamental that they should be retained, even though there are statutory provisions in the Alabama Corporations Code recognizing these same principles. So these two were retained, but consolidated in one section.</p> <p>Note: The language “dues from private corporations” is somewhat archaic. It simply means “obligations due from a corporation” to its creditors; with that understanding, what that clause essentially means is “Obligations of private corporations shall be enforced as provided by general law.”</p>	

<b>Sec. 241. "Corporation" defined.</b>	
<b>Current</b>	<b>Proposed</b>
The term "corporation," as used in this article shall be construed to include all joint stock companies, and all associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.	Not Changed
<b>Comments:</b> Article XII's current definition was retained.	

<b>Sec. 242. When railroads and canals deemed public highways; railroad and canal companies; common carriers; rights of railroad companies generally.</b>	
<b>Current</b>	<b>Proposed</b>
All railroads and canals not constructed and used exclusively for private purposes, shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railway between any points in this state, and connect at the state line, with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and each shall receive and transport the freight, passengers, and cars, loaded or empty, of the others, without delay or discrimination.	Not Changed
<b>Comments:</b> Of the sections of Art. XII (sections 242-246) dealing with railroads, only this section was retained.	

<b>Sec. 243. Regulation of railroad companies vested in legislature.</b>	
<b>Current</b>	<b>Proposed</b>
The power and authority of regulating railroad freight and passenger tariffs, the locating and building of passenger and freight depots, correcting abuses, preventing unjust discrimination and extortion and requiring reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the legislature, whose duty it shall be to pass laws from time to time regulating freight and passenger tariffs, to prohibit unjust discrimination on the various railroads, canals, and rivers of the state, and to prohibit the charging of other than just and reasonable rates and enforce the same by adequate penalties.	Repealed
<b>Comments:</b> In addition to the general powers under Section 229, several examples of the Legislature's regulation of railroads are in the Alabama Code, including Chapter 2 of Title 37.	

**Sec. 244. Giving free passes or discount tickets to members of legislature or officers exercising judicial functions.**

<b>Current</b>	<b>Proposed</b>
<p>No railroad or other transportation company or corporation shall grant free passes or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature or to any officer exercising judicial functions under the laws of this state; and any such member or officer receiving such a pass or ticket for himself, or procuring the same for another, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars, and at the discretion of the court trying the case, in addition to such fine, may be imprisoned for a term not exceeding six months, and upon conviction, shall be subject to impeachment and removal from office. The courts having jurisdiction shall give this law specially in charge to the grand juries, and when the evidence is sufficient to authorize an indictment, the grand jury must present a true bill. The circuit court or any other court of like jurisdiction in any county into or through which such member or officer is transported by the use of such prohibited pass or ticket, shall have jurisdiction of the case, provided only one prosecution shall be had for the same offense; and, provided further, that the trial and judgment for one offense shall not bar a prosecution for another offense when the same pass or ticket is used; and, provided further, that nothing herein shall prevent a member of the legislature who is a bona fide employe[e] of a railroad or other transportation company or corporation at the time of his election, from accepting or procuring for himself or another, not a member of the legislature, or officer exercising judicial functions, a free pass over the railroads or other transportation company or corporation by which he is employed.</p>	<p>Repealed</p>

**Comments:** Transportation has evolved significantly since this section was enacted, and this section is not relevant in today’s regulatory environment.

The Alabama Ethics Act (Ala. Code § 36-25-1 et seq.) provides ethical standards for public officials and public employees.

**Sec. 245. Railroad companies not to give rebates or bonuses in nature thereof; deceiving or misleading public as to rates.**

<b>Current</b>	<b>Proposed</b>
No railroad company shall give or pay any rebate, or a bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.	Repealed

**Comments:** To the extent not preempted by federal statutes and regulations, Ala. Code § 37-2-10 requires railroad companies to plainly state their rates and to file them with the Public Service Commission.

<b>Sec. 246. Acceptance of article prerequisite to benefits of future legislation.</b>	
<b>Current</b>	<b>Proposed</b>
No railroad, canal, or transportation company in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws other than in execution of a trust created by law or by contract, except on the condition of complete acceptance of all the provisions of this article.	Repealed
<b>Comments:</b> This section has no relevance today.	