

Special House Sitting  
22<sup>nd</sup> July, 2011

Mr. Speaker, I rise to introduce a Bill for an Act to amend the Belize Constitution Chapter Four of the Laws of Belize Revised Edition 2000/2003 to provide that the government shall at all times have majority ownership and control of public utilities. To clarify the provisions relating to the amendment of the constitution and to provide for matters connected therewith or incidental thereto. This Bill has the recommendation of the cabinet, Mr. Speaker, and with your permission would like to say a few words in explanation of the Bill.

Mr. Speaker, there are only four clauses to the Bill. The main purpose of which is to entrench the government's control of public utilities and to place the nationalization of Belize Telemedia Ltd. and the nationalization of Belize Electricity Ltd. on an unchallengable footing. But the opportunity is also being taken to clarify the provisions governing amendments to our constitution. Mr. Speaker, let me deal with the latter first. Clause two of the Bill that I am introducing is interlinked with Clause three and what Clause two does is to seek to amend the current Section two of the Constitution together with that Clause three of the present Bill, the Bill being introduced, will also then seek to amend the current Section 69 of the Constitution. It would I think Mr. Speaker be useful to read first the present Sections two and 69 of the Constitution and then the new amending clauses in order to demonstrate the purpose and effect of those changes. Mr. Speaker, Section two of the Constitution reads as follows and I quote, "this Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall to the extent of the inconsistency, be void", and then Section 69 of your Constitution, Mr. Speaker, is as you know a long section with several sub-sections allow me then only to read what I consider the relevant sub-sections of the current Section 69 of the Constitution. Let me start with 69 sub-section one which says, The National Assembly may alter any of the provisions of this Constitution in the manner specified in the following provisions of this section. And then if I can jump to Section three, A Bill to alter this section, that is the very Section 69 of the Constitution which talks with how you amend the Constitution, A Bill to Alter Section 69 and as well a Bill to alter Schedule 2 to the Constitution or any of the provisions of the Constitution specified in that Schedule, and we are talking there of the fundamental rights and that sort of thing, shall not be regarded as being passed by the House of Representatives unless on its final reading in the House the Bill is supported by the votes of not less than three-quarters of all the members of the House. Then if I could go to Section five which says A Bill to alter any of the provisions of this Constitution referred to in subsection three, which I just finished reading, of this section shall not be submitted to the Governor-General for his assent unless there has been an interval of not less than ninety days between the introduction of the Bill in the House of Representatives and the beginning of the proceedings in the House on the second reading of the Bill. For Section 5 (A) of the current Section 69 subject to Sections 78 and 79 of this Constitution, A Bill to alter any provisions of Part II of this Constitution shall not be regarded as being passed by the National Assembly unless it is supported by a simple majority of the Senate. Mr. Speaker Clause two of this Bill that I am introducing says this, Section two of the Constitution, which I earlier read, Clause two

of this Bill proposes to amend Section two of the Constitution merely by adding a sub-section. Section two according to Clause two of the Bill, which members now have before them, Section two of the Constitution says this, remember we are talking about two things the Bill and the Constitution this Bill is to amend the Constitution and clause two of this Bill refers to Section two of the Constitution, the current Constitution and clause two says Section two of the Constitution which I just read is hereby amended by renumbering Section (2) as Sub-Section (1) and by adding the following as Sub-Section (2) the following is this : "The words "other law" occurring in subsection (1) above do not include a law to alter any of the provisions of this Constitution which is passed by the National Assembly in conformity with Section 69 of the Constitution." That appeared to me to be self evident but later on I will say to you and to members, Mr. Speaker, why we thought it necessary to actually spell that out so that if the current Bill is later passed into law Section (2) of the Constitution would read, this Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall to the extent of the inconsistency, be void. And there will be this new subsection 2 will say the words "other law" occurring in subsection (1) above do not include a law to alter any of the provisions of this Constitution which is passed by the National Assembly in conformity with Section 69. As I said, Mr. Speaker, I would have thought it self-evident that is why the words in Section (2) are so framed. "other law" it can't mean Section (2) is talking about a law that is amending the Constitution, it must mean an ordinary law as opposed to a constitutional amendment law but as I will say later on some controversy has developed in this regard and that is why we are taking opportunity to clarify. Clause (3) of the Bill I am introducing is as follows, Section 69 of the constitution is hereby amended, remember that is the section that tells you how you amend the constitution, we are amending it merely by the addition of the following new sub-section to section 69, so after sub-section (8) this Bill proposes a new sub-section (9) that would say this, "For removal of doubts, it is hereby declared that the provisions of this section are all inclusive and exhaustive and that there is no other limitation, whether substantive or procedural, on the power of the National Assembly to alter this Constitution; and a law passed by the National Assembly to alter any of the provisions of this Constitution which is passed in conformity with this section shall not be open to challenge in any court of law on any ground whatsoever." Again Mr. Speaker I would have thought this to be self-evident but let me tell you now why we are spelling it out. The two amended clauses then would have the effect of putting beyond argument what I always thought to be the true and obvious position that once a constitutional amendment bill is passed in accordance with the stipulations laid down in Section 69 as to how you pass such an amendment bill that is the end of the matter, such a bill having satisfied the requirements in the constitution as to how to alter the constitution would clearly be good law and the amendments thus passed valid and of undoubted effect, but it had become necessary to spell this out in the details proposed by clause two and clause three of the new bill we are introducing and it has become so necessary because great controversy developed not too long ago in a case heard by Chief Justice Conteh. He accepted an argument that section 69 of constitution was only a procedural effect and that it did not allow for passage even though you complied with it scrupulously, it did not allow for passage without law of certain fundamental types of amendments to the constitution. Mr. Speaker, I personally found this an astonishing proposition especially since section 69 currently the way it is framed is on its very face

exhaustive and complete. On the question of amending the constitution for whatever purpose and in whatever respect there is no where left any addition to or derogation for or even the slightest block on the all inclusive provisions of section 69. Yet the Chief Justice said he was persuaded that Section 69 didn't cut in all circumstance. It was no wonder then on an Appeal Conteh's position did not appear to find favor with the higher court, I say appear because the matter in the appeal was settled without the courts having to make any official pronouncement on that particular of Conteh's judgment. We are taking this opportunity to conclude this issue once and for all. In doing so I stress two things. There is no apology to be made for confirming what we insist was ever the correct position and it is always permissible for the legislature by amending the constitution to clarify and change any state of affairs that has led to public policy confusion or undesirability as a consequence of any court decision. I shall say more about this when I deal with clause 4, which is the last clause of this Belize Constitution 9<sup>th</sup> Amendment Bill. Mr. Speaker part 4 of the bill we are introducing proposes to add a new part to the constitution to provide government control over public utilities and that is the main purpose of the Bill. New Sections 143 and 144 which go together establish now or would establish if the Bill is passed into law that government shall have and may state at all times majority ownership of a public utility provider and public utility provider is defined in section 143 of the bill to mean (1) the Belize Electricity Ltd. (2) Belize Telemedia Ltd. and (3) Belize Water Services Ltd. Section 144 further lays down that any alienation of the government's minimum shareholding of 51% in any of these utilities shall be wholly void and of no effect. Once this bill is passed from now on and forever the government and people must own 51% of the public utilities that have been listed. Just as important the new section 145 for this bill also introduces and again I make no apologies for this is the nationalization of BEL and BTL beyond dispute

New Sections 143 and 144 which go together establish now or would establish if the Bill is passed into law that government shall have and may state at all times majority ownership of a public utility provider and public utility provider is defined in section 143 of the bill to mean (1) the Belize Electricity Ltd. (2) Belize Telemedia Ltd. and (3) Belize Water Services Ltd. Section 144 further lays down that any alienation of the government's minimum shareholding of 51% in any of these utilities shall be wholly void and of no effect. Once this bill is passed from now on and forever the government and people must own 51% of the public utilities that have been listed. Just as important the new section 145 for this bill also introduces and again I make no apologies for this is to place the nationalization of BEL and BTL beyond dispute. Rights of the previous owners to receive their proper compensation within a reasonable time are preserved and protected. It must be remembered that those rights have been amplified in the new BTL acquisition act. I express now the fullest possible plenitude in accordance with the court of appeal declaration. The rights that were put in the new BTL acquisition act will apply equally to Fortis regarding BEL. Subject to those rights though there must and can be no turning back of the sovereign ownership of these essential services by the people of Belize, and it is the constitutional enshrinement that we are putting in motion today which will guarantee what I think is the greater achievement of Belize nationalism since Independence. Mr. Speaker this should an occasion for all of us to rally round the flag and we on this side of the house together I believe with the members for Albert and Lake I are fully conscious of the moment. We know that we today embark on an endeavour that celebrates Belizean pride and consecrates Belizean identity and vindicates Belizean social justice. But there are those that will be against history and in opposition to prosperity. In that regard the paid circles of the former majority shareholder of BTL who is the correct majority owner of Speednet is one thing, they should be joining in the patriotic chorus and saying Belizeans first are quite another. But I can't just dismiss either category. I will therefore with your permission Mr. Speaker spend a brief moment the fallacies they have mounted. It is anti-nationalist trumpety. If Michael Ashcroft and his allies make a big deal about fair and just compensation the Belize Chamber of Commerce and Industry vote so far as to say compensation should in the case of BTL have been paid within a year and Ashcroft echoed this in maintaining that the government had been trying to avoid payment of compensation. But the Facts Mr. Speaker are clear. The former owners of BTL have never quantified to government their compensation claims, this despite having been requested to do so on several occasions. Ultimately government to move the matter forward made an official offer of compensation to them based on a professional and expert evaluation. The Ashcroft alliance rejected this, but still refuse to say how much they were claiming. Because we were anxious to get compensation behind us, we weren't the ones claiming, we were so anxious to pay that we filed suit to have the supreme court determine what compensation was to be paid to these people. The Ashcroft alliance applied to strike out our action to have compensation determined, and then they turn around and say we don't want to pay. We found it inexplicable at the time but now all Belize has seen and heard the manner in which Michael Ashcroft, was it on Tuesday, collimated our judiciary on his channel 5 station it has become obvious why he has determined that contrary once again to the laws of our country compensation should not be fixed by the courts of Belize. He wants an outrageous award be given by some foreign tribunal and he really doesn't care how long that takes. Mr. Speaker that is fine for him but it is beyond my understanding how the chamber could join in this disrespect

of our courts and help to perpetrate the falsehood that it is the government that is delaying to settling of compensation. The position is similar regarding the assertion that government has failed to follow the rule of law. The Belize Bar Ass upon being confronted with the legal citation regarding the need for an enforcement order before a declaratory judgment could take hold retreated. But some in the chamber have persisted in this damnable allegation. Given its history we also expect to hear now echoes of their master's voice regarding today's proposed constitutional bar against challenging the acquisition of BTL and BEL. Let me take two things clear it is very true that legislature in democracies are in normal circumstances prevented from interfering in a case against government that is pending before a court. That is the legislature can't by way of some ordinary law pass a measure, a bill into law that would have the effect of taking away the decision in the case that is pending before the court from the judge. Legislating as it were a particular outcome of making the litigant's case against government unridable. Once a case is over the legislature is free to act to properly address any situation created by the judgment. Those on the other side, this is what happened when they couldn't get the special share from prosser by way of the courts when conteh said it was not recoverable. They waited until the case was finished and it was perfectly proper. What we do in terms of fixing a situation as declared by the court of appeal is also proper, the difference is of course that they did it when they passed a law to change or address the outcome of the conteh decision so that they could get back the special share to give back to Ashcroft. When we fix what happened in the court of appeal it was so Belizeans could get back BTL. Once a case is over the legislature is free to act by way of ..... end of tape.

SIDE B: Last point is that what we did when we took over BTL was never wrong, but always right. There were of course according to the court of appeal procedural missteps that brought us up short before that tribunal but it was conceded that once we got the drafting right we were entitled under our democracy to acquire utilities in the public interest so our nationalization was morally and politically correct if legally flawed and it is a matter of the greatest justice now that we are curing the defects via the supreme law of the land the Belize constitution. IN so doing mr. speaker we are proud to be giving light, water, and telephone to the people of this country forever as part of the inalienable patrimony of our beloved Belize.