

**OFFICIAL HANSARD REPORT**  
**MONDAY**  
**5 DECEMBER 2011**  
**12.12 PM**  
*Third Sitting*

**The Speaker:** I will ask the Honourable Minister of Community Services to say Prayers.

**PRAYERS**

**Hon. Michael T. Adam, Minister of Community Affairs, Gender and Housing:** Let us pray.

*Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly now assembled, that all things may be ordered upon the best and surest foundations for the glory of Thy Name and for the safety, honour and welfare of the people of these Islands.*

*Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Speaker of the Legislative Assembly, Official Members and Ministers of Cabinet and Members of the Legislative Assembly, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.*

Let us say The Lord's Prayer together: *Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the power and the glory, forever and ever. Amen.*

*The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.*

**The Speaker:** Proceedings are resumed. Please be seated.

**READING BY THE HONOURABLE  
SPEAKER OF MESSAGES  
AND ANNOUNCEMENTS**

**The Speaker:** I have no messages or announcements this morning. The Honourable Minister of Education continues to be absent.

**STATEMENTS BY HONOURABLE  
MEMBERS AND MINISTERS  
OF THE CABINET**

**The Speaker:** I have no notice of statements by Honourable Members and Ministers of the Cabinet.

**Motion without notice**  
*[Standing Order 24(9)(h)]*

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker.

**The Speaker:** Yes sir.

**Hon. Alden M. McLaughlin Jr., Leader of the Opposition:** Madam Speaker, pursuant to Standing Order 24(9)(h), I wish to move the following Motion, which may be—

**The Speaker:** Just wait a minute please.  
What was the Standing Order?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Twenty-four (9)(h).

It is a motion, Madam Speaker, which may be made without notice arising out of any item of business made immediately after that item is disposed of and before the next item is entered upon.

Madam Speaker, the issue I wish to deal with by way of this Motion—

**The Speaker:** You have not given me notice of bringing any motion to the House this morning.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Yes, Madam Speaker, this is a motion which may be made without notice. That is precisely the point.

This Motion—

**The Speaker:** Who says it may be made without notice?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** The Standing Orders, Madam Speaker.

**The Speaker:** Which—

**Hon. Alden M. McLaughlin Jr., Leader of the Opposition:** Standing Order 24(9).

[Long pause]

**The Speaker:** I am aware of . . .

[Long pause and audio interference]

**The Speaker:** [Standing Order] 24(9)(h) says, “**The following motions may be made without notice.**” And (h) says, “**arising out of any item of business made immediately after that item is disposed of and before the next item is entered upon;**”

I have received no notice of any motion being brought on any item of business that was made this morning.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, no item has been dealt with this morning.

The item of business would have been the motion to adopt the SPS which was concluded on Friday evening. Therefore, this motion is being brought between the conclusion of that business which has been disposed of and arising from that debate but before the next item of business is to be entered upon, which is the motion now to deal with the Framework for Fiscal Responsibility. And—

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, on a point of order.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, if the Premier would let me finish addressing you, he may say whatever he wishes to say.

**The Premier, Hon. W. McKeever Bush:** Well, I am rising on a point of order for clarity.

**The Speaker:** If he rises on a point of order you have to give—

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, I am not in the middle of a debate. He is not entitled to raise any point of order now. I am addressing you in relation to this motion.

**The Speaker:** He is entitled . . . I am sorry, Leader of the Opposition, he is entitled to raise a point of order at any point in the proceedings; so is any other Member of the House. And you will give ground while he raises a point of order. I want to hear what the point of order is.

#### Point of Order

**The Premier, Hon. W. McKeever Bush:** Thank you very much, Madam Speaker.

Madam Speaker, I am just barely trying to, as far as the Order Paper is concerned (it is just a matter

of clarity) but that Order Paper was completed last week, Friday, and this is a new Order Paper. So, Madam Speaker, it is a new Order Paper. We have carried over the items into the new day and the new paper. So, it is a new Order Paper, as it stands before us. So, I am left to wonder where we are going with the matter and that is why I am seeking a matter of clarity.

**The Speaker:** First Elected Member for George Town.

**Mr. D. Kurt Tibbetts, First Elected Member for George Town:** Thank you, Madam Speaker. And I certainly do not wish to get into any fray here, but as a matter of clarity, Madam Speaker, the point that the Leader of the Opposition has made, is that the Standing Order referred to, speaks to when one item of business is completed and before the other item is begun.

It does not say it has to happen on the same day of the sitting. So, the fact that an Order Paper was completed one day before does not relate to the way the Standing Order reads.

And, Madam Speaker, the second point was, while, again, as I said, I am not wanting, wishing to get into this fray, the Honourable Premier stood on a point of order and certainly, as you have heard, it was not a point of order.

**The Premier, Hon. W. McKeever Bush:** It was a point of clarity. Well, what is yours?

**Mr. V. Arden McLean, Member for East End:** Well clarity ain't no point of order.

**The Premier, Hon. W. McKeever Bush:** Well, he had a speech, worse yet.

Madam Speaker, if I may?

**The Speaker:** You know I have settled this. I am going to suspend the House for five minutes. And I will see the Leader of the Opposition in my Chambers.

**Proceedings suspended at 12.28 pm**

**Proceedings resumed at 12.54 pm**

**The Speaker:** Proceedings are resumed. Please be seated.

Madam Clerk, do we have a quorum in the House?

**The Clerk:** Yes Ma'am.

#### Speaker's Ruling

[On Standing Order 24(9)(h)]

**The Speaker:** Thank you.

When I called for the suspension or ordered the suspension, the Leader of the Opposition had risen and began quoting from [Standing Order] 24(9), [which states that] a motion may be made without notice—“(h) arising out of any item of business made immediately after that item is disposed of and before the next item is entered upon;” his argument was that the Order Paper on Friday . . . he is now able to bring this particular request under that.

I think the statement is quite clear. Unless there are two items of business on the Order Paper that we have today everything listed on the Order Paper is an item of business. Irrespective of what the result of that item of business is, when the Clerk called for “Reading by the Honourable Speaker of Messages and Announcements,” that was an item of business. I said there were no messages or announcements.

When she called for “Statements by Honourable Members and Ministers of the Cabinet,” that was another item of business. I said there were no statements by Honourable Members and Ministers of the Cabinet.

This particular section of the Standing Orders, “The following motion may be made without notice – arising out of any item of business made immediately after that item is disposed of . . .” So, whatever motion the Leader of the Opposition was planning to bring, it would have to arise out of item 3 on our Order Paper today—“Statements by Honourable Members and Ministers of the Cabinet” . . . “made immediately after that item is disposed of and before the next item is entered upon.”

He has chosen to absent himself from the Chamber and the rest of the Opposition with him. My ruling is that unless his motion related to the item of business directly before he spoke—“Statements by Honourable Members and Ministers of the Cabinet,” he does not have the right to bring it.

Can we proceed with the business on the Order Paper now, please?

## GOVERNMENT BUSINESS

### MOTIONS

#### Government Motion No. 5/2011-12—Framework for Fiscal Responsibility

*[Deferred]*

**The Speaker:** Honourable Premier.

**The Premier, Hon. W. McKeever Bush:** Thank you very much, Madam Speaker.

Madam Speaker, I move to seek the permission of the House to defer this Motion until the 14 December. After today’s [sitting] we will be meeting on the 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> of this month, God willing. And I want to defer this Motion until the 14<sup>th</sup> December.

**The Speaker:** The question is that Government Motion No. 5/2011-12 be deferred until 14<sup>th</sup> December when the House meets again. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The Ayes have it.

**Agreed: Government Motion No. 5/2011-12 Framework for Fiscal Responsibility deferred.**

## BILLS

### FIRST READINGS

#### Mutual Funds (Amendment) Bill, 2011

**The Clerk:** The Mutual Funds (amendment) Bill, 2011.

**The Speaker:** The Bill is deemed to have been read a first time and is set down for a second reading.

#### Criminal Procedure Code (Amendment) Bill, 2011

**The Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011.

**The Speaker:** The Bill is deemed to have been read a first time and is set down for second reading.

#### Penal Code (Amendment) Bill, 2011

**The Clerk:** The Penal Code (Amendment) Bill, 2011.

**The Speaker:** The Bill is deemed to have been read a first time and is set down for second reading.

### SECOND READINGS

#### Mutual Funds (Amendment) Bill, 2011

**The Clerk:** The Mutual Funds (Amendment) Bill, 2011.

**The Speaker:** Honourable Premier.

**The Premier, Hon. W. McKeever Bush:** Thank you very much, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill for a Law to amend The Mutual Funds Law (2009 Revision) to provide for the registration of Master Funds and to provide for incidental and connected purposes.

**The Speaker:** The Bill has been duly moved. Does the mover wish to speak thereto?

**The Premier, Hon. W. McKeeva Bush:** Thank you very much, Madam Speaker.

Madam Speaker, Honourable Ministers and Members of the Assembly are asked to approve amendments to the Mutual Funds Law (2009 Revision) that would provide for the registration of Master Funds in the Cayman Islands and grant the Cayman Islands Monetary Authority (CIMA) the power to regulate and supervise certain investment funds classified as Master Funds which are incorporated in the Cayman Islands under the Law.

In the Budget speech last year, Madam Speaker, it was announced that we would introduce a single revenue measure during the course of the 2011/12 Fiscal Year, and that certain Master Funds would be regulated by the Cayman Islands Monetary Authority just as they are regulated in other jurisdictions.

Master Funds, Madam Speaker, are part of a master feeding structure, which is a structure commonly used by Hedge Funds to pool investment capital raised by different investor groups, for example, the US taxable, US tax exempt and non-US investors, into one central vehicle with separate investment vehicles (that being the feeder funds) created for each investor group. The Master Fund makes all of the portfolio investments and conducts trading activity while management and performance fees are payable at the feeder funds.

Currently, there are thousands of investment funds that are not regulated by the Authority as a result of an exemption in section 4(4) of the Mutual Funds Law, or as a result of the definition of a mutual fund which excludes closed-ended private equity funds and funds that issued debt rather than equity interest.

Master Funds represent a significant portion of the exempted funds category, but the exact number, Madam Speaker, is unknown.

A survey of regulations enforced in other countries show that some competitor jurisdictions require all funds, including Master Funds, to be registered while others exempt those funds from regulation. However, even in the latter case, most regulators collect at least information for anti-money laundering purposes from exempted funds. Some concerns do exist locally and internationally with respect to gaps in regulation and the role and risk of unregulated funds in the international financial system.

It is clear that there will be international pressure to increase the scope of the regulation of the fund industry in Cayman given the trend towards increased regulation. Example of this trend includes the Dodd-Frank Wall Street Reform and Consumer Protection Act in the United States and the European Commission Directive on Alternative Investment Fund Managers. Also notable, is the September 10<sup>th</sup> Global Forum on the transparency and exchange of information for tax purposes, peer review report on the

Cayman Islands which contain concerns regarding the availability of investor information on exempt (that is on the unregulated funds). It is therefore hoped that by taking a proactive approach on regulating these Master Funds, we will place the jurisdiction in a better position when further reviews do occur of our regulatory framework rather than Cayman responding to a negative report of some sort.

The proposal would require amendments to The Mutual Funds Law (2009 Revision), The Mutual Funds Law Fees (Regulation 2007), and The Mutual Funds Annual Returns (Regulations 2006). The proposed change in the legislation will be a significant development. And the regulatory environment for mutual funds, while some Master Funds already register with CIMA for commercial reasons, it will now become mandatory for all funds that meet the definition of a master fund under this Bill, to register.

Madam Speaker, this matter is indeed quite important on a number of levels. This is a major enhancement to our regulatory regime and will give CIMA significantly more powers of supervision than it currently has. Secondly, it is an important source of revenue for the Government, and in order to realise this revenue, the amendments must be passed during this current Meeting of the Legislative Assembly, to ensure that local firms will build their clients according to this revised fee structure.

Registered Master Funds will pay an annual fee of CI\$2,500. Madam Speaker it is estimated that some 3,000 to 4,000 new Master Funds will be brought under the scope of CIMA's regulation should the proposed legislation be adopted. This will require CIMA to increase its human and technical resources as well as potentially acquire additional office space to cope with the increase of funds now subject to their regulation. Additional finances will have to be allocated to CIMA in this regard. It is estimated that such cost will amount to approximately \$750,000 per year. However, with anticipated revenue from the proposal estimated to be something in excess of \$7 million, such operating expenses would be nominal in comparison.

Madam Speaker, the Government has carefully engaged with the financial services industry on these proposed amendments. I must report that these particular amendments elicited strong views from stakeholder groups in the financial service industry. There were some who were opposed to any change to a regulatory regime which, in their view, has worked well in the past. There were others, however, who agreed that the time was right to make this significant change to our regulatory regime given that we have often faced questions from international regulatory bodies and given the trend towards greater regulatory oversight of the funds industry in both the United States via the Dodd-Frank Act and in Europe under the requirements of Alternative Investment Fund Managers Directive (AIFMD).

And while these amendments, Madam Speaker, do not purport themselves to answer all the concerns raised by the Global Forum and other assessments or oversight bodies, it is an important step in bringing Cayman more in line with the underlying concerns in new legislation coming out of the United States and Europe and gives us something to build upon to address the previously mentioned Global Forum concerns.

Madam Speaker, as a result of continued dialogue, we have received some further input from the Cayman Islands Monetary Authority and the private sector, which will result in some committee stage amendments.

Madam Speaker, the Cayman Islands has always been a leader in regulation of the funds industry. We are looked upon as pioneers in this sense. In this particular instance, we are not voyaging into unprecedented waters, as regulation of Master Funds exist in other competitor jurisdictions. However, we are taking a proactive step towards improving a regulatory regime. A strong regulatory environment, Madam Speaker, is what will continue to attract good business to the Cayman Islands. And my Government remains committed to the highest standards in our financial services industry.

The Cayman Islands can only benefit from the regulation of Master Funds and it is believed that these amendments are needed and that it is a strong step towards reinforcing our international standing.

So, in closing, I would like to express my deep gratitude to the Cayman Islands Monetary Authority and other key stakeholders in the private sector along with the staff within my Ministry, for their faithful and diligent adherence or attendance to these matters.

Thank you very much, Madam Speaker.

**The Speaker:** Thank you, Honourable Premier.

Does any other Member wish to speak?  
Leader of the Opposition.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Thank you, Madam Speaker.

Madam Speaker, I rise to register some concerns on our part arising principally from representations which have been made to us from players within the financial services industry in relation to the amendments that have just been spoken to by the Premier.

Madam Speaker, this issue of the registration of Master Funds and the implementation of a fee—which originally was proposed to be \$1,500 when the Premier spoke during the budget address in June . . . we now understand what is being proposed is some \$2,500. Madam Speaker, although the Premier did acknowledge that there is a divergence of view within the industry, I do not believe what he said accurately conveys the depth and level and breadth of concern that exists.

In fact, Madam Speaker, based on the representations that we have had, there is only one core group within the industry that actually is supporting and promoting this process. And the registration, Madam Speaker, we understand, is not, or at least, was not initially, driven by the Cayman Monetary Authority at all, but that this was an idea that was developed elsewhere and subsequently came to be adopted by CIMA.

Madam Speaker, as best as we have been able to ascertain, what is being proposed by the Premier is opposed by the Cayman Islands Law Society (CILS) and is opposed by his own Cayman Islands Financial Council (CIFC) which is chaired, I believe, by Mr. Winston Connolly.

Madam Speaker, we have been made privy to a range of correspondence that has passed between the Premier and these associations, which I think indicates the significant level of opposition to what is being proposed and discusses in detail the concerns that these two things: the increase in fee; and the manner in which this registration is proposed to be implemented will have a truly chilling effect on the industry, and it is believed, may well drive significant business away from these Islands.

We have also, Madam Speaker, been told that CIMA and the system which exists, and even the systems within the private sector, are not capable of coping with the volume of registrations that are going to have to occur within the small window that has been proposed by the Government because of their anxiety to see revenue generated from this process.

And, Madam Speaker, there are concerns within the industry that this will add even greater levels of concern to clients and, indeed, create some reputational risk for the jurisdiction if the systems in place (both at the private sector and government level or at CIMA level) are not capable of coping with the registration process.

Madam Speaker, I believe I should bring to the attention of the House these various pieces of correspondence we have, and, indeed, Madam Speaker, I would propose to lay them on the Table of the House in due course.

**The Speaker:** Honourable Leader of the Opposition, you have copies of those papers?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** I only have one copy in my possession, Madam Speaker. If you wish we can suspend briefly while I have someone copy them. I expected, Madam Speaker, that the Premier would have dealt with these things when he spoke. But as he has not, I believe I am duty bound to do so.

**The Speaker:** I would like to have copies so that everybody will know what we are dealing with this morning.

**The Premier, Hon. W. McKeever Bush:** I must present it? [*inaudible*] They want to make the money; they do not want government to make the money.

**The Speaker:** Okay. We need to have these copied. I'll suspend for five minutes while this is done.

**Proceedings suspended at 1.15 pm**

**Proceedings resumed at 1.25 pm**

**The Speaker:** Please be seated. Proceedings are resumed.

Honourable Leader of the Opposition, are you ready?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Thank you, Madam Speaker.

Madam Speaker, during the suspension, copies of these various pieces of correspondence were made. I believe the Serjeant has ensured that there is a copy for every Member of this House.

Madam Speaker, I can hand up one copy to you and the Serjeant can distribute the others.

Madam Speaker, I am not proposing to read entire letters because the letters are in some cases very long and very technical in nature. But I do wish, Madam Speaker, to highlight the concerns that have been raised with the Premier by the members of the financial services industry.

Yes, Madam Speaker, and I propose to lay a copy on the Table of the House.

Madam Speaker, the first letter—

**The Speaker:** I just have one letter. Is there more than one letter?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** I am doing them one at a time, Madam Speaker, to avoid confusion.

So, Madam Speaker, I will lay the letter of 30<sup>th</sup> June 2011, from the Cayman Islands Financial Services Council [FSC] to the Premier, on the Table of this honourable House.

**The Speaker:** So ordered.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, the letter begins by saying:

**“In your budget, you announced the intention of your Government to introduce legislation which would regulate Cayman Islands master funds. Some members of the Council have received significant negative feedback on this proposal. A quite separate point is the expressed view from the various industry participants for the need for Government to be more proactive in consultation with the FSC with information prior to**

**statements of this significance being made. The public relations backlash on this issue has been considerable.**

**“As you are aware, several stakeholders have expressed their reservations about whether or not the proposed introduction of such a master fund registration would increase the cost of the establishment and maintenance of hedge funds in the Cayman Islands to a point where fund managers may reexamine the jurisdiction in which they domicile their hedge fund. With the competition of the hedge fund business between Cayman and other jurisdictions becoming increasingly intense and with new registration figures already showing a decline, as some have predicted, it is incumbent on the Government to be vigilant to ensure that the Cayman Islands maintains the leading market position in this field.**

**“If the Government decides to proceed with the registration of master funds, carefully thought out amending legislation (circulated for industry opinion) will need to be put in place to ensure that the market confidence is not eroded. If, as a result of this industry feedback, the Government is persuaded that master fund registration may be too potentially detrimental to the industry, then the initiative should be rethought.”**

Madam Speaker, the Premier in his presentation referred to exemption under the US Dodd-Frank legislation and this letter in the next paragraph goes on to deal with those technical points. I will skip over that, Madam Speaker.

But the next paragraph, Madam Speaker, which is at the top of the second page: **“Registration of Master Funds have not been felt necessary because the Feeder Funds from which it derives its assets are already regulated and thus the required Master Fund to provide an audit simply doubles incidental expenditure with no regulatory benefit.**

**“If it is felt that a fee should be introduced to regulate master funds, then an exemption from the requirement to file audit accounts should be included where the related feeder funds are already regulated so that the additional fee to master funds is limited to the Government fee. It should be noted that some master funds already register under the Mutual Funds Law and they may ironically actually be able to opt for the newer lower proposed fee.”**

Madam Speaker, I pause here to say that this letter was written back in June when it was proposed that the fee would be \$1,500 per Master Fund registered. The proposal now, as best we understand, is \$2,500 so I doubt that that particular observation is still relevant.

The letter goes on, Madam Speaker: **“Assuming that CIMA registers approximately 1,000 new mutual funds a year, it will become apparent that the introduction of a new law to register mas-**

ter funds will require CIMA to register 3 or 4 years' worth of funds within a very short period of time. We would therefore recommend to you that the registration process be as straightforward as possible. We consider this to be important, both from a CIMA resourcing perspective and from an in-user perspective."

Madam Speaker, the Premier has referred to the need to increase the resources at CIMA to deal with this. He has not told us how that is proposed to be done, when it is proposed to be done, or indeed, how much that is going to cost.

But we would have thought that these are all important factors that ought to be part of this debate, particularly in the context that we are presently operating in this country, and the fact that we have just had delivered the Strategic Policy Statement (SPS)—with all the concerns which we on this side have about that—and we intended to proceed until just a short while ago, with a motion to adopt the Framework for Fiscal Responsibility (FFR), which the Premier has signed with Minister Bellingham, the Overseas Territories Minister. So, we would have expected, Madam Speaker, that there would have been a greater degree of disclosure and transparency and some evidence provided that the Government has carefully thought the implications of this through, not just from the revenue end, but from the resourcing and expenditure as well.

Madam Speaker, the letter goes on to discuss what are called "**Alternatives to Master Fund Registration**" because there is great reservation and concern within parts of the industry that the method which is being adopted by the proposed Bill before the House now, the amending Bill, will actually place Cayman in a less competitive position than it presently is. And that if there are concerns about . . . or if the conclusion is that the registration of these master funds is imperative, that other methods should be considered.

Madam Speaker, the letter goes on also to discuss the OECD Report, the relevant bits which relate to regulated mutual funds, and it says this: "**The OECD Report** [Organisation for Economic Co-operation and Development] **contains the following statement: 'At March 2009 there were 9,378 regulated mutual funds operating in the Cayman Islands, and whilst the precise numbers are not known by the Islands, a recent estimate suggests that there is an additional 3,000 exempt mutual funds currently operating.**

**"With an estimated 3,000 exempt mutual funds managing an unknown asset value, combined with the very low penalties for companies with partnerships that do not comply with information retention requirements, there are potentially significant adverse consequences on the availability of information in respect of these exempt funds."**

The letter goes on, Madam Speaker, to observe: "**It is our view that the main object of concern in the OECD Report is not the fact that these funds are unregistered; rather it is the consequential perceived limitation on the availability of investor information in respect of these unregistered funds. The bottom line is that the OECD wants to be able to access investor information so that it can be exchanged for tax purposes. The requirement for master funds to be registered as mutual funds does not by itself achieve this objective.**

**"The OECD Report itself contains the answer having identified that the number of unregulated funds is a potential problem, they go on to recommend the solution. The recommended solution is to (quote): 'introduce effective sanctions against companies and partnerships where they fail to comply with requirements to maintain ownership and identity information as requested' [(emphasis added)]. What the OECD failed to consider however, were the existing extensive penalties for failure to maintain client information under the Money Laundering legislation. The OECD has chosen to ignore or has not taken into consideration the obligations and extent of these provisions. The existing legislation in Cayman has been extensively reviewed by the FATF [Financial Action Task Force] and IMF [International Monetary Fund] and it is difficult to see where further revisions are required."**

Madam Speaker, the letter from the Financial Services Council goes on to support, to promote, and to urge the Government to consider the adoption of what is called the authorised representative regime, which was introduced recently in the British Virgin Islands under the Securities Investment Business Act. And, Madam Speaker, it is felt by the Financial Services Council that this would be a much less onerous and a much less intrusive and expensive way of achieving the desired results of the OECD Report and indeed of the Government's need to increase revenue.

Madam Speaker, the letter closes by saying: "**We would again recommend that in implementing this or any other proposal, the financial services industry and all stakeholders be fully consulted and their feedback sought to ensure that any such legislation is the subject of a full and appropriate review by those most affected."**

Madam Speaker, the importance of this letter is that this is the Cayman Islands Financial Services Council, this is the Council which serves, or at least is intended to serve, as the advisory body to the Minister of Finance on these matters.

I did not note from his presentation any reference at all to this Council, or indeed to the advice which they have given. And, Madam Speaker, I am hoping that when the Premier winds up the debate on

this important Bill, that he will explain to us the process or processes he has been through in arriving at the position that we are at now with this Bill before the House, and that he will tell us what has been done to mitigate the potential damage to the industry, to the reputation of these Islands, and to the competitive position of the Cayman Islands in relation to mutual funds.

Madam Speaker, there is no question in anyone's mind that the significant increases in taxes and fees right across the board, but in particular as it relates to the financial services industry, starting in 2009 (shortly after the Premier took over as Minister of Finance) has had a significant and adverse effect on business. That, coupled with the downturn in business as a result of the global financial crisis, has placed many aspects of our economy, but particularly aspects of the financial services industry, at risk.

One of the areas that has been still prospering, has been the whole area of mutual funds and it is concerning that we are now at this stage passing legislation which will have the double effect of causing registration where registration was previously required, and also imposing a fee where none previously existed.

Madam Speaker, the Law Society on the 16<sup>th</sup> June also wrote to the Premier regarding this matter, and I would also wish to lay a copy of this letter on the Table of this honourable House. I will pass a copy up to you, Madam Speaker, and to ask the Serjeant to please distribute copies to all honourable Members.

Madam Speaker, the letter reads:

**"Dear Mr. Premier,  
"Proposed New Fees for Master Funds**

**"I am receiving reports from several law firms here that they have been contacted by clients worldwide who are concerned about the mention in your Budget speech of the introduction of fees and regulation of master funds.**

**"The legal profession which was not consulted by Government on this measure despite its close relations with fund clients does not support it. We understand Government's need to raise additional revenue but we believe additional regulation in this way is severely detrimental to Cayman's competitive edge and hence its prominence in this market. Despite what was stated in the Budget speech, few other offshore jurisdictions regulate entities that are not investor-facing, and you may be sure that our competitors will even now be preparing client advisories on its introduction here, reminding clients of how increasingly expensive and burdensome Cayman is becoming, and by implication at least, urging them to switch jurisdictions. Already we are starting to see misleading and damaging articles in the financial press that we are now (quote) "taxing hedge**

**funds", which will only get worse when it is more widely known that the expressed purpose of the increase is simply to subsidise private electricity consumption.**

**"On a separate but equally important point, lawyers are left in an embarrassing position of being unable even to explain the new rules to their clients, because as far as we are aware the details of it have not yet been finalised even at Government level. As a result, as a jurisdiction of choice, Cayman is starting to appear not only expensive but also incompetent, with a crucial part of the industry having imposed on it new taxes and regulations without any consultation and with its lawyers being unable to advise what they are.**

**"In particular, clients will be concerned not simply with the additional US\$1,500 for each master fund, but what the ancillary cost payable to auditors, lawyers and other service-providers will be as an indirect consequence of this new form of regulation. If these costs rise substantially as a result, this will be even more damaging to our competitive edge.**

**"Finally, if in fact one of the drivers of the Budget announcement was the OECD Peer Review, members of the legal profession have already come up with a practical solution to the question of how to provide information to enable the Cayman Islands to comply with this OECD tax information exchange commitments, namely, an "authorized representative" scheme already implemented in the British Virgin Islands. That would have been a non-intrusive inexpensive and effective alternative regime. But that suggestion has apparently been ignored with no reasons given.**

**"Yours sincerely,  
"Charles Jennings  
"President"**

And so, Madam Speaker, this letter from the Law Society, with more brevity, repeats much of the concerns which are . . . or, I should say, echoes the concerns which appear in the Cayman Islands Financial Services Council's letter which I read from a short while ago.

Madam Speaker, the Law Society wrote to the Premier some 15 days later on the 1<sup>st</sup> July about the matter again. Madam Speaker, I would ask that a copy of this letter also be laid on the Table; a copy passed to you and copies distributed to Members.

Madam Speaker, the letter reads:

**"Dear Mr. Premier,  
"Proposed New Fees for Master Funds - second letter**

**"Further to my letter dated the 16<sup>th</sup> June, 2011, I am writing to you again in connection with the proposal, announced in your budget, to re-**

quire “master funds” to register under The Mutual Funds Law.

“We have had the opportunity to review the letter to you, dated 30<sup>th</sup> June 2011 from the Cayman Islands Financial Services Council (the “FSC”). I am happy to advise you that the Law Society fully agrees with and endorses the views of the FSC expressed in that letter.

“I should make the following additional points:” And this is an important point, Madam Speaker, and I would ask that the Premier address it when he rises to speak.

#### *“Master Fund Registration Unlikely to Achieve Revenue Targets*

“We consider it most unlikely that Master Fund registration will generate the revenue that Government has budgeted for this year.

“The FSC makes the very good point that the introduction of a new law to register master funds will require CIMA to register three or four years’ worth of funds within a very short space of time—a couple of months or weeks, depending on how long it takes to prepare and pass the new law.

“We do not think that it is possible to expect any group of people, in any business or industry, to undertake four years’ worth of work in a couple of months or weeks. This Island does not have the resources to be able to complete this task within such a short timeframe. And so far as the legal community is concerned, there are simply not enough lawyers on the Island to be able to process this number of new registrations within this timeframe either. I cannot comment on whether CIMA is equipped to handle this work, but clearly it will need the allocation of significant new resources to its licensing department.

“If we are correct in questioning the feasibility of registering so many funds within a short space of time, it follows that Government will not generate the revenue it has currently budgeted for in the financial year 2011/12.

#### *“Alternative Ways of Raising Budgeted Revenue*

“The Law Society therefore recommends that introduction of the proposed master fund registration regime be deferred until such time as additional analysis can be done on the practicalities of implementing it and the resources required to complete such a large task. Needless to say it is critical, for the sake of the Islands’ standing in the financial world, that we are able to credibly implement any proposed changes in the Law. If Government cannot guarantee effective implementation of any new law, by which in this case I mean being able to turn around new master fund applications within five working days, we will damage

our reputation as an international financial centre. This risks the future flow of new business and revenues into the jurisdiction.”

Madam Speaker, I would ask the Premier, when he responds, to specifically address this particular point, and to say whether or not, on behalf of the Government, he is able to offer a guarantee that the implementation of this new Law will be effectively done, and that the system will be able to turn around new master fund applications within five working days.

**The Speaker:** Are you going to be reading from the entire letter or are you going to summarise sections of it?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, this is a relatively short letter. There are only two further paragraphs which I propose to read.

“Our recommendation therefore is that Government looks at alternative ways of raising revenue for this year’s budget. We suggest a combination of: -slightly increased fees for existing registered mutual funds; and -similar to the fees payable to the Registrar of Companies, a small fee for each filing made by an existing registered fund during the course of the year. We understand that there are approximately ten thousand filings with CIMA each year.

“The bigger concern with respect to the proposed master und registration regime is that it will divert resources away from addressing what we consider a major issue facing our industry, i.e., is the OECD Peer 1 Review Report and the visit from the OECD scheduled to take place next year.

“The Peer 1 Review Report criticises this jurisdiction in relation to unregulated entities that fail to maintain adequate ownership and identity information on the investors in the fund. We agree with the FSC that the registration of master funds does not meet this issue. A master fund typically only has 2 investors, one a CIMA registered fund and the other a Delaware registered fund. The OECD report/visit is a fundamental importance to the future wellbeing of these Islands. If Cayman were to be placed on a black or grey list, there would be significant damage to our industry; perhaps fatal damage. I therefore urge your Government not to allocate our scarce resources on using a new law for master fund registration. Rather, we should direct our resources to looking at the ways in which the OECD concerns can be addressed. This should include public and private sector consideration of the proposed Authorised Representative Law suggested by the FSC and/or other strategies that can achieve the same objective.

“Finally, our private equity clients do need reassurance that closed-ended funds will not be

scoped into the Mutual Funds Law. The FSC rightly says that this industry is worth in excess of \$20 million annually to the Government. Private equity funds are not subject to mutual funds registration in any competitor jurisdiction. We must reassure our private equity clients, who are comparing jurisdictions, that, it is not the current intention of Government that these funds become subject to the Mutual Funds Law (or anything equivalent to it)."

Again, Madam Speaker, it is signed by Charles Jennings, President of the Law Society.

Madam Speaker, the final letter which I wish to refer to is more recent, the 9<sup>th</sup> of November.

**The Speaker:** Before you read that let me refer you to Standing Order 32(4): "A Member shall not read the speech but may refresh his memory by reference to notes and may read extracts of reasonable length from books or papers in support of his argument."

These are quite lengthy documents; perhaps you could summarise some of them instead of trying to read them all. We are laying them on the Table of the House so everybody will be able to read them from there.

You can proceed, please.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Madam Speaker, you will be pleased to know that this is the final letter and it is relatively short.

**The Speaker:** I will be pleased to note that. Can we have the copies please?

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** To be laid on the Table of the House.

Madam Speaker, this letter is directed to Mrs. Thais Ducent, the Executive Assistant in the Financial Services Secretariat. It is dated the 9<sup>th</sup> November, 2011.

It reads, Madam Speaker: "The Cayman Islands Law Society has not supported master fund registration because we believe that it will neither raise the revenues that Government seeks, nor, on present evidence, satisfy OECD requirements. In fact, not one convincing technical reason has yet been given as to the latter point by private or public sector proponents of master fund registration.

"To meet immediate revenue needs at the stroke of a pen, we advise instead of simply raising registration fees paid by existing funds and charging a small fee for each filing made by registered funds, and subsequently revisiting the regulatory aspects when it becomes clear what is needed to meet future supranational requirements.

"For the record, our position remains unchanged, although we see that our advice has gone unheeded."

Then, Madam Speaker, they have proposed a number . . . this letter is obviously written after the Bill has been promulgated and circulated. And so it refers to specific clauses in the Bill in some instances.

"1. Our most immediate concern is that in establishing and registering a master fund in the Cayman Islands under the Bill will actually be a far more expensive exercise than was previously represented. In particular: (a) the suggested replacement wording for section 4(b) implies a requirement of an offering document for a master fund. In most cases because master funds are not investor-facing, there is no separate offering document. The cost of producing an additional offering document is substantial and of its own may well persuade funds to use other jurisdictions;

"(b) We assume that it is proposed to amend the Mutual Funds (fees) Regulations so that a reduced annual registration fee will, as previously indicated in the budget speech, be payable in respect of master funds. Can this be confirmed? If that assumption is not correct, then the prospect of fund structures being re-domiciled elsewhere increases further.

"2. Most master funds will not even fall within the definition of "master fund" in the Bill in any event.

"3. The 90 day period contained in Clause 4 of the Bill is impractical. There may be several thousand master funds that fall within this new requirement. At neither client nor regulator level can their registration possibly be achieved within 90 days.

"4. As you may know, Cayman's practice of local audit sign-off is set out, not in the Mutual Funds Law but in a Policy Statement by CIMA dated March 2002; and it is unique to Cayman among all offshore jurisdictions. Can Government clarify whether or not its policy for local audit sign-offs will apply in the future to both Cayman Islands feeder and master funds? If it will, have Government or CIMA received any assurances from the local audit firms as to the cost of providing that additional sign-off? Any increase will act as a further disincentive to establishing feeder structures here.

"As mentioned, our principal concern is the overall increase in cost to clients of establishing a master/feeder structure in Cayman if the Bill becomes law. While this may provide additional professional fees for Cayman lawyers and accountants, the combined effect will put Cayman at a competitive disadvantage to rival domiciles. We appreciate the same point was made when local audit sign-off was introduced, but we are in a very different economic environment today and Gov-

ernment should be vary of the risks of making the structure too expensive.

**“That said, if the above particular issues are ameliorated (i.e. by eliminating the need for an offering document, confirming the master fund registration fee as per the Hon Premier’s budget speech and/or removing separate audit sign-off for master funds), master fund registration might be a slightly less bitter pill for clients to swallow.”**

And again, Madam Speaker, it is signed by Charles Jennings, President of the Law Society.

Madam Speaker, it is not for us on this side to oppose what the Government is seeking to do in this respect. Our job, our objective in this regard, is to raise these issues squarely with the Premier in the context of this debate. Because, although he did allude to differences of view, divergences of opinions in his presentation, he certainly did not spell out in detail the level of concern that there is and what appears to us to be significant risks to the jurisdiction as a result of the passage of this Bill and implementation of these new fees and proposed regulations.

We would be grateful, Madam Speaker, to hear from him in some detail about how these concerns have been addressed, or whether these concerns are fanciful and indeed not be taken seriously by the Government and by the House. Depending, Madam Speaker, on what the Premier says and how best he is able to deal with the concerns we have, we will then on this side, Madam Speaker, decide what attitude to adopt in relation to the vote on this particular Bill.

Thank you, Madam Speaker.

**The Speaker:** Thank you, Leader of the Opposition.

Does any other Member wish to speak?  
[pause] Does any other Member wish to speak?  
[pause] Does any other Member wish to speak?  
[pause].

If not, I will call on the Honourable Premier to conclude the debate.

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, as I listened to the [Leader of] the Opposition, his speech clearly brought back to me the Budget of 2002 when that Member did then basically what he just did—read from a lot of paper that he claimed was sent to the Government, and oppose the local audit signoff which brought millions of dollars to the budget at the time. I will speak to it a bit later, Madam Speaker.

I am under no illusion that that side is going to support this. He might as well have said that because I know from whence he cometh. And they are not going to take my word against all that he just read out or he would not have read it. But he is not smarter than me. Uh-uh!

Madam Speaker, the Member started off by saying that I had given no indication of cost, when I

did say, Madam Speaker—and I want to quote what I said. I said: **“Madam Speaker, it is estimated that some 3,000 to 4,000 new master funds will be brought under the scope of CIMA’s regulation should the proposed legislation be adopted.”**

He said also, Madam Speaker, that I did not say anything about what would happen to CIMA and the way they will operate it. I further said, and I quote: **“That this will require CIMA to increase its human and technical resources as well as potentially require additional office space to cope with the increase of funds now subject to their regulation. Additional finances will have to be allocated to CIMA in this regard. It is estimated that such cost will amount to approximately \$750,000 per year. However, with anticipated revenue from the proposal estimated to be in excess of \$7 million, such operating expenses should be nominal in comparison.”**

The Member in his usual style begun by trying to say we were not listening to the industry and then he went on to give the big declaration that the Government is opposed by the lawyers. But he is not completely true about that—

*[inaudible interjection]*

**The Premier, Hon. W. McKeever Bush:** *[Addressing inaudible interjection]* The what?

*[inaudible interjection]*

**The Premier, Hon W. McKeever Bush:** I’ll talk about that in a minute.

He went on to also say that this is not driven by CIMA.

I just want to say, Madam Speaker, that CIMA has a serious regulatory role in this country that has put us in good standing. CIMA is capable, yes, as it presently stands, and, as I have said, they will have to strengthen their oversight for this. But that is no more so than what they have had to do when we must comply with international regulation. And that is part of what we are doing here. And I have said that. He is not listening to that. His objective in reading all of this stuff which was sent to him is to confuse people.

On the matter of the Financial Services Council, there have been mixed views by the Council; but do not know that I had full opposition from them.

Madam Speaker, my Administration, this Administration, has followed closely the requirements of the OECD. And that Member should be more than careful reading what he himself does not know about because it was his kind of thinking and his waywardness refusing to listen to the OECD that put this country on their black list. And now he wants to come and preach to me about regulation.

Madam Speaker, I did listen to the FSC. I attended one meeting, but I had many discussions with

several groups and various different people from various groups, because not one of those groups were solidly . . . perhaps the lawyers, and I did not talk to every lawyer but I will come to that. But I would say that not one of those groups that I spoke with, that there were not people in there who supported and some who did not support.

I attended a meeting, one meeting of the FSC. I do not usually attend because I appointed that body and I wanted their recommendations, and that is why I do not normally attend. It has a decent chairman in Mr. Connolly, and I thought that they had sufficient people on it, and when they send me a recommendation it is something that the Government then has to consider. But I do not attend because I do not want anybody to say that I sway them in any shape or form, or I put any kind of pressures to them.

But, I went to that meeting and, indeed, after listening to the war—and believe you me, Madam Speaker, it was a war between the lawyers who did not support, and the accountants there who supported. It was a war about cost. I told them there that day that I would await their reasoning, but I was inclined to support the accountants. Not that I disrespected the view of the lawyers present, but I too well remember their views—and those were the same people who wrote in the papers in 2002 against the budget, which the same Member (who was a backbencher then and is still a backbencher today) what he said—

*[inaudible interjection]*

**The Premier, Hon. W. McKeever Bush:** *[Addressing inaudible interjection]* You're not Backbench? You're *wuhsa!* You got a bit more standing now, which gives you a little more room and that is worse!

When I say backbench, Madam Speaker; on the opposite side then. He is part of the Opposition. He said he would not be a part of my backbench.

*[inaudible interjection]*

**The Premier, Hon. W. McKeever Bush:** Yep.

Maybe.

But what he can tell the world is that we do not want him.

*[inaudible interjection]*

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, I remember what he said then. The whole world was going to fall apart. He was like Chicken Little—"The sky is falling." And every one of them echoed the same thing when we had to raise the fees because they were atrocious.

We had to raise them on the banks because they were atrocious. Imagine paying two to three hundred thousand dollars in this day and age and making millions? Oh, we had a competitive business but gov-

ernment has to rethink the way they do business. He does not seem to understand that because there are some people in this country who want to carry everything home in their pockets. They want to retire at 35 with [\$]50 million and government cannot build a courthouse.

I like to give this analogy because I hear it is one of them joining them who just retired and he seems to be strutting about like some little cock of the walk. He got money and he says that he is going to put it to get me out. Well, I hope he has to spend a lot!

But I can never forget in the 1970s when we built these buildings; that courthouse, we had 35 lawyers in 1975, thereabouts. Today we have 400 and odd or 500, and we cannot afford to build a courthouse as much as we need one. That tells you something about the way we have done business in this country.

I am charging \$2,500. Ask them. Ask your pals how much they are charging! And that is the whole crux of the matter. The crux of the matter is that if I charge \$2,500, or I charge \$1,500, they are charging \$6,000. Ask them is that is so. Ask them what their add-on is. Or does the Member already know that? And he is coming here and batting for them. Whose side is he on? Whose side is he on? No, not the people of this country. He thinks he is going to get back and fool them again, but he will have some talking yet to do.

I can never forget the noise they made, the insults I took, the ridicule I took, saying this budget has got to go through; myself and the then Financial Secretary, Mr. George McCarthy. And the accountants said this must be done; the country is going to improve. The country is going to get revenue.

The Member over there was spouting off his mouth then reading loads of papers he claimed that had been sent to him, making the world believe that he is in high standing and knows all of what is going on, and we know a little bit but are not paying any attention. That is what he is trying to make the people believe. Nonsense!

Madam Speaker, it is not just a desire to see revenue. While I said in June that we need the revenue, that is not the only reason. We are moving in this direction because the OECD does require it. They can say what they like. They can try to put any position. I've sat around the table. Has he? Or did he? No! He didn't go. I don't know about him going to any. He ran to see who was trying to get Faroe Islands and the next little island and it did not matter at all to say he had done some work when he felt the pressure and then it was too late!

We moved with objectivity. We put the right crew in place to discuss at the table. And I could not be there and did not want to be there for some of those things. Technical people do that. Led by the AG [Attorney General]; led by Mr. McCarthy and others. We came out on top. We are still on top! We are get-

ting a good name around the world as much as they are cursing us and saying all manner of evil about us. [All] done from right in the Island. What kind of trickery they do, Madam Speaker, to try to give us a bad name. But we have put the things in place that count.

Now, Madam Speaker, he went on to read something from them about the adopted authorised representative regime which they have in the BVI. But what we know is that self-regulation (what that is all about) is not the way to go and exactly what the OECD has raised its concerns about, from what I remember. Such a regime, as they say, does have a number of disadvantages, including adopting an authorised representative regime as an alternative to registered master funds would likely significantly reduce government's revenue potential. That is where the reduction would come in.

The authorised representative proposal is not a tried and tested regulatory framework, unlike the existing CIMA regulatory framework, and it is unknown whether it would be accepted from the perspective of overseas regulators. I think a little bit more [will be] known when I finish this, than at the time of the writing of this. But applying an authorised representative regime to all regulated mutual funds may be more costly, as much of the data proposed to be held by an authorised representative is already available to CIMA from the operators and/or service providers of the funds.

Constant and ongoing updating and reconciliation of the information would be very costly and periodic updating may not be sufficient or may not coincide with the timing of the requirements of CIMA or overseas regulators.

Licensing and regulating authorised representatives will still create a burden and need for additional funding and staffing for CIMA. In Cayman, because it does not have the OECD backing, it is not going that way. As I said, CIMA's ability to deal with this initial registration, we have acknowledged that in the first go-round it may be difficult in getting all master funds registered but resources are being allocated to ensure this occurs. And this is not a foreign concept. And many of our competitor jurisdictions have or require registration of master funds.

Madam Speaker, he mentioned that we should do what BVI did. But the BVI that just went through a peer review did not receive a favourable Phase 1 Peer Review. In fact, they received a number of elements not in place. Surely, the Authorised Representative Regime, which some in our industry are now advocating and which the Opposition is advocating for, has proven itself to be insufficient. They put that in place prior to the peer review (if I remember correctly), hoping that that would satisfy the OECD. Obviously, it has not.

There is nothing more damaging to our industry than unfavourable regulatory reviews. The OECD

will not look favourably upon self-regulation as demonstrated by what happened in the BVI.

So, why did I not read some of these? Those are some of the reasons why I did not read those letters. I must tell you, I think I have one of them. I do not recall getting the rest of them. But I remember getting one from the chairman. No; not because I do not stand here and read every piece of paper that I get, that I need that to make my case. I don't! He might need that sort of salve to put on his conscience.

I tell them they should support this. We are seeking revenue. We cannot increase many areas but this is an area that we should.

The Law Society's concerns, Madam Speaker . . . it should be noted that the Government has ameliorated the main concerns, namely, the issue of offering documents. That was their main concern, except . . . I mean I think that went to the whole body. But then concerns went to individual companies that need to charge more. The committee stage amendments which members of the Law Society contributed to, Madam Speaker, address that aspect.

What I said to them was that they could contribute to easing the burden on their clients by not excessively charging them. The Government and country must be able to benefit from the business that is generated in these Islands. In fact, we need to be careful not to drag our feet in improving our regulatory regime and be more proactive in making improvements.

Madam Speaker, once again the Leader of the Opposition is wrong. He has not done anything to enlighten me or this side of the House as to why we should not put this in place. I am sure that he is going to enquire what revenue is doing with it and make some demands as to what revenue should be used for. But we cannot use revenue if we do not have it.

And, Madam Speaker, we have to pay attention to the cost. And I should say in closing, that he talked about the cost that this Government has increased. What he did not say, Madam Speaker, is what role he played in it.

I would not let Hansard not record me in saying that the fees that we raise was to ensure that we could pay the \$320 [million] or \$309 million that we had to borrow because of his management, in the first instance. And then the [\$]185 [million] to help complete some of the things that he left unfinished. And you are now coming to ask with tongue-in-cheek and cry about the cost? You should have considered that when you were making plans and saying that nobody could make you stop. That's the problem, Madam Speaker; he did not listen. And now he is only listening to one side.

And so, the Government is satisfied, Madam Speaker, that we are doing the right thing. We would love to not have to be able to put anything up but we need to keep good regulation, keep in good corners of the international regulators, and at the same

time, be innovative enough to get revenue to assist our people.

Thank you, Madam Speaker.

**The Speaker:** Thank you, Honourable Premier.

The question is that The Mutual Funds (Amendment) Bill, 2001, be given a second reading. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The ayes have it.

**The Premier, Hon. W. McKeever Bush:** Can we have a division, Madam Speaker?

**The Speaker:** Madam Clerk.

**The Clerk:**

**Division No. 23–2011/12**

**Ayes: 8**

Hon. W. McKeever Bush  
Hon. Juliana Y. O'Connor-Connolly  
Hon. Michael T. Adam  
Hon. J. Mark P. Scotland  
Capt. A. Eugene Ebanks  
Mr. Ellio A. Solomon  
Mr. Dwayne S. Seymour  
Mr. Moses I. Kirkconnell

**Noes: 0**

**Abstentions: 2**

Hon. Alden M. McLaughlin, Jr.  
Mr. D. Kurt Tibbetts

**Absentees: 5**

Hon. Rolston M. Anglin  
Hon. Cline A. Glidden, Jr.  
Mr. Anthony S. Eden  
Mr. V. Arden McLean  
Mr. D. Ezzard Miller

**The Speaker:** The result of the division, 8 Ayes, 2 abstentions, and 5 absentees.

**Agreed by majority on division: The Mutual Funds (Amendment) Bill, 2011, given a second reading.**

**The Speaker:** We are going to break for lunch now. This has been a very long morning. It is 2.25 and I think if we resume at quarter to four . . . I'll give you an hour. Three-thirty? Okay.

That is your 3.30 so let's make it 3.30 my 3.30.

**Proceedings suspended at 2.25 pm**

**Proceedings resumed at 4.07 pm**

**The Speaker:** Proceedings are resumed. Please be seated.

At the suspension we had concluded the Second Reading of the Mutual Funds (Amendment) Bill, 2011.

**Criminal Procedure Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011. Second reading.

**The Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin, Second Official Member:** Thank you, Madam Speaker.

Madam Speaker, with leave I beg to move that the Bills as they appear on the Order Paper . . . that I be permitted to take the Penal Code (Amendment) Bill, 2011, prior to taking the Criminal Procedure Code (Amendment) Bill, 2011.

**The Speaker:** The question is that the Penal Code (Amendment) Bill, 2011, takes precedence over the Criminal Procedure Code (Amendment) Bill, 2011. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The Ayes have it.

**Agreed: The Penal Code (Amendment) Bill, 2011 to take precedence on the Order Paper.**

**Penal Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Penal Code (Amendment) Bill, 2011. Second reading.

**The Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Madam Speaker, I beg to move the Second Reading of a Bill for a Law to amend the Penal Code (2010 Revision) in order to create offences and increase penalties for the purpose of promoting public order to strengthen the anti-gang provisions of the code to abolish the year and a day rule and to make provision for incidental and connected matters.

**The Speaker:** The Bill has been duly moved, does the Member wish to speak thereto?

**Hon. Samuel W. Bulgin:** Yes, Madam Speaker, thank you.

Madam Speaker, as I mentioned earlier, this Bill seeks to amend the Penal Code (2010 Revision) in order to create offences and increase penalties for the purpose of promoting public order, and also, to strengthen the anti-gang provisions of the code and to abolish the year and a day rule and to make provision for incidental and connected purposes.

Madam Speaker, we see from the Bill (which is in the possession of Members), that clause 1 really just speaks to the short title.

Clause 2 seeks to amend section 69 to increase the custodial sentence for the punishment of riot from two years to four years.

Clause 3, Madam Speaker, seeks to amend section 70 to increase the custodial sentence for punishment for . . . sorry. I just crave your indulgence.

Clause 4, Madam Speaker, amends section 82 by deleting the words “one hundred dollars” and substituting the words “two thousand dollars.”

Clause 3, basically changes the sentence from “two years” to “four years.”

Clause 5, repeals section 86, and seeks to enact a section which reads: “**Affray—[86(1)] A person who uses or threatens unlawful violence towards another person and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety is guilty of affray and liable to imprisonment of four years.**”

In effect, Madam Speaker, just streamlining (if you will), the definition of “Affray” to bring it in line with more modern language, more contemporary thinking.

Madam Speaker, clause 6, inserts a new section 88 to constitute offence of causing fear or provocation of violence, harassment and threat to kill. And may I just say, Madam Speaker, that it is our intention, as evidenced by the committee stage amendment notice, to insert a provision which would make it clear that there is *mens rea* requirement. In other words, there has to be intent to cause what is being alleged. So, we consider it necessary to, at the relevant stage, to move a committee stage amendment to adjust that issue.

Madam Speaker, clause 7 of the Bill inserts a provision dealing with gross indecency. “[**134A**] **A person who commits an act of gross indecency with or towards a child under the age of sixteen or who incites a child under that age to do such an act with him or another person is guilty of an offence and liable to imprisonment for twelve months [sic].** So, that is a provision that has been put in there, Madam—

**An Hon. Member:** Twelve years!

**Hon. Samuel W. Bulgin:** Twelve years, I’m sorry. Thank you.

Clause 8, Madam Speaker, seeks to increase the fine on custodial sentence for idle and disorderly person, from a fine of \$500 and imprisonment for three months, to a fine of \$2,000 and imprisonment of four years.

Madam Speaker, may I just explain that these clauses, where there is an increase in fine or an increase in custodial sentence, they are simply just the maximum. That’s all they are. So, it provides a range. So, the court can, for example, in an instance still impose a fine of \$10 or \$5 and up to a maximum; and,

the same thing in terms of custodial sentence. It can impose a sentence of a day, two days, ten days, up to a maximum of four years. So, there’s really just a range of sentences. They are not minimum sentences or mandatory minimum sentences or anything.

*[inaudible interjection]*

**Hon. Samuel W. Bulgin:** Huh? All this is pre-supposed. Madam Speaker, the same goes in respect of clauses 9, 10, 11 and 12; they all seek to increase the sentences.

Of some significance, Madam Speaker, is clause 13 of the Bill which abolishes the “year and a day” rule for the purposes of offences involved in death and suicide. And in section 190, as the Law now reads, Madam Speaker, section 190 of the Penal Code says that “**a person shall be deemed not to have killed another if the death of that person does not take place within a year and a day as the cause of death.**”

This is a rule that has been abolished in other places for a long time. And what it really means, Madam Speaker, is that, for example, if there was a motor vehicle accident or a fight or something, and someone (let’s use a fight) sustains an injury arising out of that and that person is hospitalised for a year and more. And the day after 12 months the person died from the injury, in law the person who caused the injury could not be prosecuted because of the “year and a day” rule.

So, the proposal is to change that and say well, that person certainly died more than three years after. That would be the circumstances. The prosecution can be brought if the person died within the three years; or if the person was previously prosecuted for some sort of an incident arising out of it. Again, I use an injury caused by a fight. If the person was prosecuted for a lesser offence, say, assault occasioning actual bodily harm or one of those other offences, and the person died after three years, then, the charge of murder can be brought under those circumstances.

Clause 14, Madam Speaker, seeks to redefine the definition of “gang.” As it currently stands, we had a provision which speaks to committing, participating or involving indictable offences and misuse of drugs offences. In order to make it far more seamless, we have jettisoned the use of the expression “indictable offences” and “misuse of drugs” and basically use the general expression of “serious offences.” So, hopefully that will find favour with Members.

Clause 15 also addresses that issue, Madam Speaker, and clause 16 as well.

Clause 17, Madam Speaker, adds new section 232A to 232D. These are inserted in this provision. And 232A to [232]C applies where a police officer not below the rank of inspector has reasonable grounds for suspecting that in a particular locality where anti-social behavior is of significant and persis-

tent problem and that certain criteria is met, the authorised police officer, Madam Speaker, may issue what we call specific direction.

The new section 232D empowers a police officer in any public place, remove or seize any item that the police officer reasonably suspects that that person has for the purpose of obscuring or concealing his identity.

Madam Speaker, I am told that there were some concerns about some of these. But I think it needs to be looked at in perspective. We are talking about police officers who are trained. It is not every young boy or whoever it is walking along the street with a hood or something that is going to be stopped by the police and the article taken away from them. Presumably what will happen, or what is expected, is that if the police have reason to suspect that this person is up to no good, certainly, the usual questions will be asked.

What if someone is stopped on the road with a ski mask or something like that? The police can make necessary enquiries and, if satisfied that the person is up to no good, they have the power in the circumstances to probably take possession of the article.

And, I must say, Madam Speaker, just in passing; this is a provision which has been in operation, for example, in Bermuda. And as far as we are aware, we have not had any problems with any abuse or any dissatisfaction with this application so far. So, it is not that it is uncharted or anything. This is something that has been tried and tested. So, I am hoping that it will be viewed in that light.

The other clause, Madam Speaker, is simply clause 18 which speaks to savings and transitional provisions of the Bill.

Madam Speaker, in summary, this is really what this Bill is all about. It is a fairly short amending Bill and in a lot of cases it really just takes cognisance of inflation. Some of these sentences have been in the Law for decades and have never been amended. For example, some of these fines have never been amended for decades. So, in a sense, the Bill seeks to bring it into line with contemporary thinking, like anything else.

The other provisions, Madam Speaker, as I said, one that deals with the amendment to the definition of "gang" and the one which deals with the abolition of the "year and a day" rule and the other provision that deals with the removal of certain items by the police, are the main provisions of the amending Bill.

So, I commend the Bill to honourable Members. Thank you.

**The Speaker:** Thank you.

Does any other Member wish to speak?  
[pause]

Leader of the Opposition.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Thank you, Madam Speaker.

Madam Speaker, there are aspects of this 18 clause Bill which we are happy to see being addressed. But, Madam Speaker, there are other areas where we do have some concerns.

Clauses 1 through 5 are relatively uncontroversial and we are reasonably happy with those, in particular the updating the definition of "affray" is to be welcomed.

Madam Speaker, we do have some issue with clause 7 which creates the statutory offence of gross indecency. The difficulty with that, Madam Speaker, is that the Bill does not define the term "gross indecency." And, as has been noted elsewhere, this terminology, in any event "gross indecency," is outdated. It is outdated language and has been abolished in the UK. We believe, Madam Speaker, that the Bill ought to provide a definition of "gross indecency."

Madam Speaker, clause 8 increases the maximum term of imprisonment for an idle and disorderly person from three months to four years. The difficulty with this is that this section is so broadly drafted that a mentally ill vagrant would be liable to be sentenced to four years in prison. And we all know the scarcity of accommodation for mental health and mental health care in Cayman.

Madam Speaker, the term "idle and disorderly person" encompasses gambling, prostitution, portending to deal in obeah, public indecency, breach of the peace, obtaining charitable contributions without prior authorisation by the Governor, abstaining from work whilst having no lawful means of subsistence . . . Madam Speaker, the point of all of this is that such a wide collection of unrelated offences do not seem to belong within the same provision, and we would urge the Attorney General and his people to consider separate definitions, creating separate offences for these quite distinct actions or conduct.

Clause 9, Madam Speaker, makes minor amendments to the definition of "rogues and vagabonds" but, importantly, it increases the maximum penalty from one year to three for a first offence, and from two years to four years for a subsequent offence. Again, this section is so broadly drafted as to make the vagrant who seeks shelter in an outhouse of a commercial or residential property, liable to imprisonment for three or four years.

Now, Madam Speaker, the learned Attorney General spoke about inflation in relation to sentencing. I did not know, Madam Speaker, that custodial sentences were subject to the rules about inflation.

*[inaudible interjection]*

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Well in this case the longer we put them in jail the more we pay. So I am not sure that that is ac-

tually warranted for an offence like rogue and vagabonds.

Madam Speaker, clause 10 sees a dramatic increase in the maximum penalty for disorderly conduct from 30 days to one year. You have to ask yourself whether or not one year in prison for things like putting up flyers for garage sales, singing songs, beating drums, blowing horns, flying kites, ringing doorbells or lighting a campfire on the beach is an appropriate sentence because all of those—

#### **Moment of interruption—4.30 pm**

**The Speaker:** Honourable Leader of the Opposition I need to interrupt you to have a motion to continue the business after 4.30. I do apologise.

#### **Suspension of Standing Order 10(2)**

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, thank you.

We propose to carry on business for a while after the hour of 4.30. So, I beg to suspend Standing Order 10(2) in order to carry on that business.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Better try to get here early in the morning so we won't have to do this.

**The Speaker:** The question is that Standing Order 10(2) be suspended to allow the House to carry on its business [beyond the hour of 4.30 pm]. All those in favour, please say Aye. Those against, No.

**Ayes and one audible No.**

**The Speaker:** I believe the Ayes have it.

**The Premier, Hon. W. McKeever Bush:** May we have a division?

**The Speaker:** Madam Clerk.

**The Deputy Clerk:**

#### **Division No. 24 2011/12**

##### **Ayes: 8**

Hon. W. McKeever Bush  
Hon. Juliana Y. O'Connor-Connolly  
Hon. Michael T. Adam  
Hon. J. Mark P. Scotland  
Hon. Cline A. Glidden, Jr.  
Capt. A. Eugene Ebanks  
Mr. Ellio A. Solomon  
Mr. Dwayne S. Seymour

##### **Abstentions: 0**

##### **Noes: 4**

Mr. D. Kurt Tibbetts  
Mr. Anthony S. Eden  
Mr. V. Arden McLean  
Mr. D. Ezzard Miller

##### **Absentees: 3**

Hon. Rolston M. Anglin  
Hon. Alden M. McLaughlin, Jr.  
Mr. Moses I. Kirkconnell

**The Speaker:** The result of the division is 8 Ayes, 4 Noes, no Abstentions and 3 Absentees.

The motion to suspend Standing Order 10(2) has passed.

**Agreed by majority on division: Standing Order 10(2) suspended.**

**The Speaker:** Honourable Leader of the Opposition, please continue your debate.

**Hon. Alden M. McLaughlin, Jr., Leader of the Opposition:** Thank you, Madam Speaker.

Madam Speaker, clause 11 of the Bill increases the maximum sentence for drunk and disorderly persons, from 30 days to one year. Again, Madam Speaker, I ask the question whether the singing of songs loudly after dark whilst walking home from a bar really warrants a sentence of one year imprisonment.

Madam Speaker, clause 13 abolishes “a year and a day” rule. I believe that is appropriate. It serves to bring the Law into line with the position in the UK. And I think it is unobjectionable.

Madam Speaker, there are concerns about the anti-gang legislation, clauses 14 to 16. While we understand the motive for doing all of this, it is only, I believe, sometimes by actually providing examples of what can happen that we can see the dangers that are sometimes inherent in well intentioned provisions.

Madam Speaker, the problem with this is that the term “gang” is drafted so widely that it will also catch persons who are not members of gangs, as commonly understood by the public, and who should not be subject to these sorts of measures.

The illustration, Madam Speaker, that I wish to give is of three drunk and disorderly tourists sitting in a bar. Because they are drunk and disorderly they are therefore guilty of the serious offence of being drunk and disorderly by virtue of clause 11. And because they intend to get even more drunk they fulfill the requirement of the proposed section 229A. In circumstances where one of these tourists has a previous conviction for a serious offence, such as flying kites or ringing doorbells (which is clause 10), calling his wife an obscene name during a domestic argument (section 133), will all be deemed to be gang members and will be liable to a maximum term of imprisonment of 20 years.

Madam Speaker, we might consider that that is a bit extreme, and I would invite the learned Attorney General to comment on that when he winds up the Bill.

Madam Speaker, clause 17 introduces dispersal orders. We have seen concern in the local media about the impact of this and the level of discretion which it will necessarily involve on the part of police officers who are sent or required by circumstances to deal with this. And, Madam Speaker, there are and

there must be real concerns about erosion of civil liberties, particularly in this case.

I think there is growing concern locally about many of these measures which are being taken because of the seriousness of crime in the jurisdiction, and because, quite frankly, of the low level of convictions that we are being able to . . . if we get them to maintain because of these offences. And all of us want the bad guys to get their just due; but there has to be a certain balance struck as it relates to civil liberties.

And I am wondering myself, Madam Speaker, without having actually done any work in this particular area, whether or not some of the legislation that we are passing now is going to fall afoul of the provisions of the Bill of Rights in the Constitution when that comes into effect next year.

Madam Speaker, there are a number of other things that have occurred to us, and that these amendments do not deal with—some of them quite obvious.

Madam Speaker, back in 2000 by Order in Council, the United Kingdom Government rendered various provisions in the Penal Code without legal force and effect. And those are the provisions, Madam Speaker, which relate to consensual, homosexual acts between two men in private who attain the age of majority. I think, Madam Speaker, that that was called the Caribbean Territories Criminal Law Order of 13<sup>th</sup> December 2000.

Notwithstanding that, Madam Speaker, there still remain in the Penal Code a number of purported offences relating to homosexual acts between consenting men. And, Madam Speaker, I do believe that the opportunity ought to be taken now to bring the legislation in line with the Order in Council, because what we are doing is purporting in the Penal Code to have certain conduct made criminal, while, in fact, it is not. It is at the very least misleading and, at worse, deceptive. I wonder why the opportunity is not taken or has not been taken now to deal with that situation.

Madam Speaker, I believe that that is what I wish to offer by way of a contribution on the part of the Opposition in relation to this Bill. As I said, we understand the intent of it and we are not by any means opposed to what is trying to be done. But we do believe that those observations do have merit and we would invite, and look forward to hearing, the Attorney General's view in relation to them.

Thank you, Madam Speaker.

**The Speaker:** Thank you, Honourable Leader of the Opposition.

Does any other Member wish to speak? [pause]. Does any other Member wish to speak? [pause]. Does any other Member wish to speak? [pause].

If not, I call on the Honourable Attorney General to conclude the debate.

**Hon. Samuel W. Bulgin:** Thank you, Madam Speaker.

Madam Speaker, it is probably helpful if I just reiterate my observation about the level of the penalties.

I did make it quite clear, Madam Speaker, that the penalties, as contemplated in the Bill are maximum penalties. So, a judge's hand or a court's hand is not tied in respect to the leniency of the sentence that wants to be imposed. And if I might use for example clause 10, which is described as a dramatic increase in the maximum penalty for disorderly conduct, and note the word "maximum." It is increasing the *maximum* penalty for disorderly conduct from 30 days to one year.

Madam Speaker, what it simply means is that a court can still impose a sentence of one day for disorderly conduct. A court can still impose a sentence of 10 days for disorderly conduct. All this is saying [is that] a sentence cannot be imposed for more than a year. That is what it says.

So, in effect it really does not alter the citation much in terms of the flexibility that the court enjoys.

*[inaudible interjection]*

**Hon. Samuel W. Bulgin:** What's that?

*[inaudible interjection]*

**Hon. Samuel W. Bulgin:** And these penalties, Madam Speaker, if we were to put them in context, we are talking about antisocial behaviour in the community. And there ought to be a level of deterrence to persons who are minded to get involved in antisocial behavior.

So, that is the real spirit here. That is what is contemplated—the deterrents to antisocial behavior, which just about everybody in society, or most people in society recognise as becoming a problem and we need to find a way to ensure that most basic values and attitudes are still the order of the day in our society.

When I came here one of the things that struck me was this offence about insulting the modesty of a woman. Most people considered that as something that was outdated and ought not to be part of our books. I took a contrary view, Madam Speaker. I thought it was quite commendable to have something like that, because part of the problem in a lot of societies where we have breakdown is that they do not punish the small things, they do not punish the trivial things. And then eventually that escalates to the larger things and it got to the point where it is out of control. So, zero tolerance, in my view, is something that ought to be embraced, ought to be commended. And I certainly think that is where society should go.

*[inaudible interjection]*

**Hon. Samuel W. Bulgin:** Thank you.

Madam Speaker, on the issue of the juxtaposition of the various transgressions: Obeah, breach of the peace and the other issues which have been ventilated. The fact of the matter is that the Law as it now reads . . . well, sorry; that is the Law as it now reads. We basically simply just seek to deal with the penalty provision, but not the alteration of the section that deals with all of the disorderly conduct issues.

So, while the point is taken that, really, from a drafting perspective it probably could have provided better reading, we are looking at a law that was originally enacted on the 3<sup>rd</sup> of September 1975, and that wording has remained in that law like that from those days. And so far, Madam Speaker, as I am aware it has not caused us any difficulties. That is not to say that at some stage it will not be necessary to have a look at separating these offences, certainly, for now, I cannot see legal objection to having them as is.

Madam Speaker, on the issue of the “gang” definition, again, I must say that I know, whilst it is not intended, I think what is really . . . the way the suggestion was put or the submission was made, to the uninitiated it might just give the impression (which is not what is intended) that the whole thing is really just a sort of a trivial attempt or an attempt to criminalise trivial behaviours and turn them into gang members.

Madam Speaker, [clause] 15(1) says: **“A person who – (a) is a member of a gang; or (b) participates in or contributes to the activities of a gang knowing that any or all of the members of the gang engage in or have, within the preceding three years, engaged in the commission of a series of serious offences. . .”** would be guilty.

Madam Speaker, I fail to see how this could cover three drunken tourists in a bar. This clearly meant just what it says—persons who are involved in the commission of serious offences. You have to exhibit those sorts of propensity. So, it does not cover the issues enumerated by my learned friend in his discourse, Madam Speaker, about disorderly tourists sitting a bar and who intend to get even more drunk fulfilling the requirements of section 229A; and where one had a previous for flying a kite or ringing a door bell, or calling his wife an obscene name.

None of those, in our view, would qualify for a serious offence in this society. And I doubt it would qualify as a serious offence in some of the other jurisdictions where undemocratic rule. So, Madam Speaker, whilst I take on board the observation, I can assure the Honourable Member that certainly that is not what the draftsman intended, and certainly that is not what is contemplated by this legislation.

Madam Speaker, clause 17 dealing with the dispersal order . . . Madam Speaker, as legislators I think we all have our ears close to the ground. And it is common knowledge that a lot of the problems that have been experienced in the Cayman Islands today are caused from instances where we have these

gatherings of unsupervised youngsters who, for any amount of reasons, seem to be left at their own device and create trouble, cause problems, cause annoyance, cause intimidation and harassment to law abiding citizens. They get involved in all sorts of anti-social behaviour and then later we find ourselves having to take them through the court system, unfortunately, in order to address some of these issues and make orders for them to go to all sorts of institutions or to be given care and protection or what-have-you.

Madam Speaker, this is really a proactive attempt to address some of these breakdowns. If a police officer sees someone somewhere, or a group of youngsters somewhere, and it is clear that these are youngsters (or persons for that matter) who are clearly not up to any good, it is quite in order for a police officer to make a judgment call and say, *I need you to disperse* (Back home, we used to call it—I don’t know if that was the case in the Cayman Islands—but back in Jamaica the police used to be able to give an order, *Move and keep on moving*). That is how it used to be said—*Move and keep on moving*. And you had better move; you had better disperse.

But I think this is really unnecessary power to give the police in the circumstances or to say to the person really, *This is an area, given your disposition, given your MO, this is an area that is off limits to you for the time being. It is clear that once you congregate here all you do is really cause problems and so this is an area that is off limits.*

This is not aimed at any civil liberties, Madam Speaker. We are trying as much as possible, to balance civil liberties with the need for law and order. And like any other society, the question is whether this is reasonable or justifiable in the circumstances. Our view is that it is, Madam Speaker. And clearly this is what it is, it is legislation. God forbid if there is an abuse or it turns out that there is an abuse of power. Not only do people have civil redress, but there is also the latitude of the Legislative Assembly to revisit the legislation. I doubt very much, Madam Speaker, whether that will be the case.

We have heard these cries before. We have heard the cries about issues dealing with the adverse inferences, issues dealing with the anonymous witnesses and all sorts of things. And it is quite legitimate for people to raise these concerns. But the fact of the matter is that, as we say colloquially, “the proof is in the pudding.” So far, Madam Speaker, all this legislation has worked very well. And the court, of course, is a safeguard for civil liberties as well. And so there is always that fallback position.

Madam Speaker, on the issue of the amendment to reflect the UK Order in Council dealing with homosexual [acts] among consenting adults, it is true that the Order in Council of the United Kingdom has dealt with that before. We have looked at it, Madam Speaker, and we think it is probably more a matter (given the obvious sensitivity of the issue) that might

best be dealt with by way of law revision exercise, rather than bringing it to the Floor of the House to cause any debate on the issue.

So, our part is really a formality. So, we are hoping to address that by way of a law revision exercise, basically just taking that out, and the position in the Order in Council itself will become as it is now stated in the Law relating to that issue.

So, Madam Speaker, I hope I have clarified or helped to sort of allay some of the concerns of the Honourable Leader of the Opposition as it relates to this Bill. Thank you.

**The Speaker:** Thank you Honourable Second Official Member.

The question now is that the Penal Code (Amendment) Bill, 2011, be given a second reading. All those in favour, please say Aye. Those against, No.

**Ayes and one audible No..**

**The Speaker:** I think the Ayes have it.

Since there is no call for a division we will conclude that the Second Reading of the Penal Code has taken place.

**Agreed: The Penal Code (Amendment) Bill, 2011, given a second reading.**

**Criminal Procedure Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011—second reading.

**The Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill entitled A Bill for a Law to amend the Criminal Procedure Code (2011 Revision) to provide penalties, and increase penalties, for offences against public order; and to make provision for incidental and connected matters.

**The Speaker:** The Bill has been duly moved. Does the mover wish to speak thereto?

**Hon. Samuel W. Bulgin:** Yes, Madam Speaker.

Madam Speaker, the reason why I asked that this Bill be taken in this sequence (and thanks to honourable Members and to yourself, Madam Speaker for agreeing for them to be switched around) is because this really is a companion bill to the Penal Code Bill that has just been read. And it seeks to amend the First Schedule to the Criminal Procedure Code in order to reflect the penalties as outlined in the Penal Code Bill.

Clause 2, for example, amends the First Schedule. And the relevant column (which is column 5) in relation to section 69 by deleting the words “One year” and substituting the words “Three years” and so on.

And the others, Madam Speaker, are of similar vein, the columns relating to replacing section [88] with the first five columns to read “C” and “A” and “88” to deal with the issue of “causing fear, or provocation of violence” and so on, and to increase the penalty to “Three years”.

Madam Speaker, there is an insertion in the new section 88A and B, and also C where the respective nature of the offences shall deal with “Intentional harassment, alarm or distress”; and makes it clear that it is an arrestable offence and that the mode of trial is a Category B offence. And, of course, repeats the maximum sentence which is three years. And if the offence is committed by night, then, clearly it is four years.

It also amends it to reflect the new offence of “Gross indecency,” the new section 134A. That also is there and it makes it clear that it is a Category B offence which means, Madam Speaker, that it can be tried either in the Grand Court or in the Summary Court. And again, repeat the fact that the proposed punishment, maximum punishment is 12 years.

Section 158 in column 5 reflects the changes of “Three months \$500” which is replaced by “Four years \$2,000”, and so on.

Madam Speaker, in column 5 again also, these were the changes in section 231 and 232—the maximum sentence for these gang related offences “Twenty years” where applicable.

And the final one I want to mention, Madam Speaker, is the new section 232C, 232D, and so on, which is all inserted there, “Refusal to comply with a direction; or resisting removal” under the dispersal order. And “Failure to comply with an order; obstruction of police officer.” And they are Category B offences. And again, it repeats the punishment of a fine of \$3,000 and imprisonment for four years.

Madam Speaker, each time we amend the penalties in the Penal Code, and if you deal with the mode of trial, which is a matter that is triable with the Grand Court and the Summary Court, it follows that we have to amend the Criminal Procedure Code as well; the necessary Schedule to reflect the changes. They are really companion Bills. So, this in itself has not done anything different or anything substantial, really. It is really just a consequential amendment to the Penal Code Bill if, of course, that goes through.

So, subject to those brief explanations, Madam Speaker, I would certainly commend the Criminal Procedure Code (Amendment) Bill, 2011, to honourable Members of this House.

Thank you.

**The Speaker:** Thank you Honourable Attorney General.

Does any other Member wish to speak? [pause]. Does any other Member wish to speak? [pause]. Does any other Member wish to speak? [pause].

If not, I call on the Honourable Attorney General to conclude.

**Hon. Samuel W. Bulgin:** Thank you, Madam Speaker. I might have said it the wrong way. Thank you.

Madam Speaker, only to say thanks to all honourable Members for their support.

Thank you very much.

**The Speaker:** The question is that the Criminal Procedure Code (Amendment) Bill, 2011, be given a second reading. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The Ayes have it.

**Agreed: The Criminal Procedure Code (Amendment) Bill, 2011, given a second reading.**

#### **Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011**

**The Deputy Clerk:** The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011—second reading.

**The Speaker:** Honourable Deputy Premier.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Thank you, Madam Speaker.

Madam Speaker, I beg to move a Bill for a Law to amend the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision), to facilitate the insuring of electrically powered vehicles and trailers; and for incidental and connected purposes.

**The Speaker:** The Bill has been duly moved. Does the mover wish to speak thereto?

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Yes, thank you, Madam Speaker.

Madam Speaker, clause 3 amends section 2 of the principal Law by repealing the definition of "motor vehicle" and inserting a definition of "vehicle". That definition includes a reference to electrically powered vehicles. This will facilitate the insuring of the said vehicles. The definition of "vehicle" covers also towed vehicles as is now set out.

Clause 4, Madam Speaker, deletes the words "motor vehicle" and substitutes the word "vehicle" in some 14 sections.

Madam Speaker, as you recall, the Traffic Law, [2011], was recently passed in this honourable House. That allows for the registration and licensing of electrical powered vehicles. It therefore follows that if these vehicles can now be legally registered for use on the roads, it is necessary to bring this amendment to the Motor Vehicle Insurance (Third Party Risks) Law, allowing them to be insured.

I propose, Madam Speaker, to also bring a short amendment to clause 3(e) of the draft Bill at the committee stage. And, Madam Speaker, with these brief words I wish to commend the draft Bill now before the House for safe passage, and also to thank my staff for their valuable assistance throughout this draft legislative process.

*[Hon. Cline A. Glidden, Jr., Deputy Speaker, in the Chair]*

**The Deputy Speaker:** Does any other Member wish to speak?

The Elected Member for East End.

**Mr. V. Arden McLean:** Thank you, Mr. Speaker.

Mr. Speaker, when researching this Bill I noticed what I thought were areas that we were going into that would not necessarily be conducive with small businesses surviving, particularly those into the heavy equipment operations. So, I brought it to the attention of the Minister. And I believe the Minister responded, but I am yet to see what that response is. And I am not getting up to oppose, I would just like to see if it fits with what I believe should be . . . particularly on the vehicles which are tracked and towed or driven on the road.

Mr. Speaker, I must say on a procedural matter, I do not know why amendments are not circulated when they have been approved by the Speaker. I would not have to get up here today, Mr. Speaker, if they were circulated. The Penal Code amendment was circulated.

#### **Point of Elucidation**

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Mr. Speaker, if the Member may, on a point of elucidation, please?

**The Deputy Speaker:** The Member has indicated he will give way.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Thank you, Mr. [Speaker], and thanks to the Member for East End.

Just for the purposes of clarity to indicate that the amended was signed and submitted and it is with regret that the Member has not seen it yet, but I trust that he will be happy that the amendment concurs with his suggestion.

**The Deputy Speaker:** Honourable Member for East End, I know that you have just gotten the amendment, so if you want to take a few minutes to just make sure.

[pause]

**Mr. V. Arden McLean:** Mr. Speaker, I believe that if this accords with what my view of it was, once that is removed it is fine.

However, I also brought to the Minister's attention the sections in the Traffic Law that we just approved, and Mr. Speaker, I do not want to bring up anything that has been gone in this session but I think somewhere in there I believe we will find that there may be some concerns that the Minister might have that coincides with this.

I believe the draftsman said that he would have a look at it once the Minister has . . . and I am only doing this in the interest of trying to be helpful really. However, I do believe that section 57(3) of the Traffic Law will make provision where the Governor in Cabinet can make regulations for different categories of vehicles.

So, I would just remind the Minister and the draftsman that when they are doing the regulation to take a look at that and remember that because, I guess my concern comes from having been in this business for a long time and the effects it will have in particular on the small businesses, Mr. Speaker, with the excavators and moving them from one job to the next and one of those excavators could be on a job for six months and never go on the road. And if someone interprets that as meaning it has to comply with the third party insurance—even though the Minister is now proposing to take it out of the Third Party Risks Law—if someone interprets that and it is not in regulation we could have a situation where they require them to comply with the third party insurance which says that any vehicle on the road has to be insured.

So, just for the sake of clarity I would ask the Minister to remember when she is doing the regulations to look at that. And that was [section] 57(3) that makes provision for Cabinet to make those regulations.

Other than that, Mr. Speaker, we support the changes the Minister wishes to make.

**The Deputy Speaker:** Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause]. If not, I would invite the Honourable Minister to windup the debate.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connelly:** Thank you, Mr. Speaker.

Mr. Speaker, I rise to thank honourable Members for their tacit support, and for the expressed support from the Member for East End. I look forward to the safe passage of this long awaited finalisation Bill

to allow electrical cars to be on the streets of Cayman. Thank you.

**The Deputy Speaker:** The question is that a Bill shortly entitled the Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, be given a second reading. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, given a second reading.**

**The Deputy Speaker:** The House will now go into Committee to consider the Bills.

### House in Committee at 5.15 pm

[Hon. Cline A. Glidden, Jr., Deputy Speaker, Chairman]

## COMMITTEE ON BILLS

**The Chairman:** Please be seated. The House is now in Committee.

With the leave of the House may I assume that, as usual, we should authorise the Honourable Second Official Member to correct minor errors and suchlike in these Bills?

Would the Clerk please state the Bill and read the clauses.

### Mutual Funds (Amendment) Bill, 2011

**The Deputy Clerk:** The Mutual Funds (Amendment) Bill, 2011.

Clause 1                      Short Title

**The Chairman:** The question is that clause 1 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**Agreed: Clause 1 passed.**

**The Deputy Clerk:** Clause 2— Amendment of section 2 of the Mutual Funds Law (2009 Revision) - definitions

**The Chairman:** Honourable Premier.  
**Amendment to clause 2**

**The Premier, Hon. W. McKeever Bush:** Mr. Chairman,

I have submitted a committee stage amendment, which I will move in accordance with Standing Order 52(1) and (2); that the Bill be amended as follows: In clause 2 by deleting the definition of “master fund” and substituting the following definition – “master fund” means a mutual fund that is incorporated or established in the Islands that holds investments and conducts trading activities and has one or more regulated feeder funds;”.

Further to Cabinet’s approval, Mr. Chairman, on the Mutual Funds (Amendment) Bill, 2011, there were a few suggestions that provide further clarity which were received from the private sector and taken into consideration in clause 2 by deleting the definition of “master fund” as it currently appears. Some potential ambiguity is significantly reduced ensuring that all of the master funds intended to be captured under this Law can indeed be brought under regulation.

**The Chairman:** The amendment has been duly moved. Does any Member wish to speak thereto?

If not, the question is that the amendment stands part of the clause. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Amendment to clause 2 passed.**

**The Chairman:** The question is that the clause as amended, do form part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 2 as amended passed.**

**The Deputy Clerk:** Clause 3 Amendment of section 4 – regulated mutual funds

**The Chairman:** Honourable Premier.

#### **Amendment to clause 3**

**The Premier, Hon. W. McKeever Bush:** Mr. Chairman, in clause 3(a) we amend by deleting paragraph (b) and substituting the following – “(b) unless an exemption from this requirement has been granted by the Authority, there is filed with the Authority– (i) the prescribed details in respect of the mutual fund’s current offering document; or (ii) in the case of a master fund where there is no offering document, there is filed with the Authority the prescribed details with respect to such master funds;”

What we are saying in clause 3(a) is deleting (b) and replacing it with the recommended language. It is recognised that not all master funds will have offering documents, Mr. Chairman.

Next, by deleting the full stop appearing at the end of clause 3(b) and substituting “; and”.

Also, this is a minor editing correction to facilitate the insertion in paragraph (d) and inserting after clause 3(b) the following paragraph “(c) in subsection (8), by inserting between the words “document” and “if” the words “or the prescribed details of a master fund that is without an offering document”; in paragraph (a) by inserting between the words “document” and “filed” where they occur for the second time in that paragraph, the words “or the prescribed details of a master fund that is without an offering document”.

Mr. Chairman, in (d) the insertion after clause 3(b) is for the purpose of imposing a requirement for prescribed details of a master fund that is without an offering document to be filed in order for the master fund to carry on mutual funds business in or from the Islands. And I think that would be it because we go on to clause 4.

**The Chairman:** The amendment has been duly moved. Does any Member wish to speak thereto?

If no Member wishes to speak, the question is that the amendment stands part of the clause. All those in favour, please say Aye. Those against No.

**Ayes.**

**The Chairman:** The Ayes have it. The amendment stands part of the clause.

**Agreed: Amendment to clause 3 passed.**

**The Chairman:** The question now is that clause 3 as amended stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 3 as amended passed.**

**The Deputy Clerk:** Clause 4 Transitional provision

**The Chairman:** Honourable Premier.

#### **Amendment to clause 4**

**The Premier, Hon. W. McKeever Bush:** We propose to amend clause 4 by inserting after the word “Law” the words “unless this period is extended by regulations for a further period not exceeding sixty days”.

This insertion clarifies the implementation timeframe of the legislation. This is very important

because of Government's concern about realising the revenue. However, it is recognised that firms need sufficient time to notify their clients, and this is what this will afford them to do.

**The Chairman:** The amendment has been duly moved. Does any Member wish to speak thereto? If not, the question is that the amendment stands part of the clause. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Amendment to clause 4 passed.**

**The Chairman:** The question is now that clause 4 as amended stands part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 4 as amended passed.**

**The Deputy Clerk:** A Bill for a law to amend the Mutual Funds Law (2009 Revision) to provide for registration of Master Funds and to provide for incidental and connected purposes.

**The Chairman:** The question is that the Title do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Title passed.**

#### **Criminal Procedure Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011.

Clause 1	Short Title and commencement
Clause 2	Amendment of First Schedule to the Criminal Procedure Code (2011 Revision)—mode of trial and arrestable offences

**The Chairman:** The question is that clauses 1 and 2 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clauses 1 and 2 passed.**

**The Deputy Clerk:** A Bill for a Law to amend the Criminal Procedure Code (2011 Revision) to provide penalties and increase penalties for offences against public order; and to make provision for incidental and connected matters.

**The Chairman:** The question is that the Title do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Title passed.**

#### **Penal Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Penal Code (Amendment) Bill, 2011.

Clause 1	Short title
Clause 2	Amendment of section 69 of the Penal Code (2010 Revision)—Punishment for unlawful assembly
Clause 3	Amendment of section 70—punishment for riot
Clause 4	Amendment of section 82—power of search
Clause 5	Repeal and substitution of section 86—affray

**The Chairman:** The question is that clauses 1 through 5 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clauses 1 through 5 passed.**

**The Deputy Clerk:** Clause 6 Repeal and substitution of section 88—threatening violence.

**The Chairman:** The Honourable [Second Official Member].

#### **Amendment to clause 6**

**Hon. Samuel W. Bulgin:** Thank you, Mr. Chair.

Mr. Chair, pursuant to Standing Order 52(1) and (2), I, the Honourable Attorney General wish to move the following amendment to the Penal Code (Amendment) Bill, 2011: that the Bill be amended in clause 6 in the new section 88B(2) proposed for insertion in the principal Law, by inserting after the words "private place" the words "but a person is guilty of an offence under this section only if he intends his words

or behavior, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting, or (as the case may be) he intends his behavior to be or is aware that it may be disorderly.”

**The Chairman:** The amendment has been duly moved. Does any Member wish to speak thereto? If not, the question is that the amendment stands part of the clause. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The amendment stands part of the clause.

**Agreed: Amendment to clause 6 passed.**

**The Chairman:** The question now is that clause 6 as amended stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 6 as amended passed.**

**The Deputy Clerk:**

- Clause 7 Insertion of section 134A—gross indecency
- Clause 8 Amendment of section 158—Idle and disorderly persons
- Clause 9 Amendment of section 159—rogues and vagabonds
- Clause 10 Amendment of section 164—disorderly conduct
- Clause 11 Amendment of section 165—drunk and disorderly persons
- Clause 12 Amendment of section 166—unauthorized wearing of uniform

**The Chairman:** The question is that clauses 7 through 12 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clauses 7 through 12 passed.**

**The Deputy Clerk:**

- Clause 13 Repeal and substitution of section 190—limitation as to time of death
- Clause 14 Repeal and substitution of section 229—definition of “gang”
- Clause 15 Amendment of section 231—gang membership

Clause 16 Repeal and substitution of section 232—participation in criminal activity in association with gang

Clause 17 Insertion of section 232A to 232D—dispersal of groups; removal of persons under seventeen to their place of residence; authorisations under section 232A: supplemental provisions; powers under section 232A: supplemental provisions; power to deal with items obscuring or concealing identity

Clause 18 Savings and transitional provisions

**The Chairman:** The question is that clauses 13 through 18 stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clauses 13 through 18 passed.**

**The Deputy Clerk:** A Bill for a law to amend the Penal Code (2010 Revision) in order to create offences and increase penalties, for the purpose of promoting public order; to strengthen the anti-gang provisions of the Code; to abolish the year and a day rule; and to make provision for incidental and connected matters.

**The Chairman:** The question is that the Title stands part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Title passed.**

**Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011**

**The Deputy Clerk:** The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011.

- Clause 1 Short title
- Clause 2 Amendment of section 1 of the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision)—short title

**The Chairman:** The question is that clauses 1 and 2 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clauses 1 and 2 passed.**

**The Deputy Clerk:** Clause 3 Amendment of section 2—definitions and interpretation.

**The Chairman:** Honourable Minister with responsibility for Administration, Works, Lands and Agriculture.

### Amendment to clause 3

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Mr. Chair, thank you.

In accordance with Standing Order 52(1) and (2), I wish to move the following amendment to the Motor Vehicle Insurance (Third Party Risks) Bill, 2011, that the Bill be amended in clause 3(e), by deleting the definition of the word "vehicle" and substituting the following definition:- "vehicle" means a wheeled vehicle capable of being driven or towed on a road, and includes an electrically powered vehicle, motor cycle, scooter, wheeled trailer and autowheel, but does not include a hand cart, barrow or baby carriage."

**The Chairman:** The amendment has been duly moved, does any Member wish to speak thereto?  
Honourable Member for East End.

**Mr. V. Arden McLean:** Mr. Chairman, Minister.

Minister, you know how these brainwaves can hit me, right?

There are situations where . . . like those quarries. They have huge wheeled loaders that stay on the quarry 95 per cent of the time. There may be an occasion when they have to move them, say to another quarry or another place where they are doing a major job or something. Now in most instances they will take them by the lowboy, flatbed, whatever, but it is being towed.

So, again, like I said in my contribution, you may have to consider that as well as an exemption or something because they have those 980s. They are not necessarily a special vehicle but they could be categorised as special vehicle. But they can drive on the road. They can do up to about 20 miles per hour. And usually if it is in close proximity, they will drive it down the road, like the quarry in East End. Sometimes they may have to load their trucks much faster in Bodden Town, so they will take one of their 980s which has the big balloon tires, put it on their trailer, take it down to Bodden Town, stay there for a couple of weeks until the dragline gets fixed and then move it back up.

I think Mr. Bodden does that as well, like from up Pease Bay down to his place there behind North Sound way; somewhere around there. But primarily those machines wheeled are left on those sites. So, you may have to make some special provisions for those if you are going to call them special vehicles,

but they will have to remain on the site designed specifically for those sites.

**The Chairman:** Honourable Minister.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Mr. Chairman, section 18 of the Traffic Law says, "Except as provided in this section no- (a) oversize vehicle; and special vehicle, may be used on a road, and no vehicle licence may be used in that respect."

And then [section 18] (3) says, "The Commissioner may grant a special permit to the owner of a special vehicle to enable that vehicle to be driven on a road from one place to another, subject to- (a) any regulations made under [section] 111; and (b) such conditions as the Commissioner may specify in that [special] permit." I wonder if that takes care of the Member's concern.

**The Chairman:** Member for East End.

**Mr. V. Arden McLean:** Mr. Chairman, that is precisely what I was drawing to the Minister's attention.

[Section] 111 says, "The Governor in Cabinet may make regulation prescribing- (a) speed limits relating to particular roads . . . ;" and "(b) the prohibition of the use of vehicles in more than one direction on specified roads;" and "(h) any other matters required to be prescribed under this Part." It goes on and on and on.

Maybe if they apply for special permit, then fine. But the fact is that if they do not know that is a special permit and they put that on their lowboy to come on the road and did not apply for that special permit, they are breaking the law, which says that it has to be insured now because it is wheeled, it is not tracked. It is wheeled and is being towed.

**The Chairman:** Honourable Minister.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Mr. Chair, I am reliably informed by my Director, Mr. David Dixon, that that has been the law since 1974 and it has not created any scenarios as my friend from East End has stated. So, obviously, there is an understanding and an appreciation of what obtains, and that we still now have the section 18 that has been put in the provision of the Traffic Bill.

*[pause and inaudible interjections]*

**The Chairman:** The question is that the amendment stands part of the clause. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Amendment to clause 3 passed.**

**The Chairman:** The question now is that the clause as amended stands part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 3 as amended passed.**

**The Deputy Clerk:** Clause 4—Amendment of principal Law to substitute “vehicle” for “motor vehicle.”

**The Chairman:** The question is that clause 4 stands part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Clause 4 passed.**

**The Deputy Clerk:** A Bill for a law to amend the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision) to facilitate the insuring of electrically powered vehicles and trailers; and for incidental and connected purposes.

**The Chairman:** The question is that the Title do stand part of the Bill. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.

**Agreed: Title passed.**

**The Chairman:** This now concludes proceedings in Committee. The question is that the Bills be reported to the House. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Chairman:** The Ayes have it.  
The Bills will accordingly be reported to the House.

**Agreed: Bills to be reported to the House.****House Resumed at 5.43 pm**

*[Hon. Cline A. Glidden, Jr., Deputy Speaker, in the Chair]*

**The Deputy Speaker:** Please be seated. The House is resumed.

Report on Bills.

**REPORT ON BILLS****Mutual Funds (Amendment) Bill, 2011**

**The Deputy Clerk:** The Mutual Funds (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Premier.

**The Premier, Hon. W. McKeever Bush:** Thank you, Mr. Speaker.

Mr. Speaker, I have to report that a Bill entitled The Mutual Funds (Amendment) Bill, 2011, was examined by a Committee of the whole House and passed with amendments.

**The Deputy Speaker:** The Bill has been duly reported and is set down for a third reading.

**Criminal Procedure Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Thank you, Mr. Speaker.

Mr. Speaker, I beg to report that a Bill entitled The Criminal Procedure Code (Amendment) Bill, 2011, was examined by a Committee of the whole House and approved.

**The Deputy Speaker:** The Bill has been duly reported and is set down for a third reading.

**Penal Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Penal Code (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Thank you, Mr. Speaker.

Mr. Speaker, I beg to report that a Bill entitled The Penal Code (Amendment) Bill, 2011, was considered by a Committee of the whole House and passed with one amendment.

**The Deputy Speaker:** The Bill has been duly reported and is set down for a third reading.

**Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011**

**The Deputy Clerk:** The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Deputy Premier.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Mr. Speaker, I beg to report that the Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, was considered by a Committee of the whole House and passed with one amendment.

**The Deputy Speaker:** The Bill has been duly reported and is set down for a third reading.

**Suspension of Standing Order 47**

**The Deputy Speaker:** Can I have a motion for the suspension?

**The Premier, Hon. W. McKeever Bush:** Mr. Speaker, I move that we suspend Standing Order 47 to enable the Bills on the Order Paper to be read a third time.

**The Deputy Speaker:** The question is that Standing Order 47 be suspended to enable the Bills on the Order Paper to be read a third time. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: Standing Order 47 suspended.**

**THIRD READINGS**

**Mutual Funds (Amendment) Bill, 2011**

**The Deputy Clerk:** The Mutual Funds (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Premier.

**The Premier, Hon. W. McKeever Bush:** Thank you, Mr. Speaker.

Mr. Speaker, I move that The Mutual Funds (Amendment) Bill, 2011, be given a third reading and passed.

**The Deputy Speaker:** The question is that a Bill shortly entitled The Mutual Funds (Amendment) Bill, 2011, be given a third reading and passed. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: The Mutual Funds (Amendment) Bill, 2011, given a third reading and passed.**

**Criminal Procedure Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Criminal Procedure Code (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Thank you, Mr. Speaker.

Mr. Speaker, I beg to move that The Bill entitled The Criminal Procedure Code (Amendment) Bill, 2011, be given a third reading and passed.

**The Deputy Speaker:** The question is that a Bill shortly entitled The Criminal Procedure Code (Amendment) Bill, 2011, be given a third reading and passed. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: The Criminal Procedure Code (Amendment) Bill, 2011, given a third reading and passed.**

**Penal Code (Amendment) Bill, 2011**

**The Deputy Clerk:** The Penal Code (Amendment) Bill, 2011.

**The Deputy Speaker:** Honourable Second Official Member.

**Hon. Samuel W. Bulgin:** Thank you, Mr. Speaker.

Mr. Speaker, I beg to move that The Bill entitled The Penal Code (Amendment) Bill, 2011, be given a third reading and passed.

**The Deputy Speaker:** The question is that a Bill shortly entitled The Penal Code (Amendment) Bill, 2011, be given a third reading and passed. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: The Penal Code (Amendment) Bill, 2011, given a third reading and passed.**

**Motor Vehicle Insurance (Third Party Risks)  
(Amendment) Bill, 2011**

**The Deputy Clerk:** The Motor Vehicle Insurance (third Party Risks) (Amendment) Bill, 2011.

**The Speaker:** Honourable Deputy Premier.

**The Deputy Premier, Hon. Juliana Y. O'Connor-Connolly:** Thank you, Mr. Speaker.

Mr. Speaker, I beg to move that The Bill shortly entitled The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, be given a third reading and passed.

**The Deputy Speaker:** The question is that a Bill shortly entitled The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, be given a third reading and passed. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Deputy Speaker:** The Ayes have it.

**Agreed: The Motor Vehicle Insurance (Third Party Risks) (Amendment) Bill, 2011, given a third reading and passed.**

*[Hon. Mary J. Lawrence, Speaker, in the Chair]*

## OTHER BUSINESS

### MOTIONS

#### PRIVATE MEMBERS' MOTIONS

**Private Member's Motion No. 9/2011-2012—Anti-Corruption Law**  
*[Deferred]*

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, on the item Private Member's Motion, we propose to not take that this afternoon. Although we said that we would be attempting to do other business and staying later, the Member for North Side is not here, even though the seconder is here. But we will then ask that this be put back to the next sitting of the House.

**The Speaker:** Member for East End.

**Mr. V. Arden McLean:** Thank you, Madam Speaker.

Madam Speaker, being the seconder of this Motion, I have been asked by the Member for North Side to ask for it to be carried over to another sitting, like the Premier has said. So, I too confirm that the Member for North Side is mindful to do it in that manner.

**The Speaker:** Maybe we should do it by motion that the Motion be deferred.

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, that is what we intended to do, to move a motion that the item be deferred to the Order Paper for the next sitting, which, as I said earlier today, God willing, it will be the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>, three days we hope to finish whatever bills and other business that we have.

**The Speaker:** The question is that Private Member's Motion No. 9/2011-12, be deferred until the 14<sup>th</sup> of December when the next sitting of the House resumes. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The Ayes have it.

**Agreed: Private Member's Motion No. 9/2011-12—Anti-Corruption, deferred to the next sitting of the House, 14<sup>th</sup> December 2011.**

**The Speaker:** That concludes the business on the Order Paper.

Honourable Premier, can I have a motion for adjournment?

## ADJOURNMENT

**The Premier, Hon. W. McKeever Bush:** Madam Speaker, before I move the adjournment, I want to thank you and the House, Members and everyone else concerned with the business of this House, for their indulgence. There have been a number of late starts, in fact, today was later than we normally would be late. But this is not done just willy-nilly, Madam Speaker. Government has a tremendous workload, tremendous items on its plate at this time. Therefore, it is called upon Cabinet to be in meetings that overextend its time, and that is what happened this morning. So I do thank you for your indulgence and for Members who arrived late.

I want to say that this is not the first time that the House has met late. Ever since I have been here the House has been meeting late. We all need to try to be as early as we can; at least to be on time for ten o'clock. And I know that we tax your patience, Madam Speaker. But that is the way it is. Unfortunately, we live in that kind of world. We will just have to try to organise business, and when meetings tend to go over the time that we had set aside, in particular, when the House is meeting, that we would get people to understand. So, I apologise for this long wait this morning.

Madam Speaker, having said that, I move the adjournment of this honourable House until 10.00 am on 14<sup>th</sup> December 2011.

**The Speaker:** The question is that this honourable House do adjourn until 14<sup>th</sup> December 2011. All those in favour, please say Aye. Those against, No.

**Ayes.**

**The Speaker:** The Ayes have it.

**At 6.52 pm the House stood adjourned until 10.00 am, Wednesday, 14<sup>th</sup> December 2011.**