My name is Don Morrill, Program Manager for Vermont School Boards Insurance Trust's Multi-Line School Program. The Multi-Line Program presently covers 48 of the 61 present supervisory union/supervisory districts. We are a non-profit trust that operates on behalf of our member schools. Our focus is on proactive risk management in order to conserve school's time and money allowing them to focus on their mission and to conserve educational resources. To that end we actively encourage schools to seek legal advice early in an area of potential conflict to reduce the possibility of future legal action.

VSBIT supports the overhaul and modernization of the Open Meeting Law as proposed by H.497 with one exception. Item (10) on Page 11 of 15; part (E) would only allow a board to enter into executive session to meet with their attorney to discuss "professional legal advice in connection with pending or imminent civil litigation or a prosecution, to which the public body is or may be a party".

Current law states that a board can go into executive session to discuss "civil actions or prosecutions of the state". H497's would amend this language to require that a litigation matter be one to which the District/Board is a party or that litigation be pending or imminent. This will have the unintended consequence of many cases tied to general loss prevention and strategic advice being no longer subject to executive session unless it comes in the context of an expressed threat of litigation (read imminent). There are a number of scenarios where legal/risk management advice to a Board needs to be given in executive session so that the potential claimant is not present. This would be particularly true when other exemptions like personnel matters or student issues are not implicated. For example, there may be a potential for litigation with a member of the public surrounding a Notice Against Trespass (or any other issue) issued by the school, but no present explicit threat of litigation. Our read of the revised wording is that

there would be no apparent basis for executive session to discuss how the Board should deal with that individual who could be potentially dangerous. Member boards are often presented with issues, which based on their past experience with an individual or set of circumstances, would signal the likelihood of litigation. Our feeling is that the present wording would not allow boards to adequately protect their school districts and that the following wording would be more reasoned:

"In anticipation of litigation. "Professional legal advice in anticipation of litigation or a prosecution, to which the public body is or may be a party."
U.S. v. Adlman, 134 F.3d 1194 (2d Cir. 1998)