

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 1225

Short Title: Open Meetings Pending Litigation.

(Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT RELATING TO DISCUSSION OF PENDING LITIGATION IN CLOSED  
SESSIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-318.11(a)(3) reads as rewritten:

"(3) To consult with an attorney employed or retained by the public body ~~in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. Regarding pending litigation, when discussion in open session concerning the pending litigation would prejudice the position of the public body in the litigation, or for any other purpose permitted by this subsection.~~ Regarding pending litigation, when discussion in open session concerning the pending litigation would prejudice the position of the public body in the litigation, or for any other purpose permitted by this subsection. General policy matters may not be discussed in ~~a~~the closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to ~~an~~its attorney concerning the handling or settlement of ~~a claim, judicial action, mediation, arbitration, or administrative procedure.~~ pending litigation. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. For purposes of this Article, all expressions of the attorney-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the attorney-client privilege for purposes of conducting closed sessions pursuant to this Article.

- 1           a.   For purposes of this subdivision "litigation" means any  
2           adjudicatory proceeding, including eminent domain, before a  
3           court, administrative body exercising its adjudicatory authority,  
4           hearing officer, or arbitrator.
- 5           b.   For purposes of this subdivision, litigation shall be considered  
6           pending when any of the following circumstances exist:
- 7               1.   Litigation, to which the public body is a party, has been  
8               initiated formally.
- 9               2.   A point has been reached where, in the opinion of the  
10              public body on the advice of its attorney, there is  
11              significant exposure to litigation against the public body.
- 12              3.   The public body is meeting only to decide whether a  
13              closed session is authorized pursuant to sub-subdivision  
14              (3)b.2. of this subsection.
- 15              4.   The public body has decided to initiate or is deciding  
16              whether to initiate litigation.
- 17           c.   For purposes of this subdivision, a public body shall be  
18           considered to be a "party" or to have a "significant exposure to  
19           litigation" if a member or employee of the public body is a  
20           party or has significant exposure to litigation concerning prior  
21           or prospective activities or alleged activities during the course  
22           and scope of that person's office or employment, including  
23           litigation in which it is an issue whether an activity is outside  
24           the course and scope of the office or employment.
- 25           d.   An attorney employed or retained by a public body who  
26           participates in a closed session for any purpose permitted by  
27           G.S. 143-318.11(a) shall prepare a memorandum stating the  
28           specific reasons and legal authority for the closed session. If the  
29           closed session is pursuant to G.S. 143-318.11(a)(3)b.1., the  
30           memorandum shall include the title of the existing litigation. If  
31           the closed session is for any other purpose permitted by this  
32           subsection, the memorandum shall include the existing facts  
33           and circumstances authorizing the closed session. The attorney  
34           shall prepare the memorandum before the closed session, if  
35           feasible, and in any case no later than one week after the closed  
36           session. The memorandum shall be made part of the account of  
37           the closed session required by G.S. 143-318.10(e) and, like the  
38           rest of the account, may be withheld from public inspection  
39           only so long as public inspection would frustrate the purpose of  
40           the closed session."

41           **SECTION 2.** This act becomes effective December 1, 2001.