



## **SB445/HB859**

OPPOSE

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SB 445 and HB 859 direct the Commissioner of Highways to evaluate whether certain roadways in Virginia should operate under the Public-Private Transportation Act of 1995.

VCOG opposes the bills.

The proposals, on lines 27-34 would:

- Require the Commissioner initiate non-disclosure agreements (NDAs) with representatives from counties that would be impacted by the arrangement: the chair of the board of supervisors chair, the chair of the land use-like committee and the county's attorney.
- The NDAs would prohibit disclosure of "private financial data, proprietary data, and any other confidential data as determined by the Commissioner."
- The NDAs could allow the sharing of with the members of the board of supervisors "in a closed meeting."
- "Any data" subject to the NDA would be exempt from FOIA.

VCOG opposes the imposition of mandatory non-disclosure agreements. Information that comes into a locality that would impact citizens and business – even the government itself – should not be pre-determined to be off-limits. Such decisions should be made on a case-by-case basis as determined by the local government body.

The bills set up tiers of information access that are in inverse proportion to those who will be impacted and could offer valuable input and insight.

The NDAs would require the chair of a board – and board chairs are not elected by the people, merely selected (and often rotated on a predetermined bases) by the members of the board – to keep information from his/her colleagues. It is possible to share the information "in a closed meeting," but unless and until that meeting takes place, members of a body with equal votes and constituencies equal to the chair to serve would be in the dark.

There is no time-limit on how long an NDA could last, but the public – the travelers, the businesses that depend on road traffic, the contractors and subcontractors, the residents who live near the roadway – would be deprived of all information until the Commissioner has heard from the board of supervisors, held a meeting of the Transportation Public-Private Partnership Steering Committee



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and only then schedules two public meetings (lines 22-26). At this point, the decision has largely been made. The public input will likely be listened to politely and then largely ignored.

And yet, the Commissioner's decision is supposed to be made "in the public interest" (line 13). ***How can it be in the public interest if the public is not made aware of anything until it is near the very end of the process?*** Public officials and experts will bring to bear their good intentions, but it is the public, and only the public, that can give voice to the real-life impact on their lives and livelihoods.

Finally, the bills make all data related to the NDA indefinitely exempt from FOIA. Long after a decision has been made, there would still be an embargo on the public's ability to assess how the process was handled and whether they believe it to be in their best interest.

VCOG opposes both bills if the NDA requirement remains intact.

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