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**HOUSE BILL NO. 354****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Education  
on January 28, 2008)

(Patron Prior to Substitute—Delegate Cole)

A *BILL to amend and reenact §§ 22.1-238, 22.1-239, 22.1-241, 22.1-242, and 22.1-243 of the Code of Virginia and to repeal §§ 22.1-240, 22.1-244 through 22.1-251, and 22.1-253 of the Code of Virginia, relating to textbook purchasing.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-238, 22.1-239, 22.1-241, 22.1-242, and 22.1-243 of the Code of Virginia are amended and reenacted as follows:**

§ 22.1-238. Approval of textbooks.

A. The Board of Education shall *have the authority to* approve textbooks suitable for use in the public schools and shall have authority to approve instructional aids and materials for use in the public schools. *The Board shall publish a list of all approved textbooks on its website and shall list the publisher and the prices of such textbooks.*

B. Any school board may use textbooks not approved by the Board provided the school board selects such books in accordance with regulations promulgated by the Board.

B. In approving basal textbooks for reading in kindergarten through first grade, the Board shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at seventy percent or above for such textbooks.

C. *For the purposes of this chapter, the term "textbook" means print or electronic media for student use that serves as the primary curriculum basis for a grade-level subject or course.*

§ 22.1-239. Basal textbooks.

No textbook approved by the Board for use in the public schools shall be changed until such book has been in use for a period of not less than six years, subject to renewal from one to four years, unless such book becomes obsolete or unless a change would result in a material decrease in price. The Board may, by agreement with the publisher, permit the substitution of a revised edition of any adopted book at the lowest price such revised edition is offered for sale anywhere in the United States. Whenever such book is so changed, the Board of Education may permit the use of the old books for a period of at least three years from the date of such change.

*In approving basal textbooks for reading in kindergarten and first grade, the Board shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70 percent or above for such textbooks.*

§ 22.1-241. Contracts with publishers.

A. ~~The Board of Education~~ *Local school boards* shall either enter into written term contracts or issue purchase orders on an as-needed basis with publishers of textbooks approved by ~~it~~ the Board for use in the public schools. *Such written contracts or purchase orders for textbooks approved by the Board shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.).*

B. The contract price shall not exceed the lowest wholesale price ~~free on board publisher~~ at which the book or books involved in the contract are currently bid under contract anywhere in the United States. ~~The Board shall stipulate the price at which school boards may sell the book or books, which price shall in no case exceed fifteen percent added to the wholesale price.~~

C. If, subsequent to the date of any contract entered into by ~~the Board~~ a local school board, the prices of books named in the contract are reduced or the terms of the contract are made more favorable to purchase anywhere in the United States or a special or other edition of any book named in the contract is sold outside of Virginia at a lower price than ~~bid contracted in this the Commonwealth, the publisher shall, in the discretion of the Board of Education, grant the same reduction or terms to the Board local school board~~ and give the ~~Board local school board~~ the option of using such special or other edition adapted for use in Virginia and at the lowest price at which such special edition is sold elsewhere and the contract shall so state.

DB. The publisher shall furnish sample copies of all books mentioned in the contract with the Board of Education and shall guarantee that the books bid in the contract are equal in all respects to such sample copies. *Contracts with publishers of textbooks approved by the Board shall require the publisher to furnish an electronic file of the textbook in the National Instructional Materials Accessibility Standards (NIMAS) format that will then be deposited in the Accessible Instructional Materials Center of Virginia from which accessible versions of the particular textbook may be produced for students with*

60 *print disabilities, as defined in 20 U.S.C. § 1474. Publishers shall deliver the NIMAS file of the textbook*  
61 *on or before the date of delivery of the regular text version.*

62 *E. When such technology is available or by January 1, 1998, whichever is earlier, contracts with*  
63 *publishers of textbooks adopted by the Board shall require the publisher to furnish electronic text from*  
64 *which Braille versions of the particular textbook may be produced.*

65 *C. Every school board shall order directly from the respective publishers the books needed to supply*  
66 *the public schools in the school division. The publishers shall ship the books to the school board. The*  
67 *purchase price of such books shall be paid directly to the publishers by the school board.*

68 *D. Any contract entered into by a local school board with a publisher of textbooks shall include the*  
69 *listing of any private school within the school division that requests in writing to be a co-party to the*  
70 *contract and agrees to the terms of the contract. Such private schools shall be fully responsible for*  
71 *ordering, purchasing, and receiving shipments of books to be provided from the publisher pursuant to*  
72 *this section. The local school board shall be immune from any civil liability as a result of a private*  
73 *school breaching the terms of such a contract.*

74 *§ 22.1-242. State Board to adopt regulations.*

75 *Each contract made by the Board with the publisher of textbooks shall be accompanied by a bond*  
76 *with good and sufficient surety in the penal sum of not less than \$1,000 nor more than \$20,000. Such*  
77 *bond shall be approved by the Board and shall be conditioned upon the performance by the publisher of*  
78 *all of the terms and conditions of the contract and payment of liquidated damages as provided for in*  
79 *§ 22.1-243 and any damage in excess thereof which may be proved to be sustained by reason of the*  
80 *violation of such terms and conditions.*

81 *The Board shall adopt regulations governing (i) the purchase of textbooks approved by it for use in*  
82 *the public schools directly from the publishers by school boards and (ii) the distribution of such*  
83 *textbooks for the use by children attending public schools in Virginia.*

84 *§ 22.1-243. Distribution of textbooks and consumable materials.*

85 *In the case of any misrepresentation of fact in the contract or upon the violation of any of the terms*  
86 *and conditions required by the provisions of this article, the publisher shall, upon the demand of the*  
87 *Board, pay as liquidated damages the sum of \$1,000 to the Commonwealth of Virginia to the credit of*  
88 *the Literary Fund; and, in the case of any such violation, the Board may, in addition, declare the*  
89 *contract null and void.*

90 *A. Each school board shall provide, free of charge, such textbooks required for courses of*  
91 *instruction for each child attending public schools.*

92 *B. Consumable materials such as workbooks, writing books, and drawing books may be purchased*  
93 *by school boards and either provided to students at no cost or sold to students at a retail price not to*  
94 *exceed seven percent added to the publisher's price. If sold, the local school board shall develop a*  
95 *policy ensuring that workbooks, writing books, and drawing books are furnished to students who are*  
96 *unable to afford them at a reduced price or free of charge.*

97 **2. That §§ 22.1-240, 22.1-244 through 22.1-251, and 22.1-253 of the Code of Virginia are repealed.**