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The Honorable John R. Bell, IV
North Carolina House of Representatives
Chair, Regulatory Reform Committee
300 N. Salisbury Street, Room 419B
Raleigh, NC 27603-5925

The Honorable Chris Millis
North Carolina House of Representatives
Chair, Regulatory Reform Committee
300 N. Salisbury Street, Room 609
Raleigh, NC 27603-5925

The Honorable Dennis Riddell
North Carolina House of Representatives
Chair, Regulatory Reform Committee
300 N. Salisbury Street, Room 533
Raleigh, NC 27603-5925

VIA HARD COPY and E-MAIL

Dear Representatives Bell, Millis, and Riddell:

I am the vice president and general counsel of the American National Standards Institute (ANSI) and write to express ANSI's concerns with H.B 583 -- "A Bill to Be Entitled an Act to Require the North Carolina Building Code Council to Make the North Carolina Building Code Available for Download Online." The Bill provides that a North Carolina state building code authored and copyright-protected by the International Code Council (ICC) and incorporated into the North Carolina State Building Code should be posted to a website maintained by the Building Code Council "in a form that can be printed and downloaded free of charge."

ANSI has been very active in the area of incorporation by reference (IBR) of standards into state and federal laws, submitting [responses to Federal Register notices](#) on the issue of IBR, hosting and co-hosting [forums and workshops](#) on the subject of IBR, providing [testimony](#) before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet on the subject, and creating and maintaining an [IBR Portal](#) for use by third parties wishing to have access to a select number of IBR-ed standards. ANSI's long-held position on the issue of incorporation of standards by reference into state or federal legislation is that such standards should be available to all interested parties on a reasonable basis, **but that does not necessarily mean available and downloadable "for free"** as the North Carolina bill suggests and could include **appropriate compensation** as determined by the SDO/copyright holder.

This issue of IBR is not particular to North Carolina but is national in scope. As ANSI stated in recent testimony before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet:

In the U.S., our standardization system is led by the private sector, with hundreds of individual standards developing organizations, or SDOs, working in different technical areas and industry sectors. It is a consensus-based and market-driven process that is open to participation by all affected stakeholders.

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...Federal, State, and local governments are active partners in the development of standards and codes when the activity is relevant to their needs. The open, market-driven, and private sector–led nature of our system is critical to achieving the widely shared policy goals of expanded U.S. leadership and innovation on the global stage....

For a standard to be incorporated by reference ... the [Federal or State] agency must determine that the standard is “reasonably available” to the class of persons affected by the anticipated regulation. In this case, “reasonably available” simply means that the standard is accessible to any potential user. It does not require that the standard be available without a fee.

More recently, after receiving extensive briefing including [input from ANSI](#), the Office of the Federal Register (OFR) [issued a final rule](#) on November 7, 2014, [declining](#) to strictly define “reasonable availability” to mean, as the North Carolina Bill would have it, “in a form that can be printed and downloaded free of charge.” Instead, the OFR requires that federal agencies set out, in the preambles of their proposed and final rules, a discussion of the actions they took to ensure the materials are reasonably available to interested parties and that they summarize the contents of the materials they wish to incorporate by reference.

The final rule reached by the OFR is in keeping with the decade-old [U.S. Standards Strategy \(USSS\)](#), developed through the coordinated efforts of a large and diverse group of constituents representing stakeholders in government, industry, standards developing organizations, consortia, consumer groups, and academia. The USSS specifically calls for state and federal governments to “advance and respect policies at home and abroad that ensure the continued ownership and control of the copyrights and trademarks of standards developers.”

The IBR issue has also been addressed by the White House Office of Management and Budget in its Administrative Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” The latest [revisions to OMB A-119](#) have been released for public comment, and the document states in section 6.1: “If a voluntary standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard.”

In sum, state and federal government bodies can and should continue to incorporate privately developed standards, eliminating costs of developing government-unique standards while protecting the copyright held by the standards developers. The proposed North Carolina Bill departs substantially from the national approach to IBR-ed standards.

Sincerely,



Patricia A. Griffin

cc: VIA EMAIL to the General Assembly of North Carolina, House Standing Committee on Regulatory Reform

[About ANSI](#) (www.ansi.org)

ANSI is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. Its membership is made up of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations. The Institute represents the diverse interests of more than 125,000 companies and organizations and 3.5 million professionals worldwide. The Institute is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC).