

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1631  
OFFERED BY MR. ISSA OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Protecting and En-  
3 hancing Public Access to Codes Act” or the “Pro Codes  
4 Act”.

**5 SEC. 2. FINDINGS.**

6       Congress finds the following:

7           (1) Congress, the executive branch, and State  
8       and local governments have long recognized that the  
9       people of the United States benefit greatly from the  
10      work of private standards development organizations  
11      with expertise in highly specialized areas.

12           (2) The organizations described in paragraph  
13      (1) create technical standards and voluntary con-  
14      sensus standards through a process requiring open-  
15      ness, balance, consensus, and due process to ensure  
16      all interested parties have an opportunity to partici-  
17      pate in standards development.

1           (3) The standards that result from the process  
2 described in paragraph (2) are used by private in-  
3 dustry, academia, the Federal Government, and  
4 State and local governments that incorporate those  
5 standards by reference into laws and regulations.

6           (4) The standards described in paragraph (3)  
7 further innovation, commerce, and public safety, all  
8 without cost to governments or taxpayers because  
9 standards development organizations fund the proc-  
10 ess described in paragraph (2) through the sale and  
11 licensing of their standards.

12           (5) Congress and the executive branch have re-  
13 peatedly declared that, wherever possible, govern-  
14 ments should rely on voluntary consensus standards  
15 and have set forth policies and procedures by which  
16 those standards are incorporated by reference into  
17 laws and regulations and that balance the interests  
18 of access with protection for copyright.

19           (6) Circular A-119 of the Office of Manage-  
20 ment and Budget entitled “Federal Participation in  
21 the Development and Use of Voluntary Consensus  
22 Standards and in Conformity Assessment Activi-  
23 ties”, issued in revised form on January 27, 2016,  
24 recognizes the benefits of voluntary consensus stand-  
25 ards and incorporation by reference, stating that

1 “[i]f a standard is used and published in an agency  
2 document, your agency must observe and protect the  
3 rights of the copyright holder and meet any other  
4 similar obligations.”.

5 (7) Federal agencies have relied extensively on  
6 the incorporation by reference system to leverage the  
7 value of technical standards and voluntary consensus  
8 standards for the benefit of the public, resulting in  
9 more than 23,000 sections in the Code of Federal  
10 Regulations that incorporate by reference technical  
11 and voluntary consensus standards.

12 (8) State and local governments have also rec-  
13 ognized that technical standards and voluntary con-  
14 sensus standards are critical to protecting public  
15 health and safety, which has resulted in many such  
16 governments—

17 (A) incorporating those standards by ref-  
18 erence into their laws and regulations; or

19 (B) entering into license agreements with  
20 standards development organizations to use the  
21 standards created by those organizations.

22 (9) Standards development organizations rely  
23 on copyright protection to generate the revenues  
24 necessary to fund the voluntary consensus process

1 and to continue creating and updating these impor-  
2 tant standards.

3 (10) The people of the United States have a  
4 strong interest in—

5 (A) ensuring that standards development  
6 organizations continue to utilize a voluntary  
7 consensus process—

8 (i) in which all interested parties can  
9 participate; and

10 (ii) that continues to create and up-  
11 date standards in a timely manner to—

12 (I) account for technological ad-  
13 vances;

14 (II) address new threats to public  
15 health and safety; and

16 (III) improve the usefulness of  
17 those standards; and

18 (B) the provision of access that allows peo-  
19 ple to read technical and voluntary consensus  
20 standards that are incorporated by reference  
21 into laws and regulations.

22 (11) As of the date of enactment of this Act,  
23 many standards development organizations make  
24 their standards available to the public free of charge  
25 online in a manner that does not substantially dis-

1       rupt the ability of those organizations to earn revenue from the industries and professionals that purchase copies and subscription-access to those standards (such as through read-only access), which ensures that the public may read the current, accurate version of such a standard without significantly interfering with the revenue model that has long supported those organizations and their creation of, and investment in, new standards.

10           (12) Through this Act, and the amendments made by this Act, Congress intends to balance the goals of furthering the creation of standards and ensuring public access to standards that are incorporated by reference into law or regulation.

15 **SEC. 3. WORKS INCORPORATED BY REFERENCE INTO LAW.**

16       (a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding at the end the following:

19 **“§ 123. Works incorporated by reference into law**

20       “(a) DEFINITIONS.—In this section:

21           “(1) CIRCULAR A–119.—The term ‘Circular A–119’ means Circular A–119 of the Office of Management and Budget entitled ‘Federal Participation in the Development and Use of Voluntary Consensus

1 Standards and in Conformity Assessment Activities’,  
2 issued in revised form on January 27, 2016.

3 “(2) INCORPORATED BY REFERENCE.—

4 “(A) IN GENERAL.—The term ‘incor-  
5 porated by reference’ means, with respect to a  
6 standard, that the text of a Federal, State,  
7 local, or municipal law or regulation—

8 “(i) references all or part of the  
9 standard; and

10 “(ii) does not copy the text of that  
11 standard directly into that law or regula-  
12 tion.

13 “(B) APPLICATION.—The creation or pub-  
14 lication of a work that includes both the text of  
15 a law or regulation and all or part of a stand-  
16 ard that has been incorporated by reference, as  
17 described in subparagraph (A), shall not affect  
18 the status of the standard as incorporated by  
19 reference under that subparagraph.

20 “(3) STANDARD.—The term ‘standard’ means a  
21 standard or code that is—

22 “(A) a technical standard, as that term is  
23 defined in section 12(d) of the National Tech-  
24 nology Transfer and Advancement Act of 1995  
25 (15 U.S.C. 272 note); or

1           “(B) a voluntary consensus standard, as  
2           that term is used for the purposes of Circular  
3           A–119.

4           “(4) STANDARDS DEVELOPMENT ORGANIZA-  
5           TION.—The term ‘standards development organiza-  
6           tion’ means a holder of a copyright under this title  
7           that plans, develops, establishes, or coordinates vol-  
8           untary consensus standards using procedures that  
9           incorporate the attributes of openness, balance of in-  
10          terests, due process, an appeals process, and con-  
11          sensus in a manner consistent with the requirements  
12          of Circular A–119.

13          “(5) PUBLICLY ACCESSIBLE ONLINE.—

14           “(A) IN GENERAL.—The term ‘publicly ac-  
15           cessible online’, with respect to material, means  
16           that the material is displayed for review in a  
17           readily accessible manner on a public website.

18           “(B) RULE OF CONSTRUCTION.—If a user  
19           is required to create an account or agree to the  
20           terms of service of a website or organization in  
21           order to access material online, that require-  
22           ment shall not be construed to render the mate-  
23           rial not publicly accessible online for the pur-  
24           poses of subparagraph (A), if—

1                   “(i) there is no monetary cost to the  
2                   user to access that material; and

3                   “(ii) no personally identifiable infor-  
4                   mation collected pursuant to such a re-  
5                   quirement is used without the affirmative  
6                   and express consent of the user.

7           “(b) STANDARDS INCORPORATED BY REFERENCE  
8 INTO LAW OR REGULATION.—A standard to which copy-  
9 right protection subsists under section 102(a) at the time  
10 of its fixation shall retain such protection, notwithstanding  
11 that the standard is incorporated by reference, if the appli-  
12 cable standards development organization, within a rea-  
13 sonable period of time after obtaining actual or construc-  
14 tive notice that the standard has been incorporated by ref-  
15 erence, makes all portions of the standard so incorporated  
16 publicly accessible online at no monetary cost and in a  
17 format that includes a searchable table of contents and  
18 index, or equivalent aids to facilitate the location of spe-  
19 cific content.

20           “(c) BURDEN OF PROOF.—In any proceeding in  
21 which a party asserts that a standards development orga-  
22 nization has failed to comply with the requirements under  
23 subsection (b) for retaining copyright protection with re-  
24 spect to a standard, the burden of proof shall be on the  
25 party making that assertion to prove that the standards



1 development organization has failed to comply with those  
2 requirements.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of sections for chapter 1 of title 17, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

“123. Works incorporated by reference into law.”.

