

Written testimony of Mark Weston concerning SB24-126

I hope to be able to testify remotely, but maybe prevented from doing so due to a medical appointment.

By way of introduction, I am a Jefferson County resident. In 2018, the C.R.S. were amended to create the Division of Conservation within DORA; I was this new division's first director, retiring late in 2019. Prior to that, I was a Colorado certified general real estate appraiser for over 30 years, specializing in conservation easements and eminent domain.

I support the above-captioned bill, following its amendment:

Please strike proposed section 39-22-522 (13) requiring the holder of a conservation easement, if certain future hypothetical conditions are met, a landowner's request to "approve expanded wind or solar energy facilities that are compatible with and do not diminish or impair conservation values" detailed in the Internal Revenue Code section 170(h).

I shared the proposed C.R.S. section 39-22-522 (13) with a senior attorney at the IRS, and was advised it may be seen as a threat to the "enforceable-in-perpetuity" aspect of our easements, an absolute requirement if a landowner wants to obtain a Colorado tax credit or a federal income tax deduction. I don't believe the bill's proponents have obtained an opinion from the IRS affirming that the proposed language complies with IRC section 170(h).

Rather, the proponents seem to be relying on information provided by easement holders and landowners, that language similar to this has been included in several conservation easements over the past decade has not yet been challenged by the IRS. This does not mean the language has been accepted or approved by the IRS - it simply means that, according to proponents of this verbiage, none of these charitable deductions have been challenged, so far.

If Colorado memorializes this language in statute, I am very concerned it will draw the unwanted attention of the IRS. We have been down that road in the past, and it very nearly destroyed the tax credit program.