

H.R. 10813 (Carey) vs. H.R. 10510 (Bergman): Conservation Easement Settlement Bills, Side by Side

Georgia Conservation Easement Coalition | **October 19, 2026** | Public summary of introduced bill text

Sources: GPO introduced-print (IH) texts of H.R. 10813, H.R. 10510 and H.R. 9398 (govinfo.gov); GovInfo BILLSTATUS and Congress.gov status, checked Oct 19, 2026; IRS IR-2026-95 (Aug 19, 2026). Section cites (§) are to the bill unless marked IRC. "Partnership representative" (PR) also covers the TMP for pre-2018 years.

H.R. 10813 (Historic Preservation and Land Conservation Certainty Act): Rep. Mike Carey (R-OH-15), introduced **Oct 15, 2026**; original cosponsors Buddy Carter (R-GA-1), Tim Moore (R-NC-14), Chuck Fleischmann (R-TN-3), Aaron Bean (R-FL-4); referred to Ways and Means; **Introduced only**. Revises Carey's June bill **H.R. 9398** (June 23, 2026; still Introduced only).

H.R. 10510 (Conservation Easement Resolution and Integrity (CERI) Act of 2026): Rep. Jack Bergman (R-MI-1), introduced **Sept 21, 2026**; **no cosponsors** (BILLSTATUS updated Oct 14; Congress.gov lists none); referred to Ways and Means; **Introduced only**, no further action as of Oct 19.

Issue	H.R. 10813 (Carey)	H.R. 10510 (Bergman)	What 10813 changed vs. H.R. 9398
Basic approach	A formula-based elective settlement made by the partnership, effective on filing. The IRS takes no discretionary action (§2(b)(6)). The investor pays tax and penalty on the deduction above a cap, and the deduction up to the cap is allowed "without regard to" qualification, valuation or substantiation issues (§2(b)(4)(A)).	Directs Treasury, consulting the National Taxpayer Advocate, to set up a Conservation Easement Resolution Program within 180 days of enactment (§2(a)). The bill sets the substantive terms (§2(c)) and changes IRC §170(h) going forward and retroactively (§§3-4). It contains no payment formula.	Same structure. The allowed deduction is now stated affirmatively ("lesser of claimed or cap," free of qualification/valuation issues). 9398 only capped it.
Eligible transactions & tax years	Any contribution claimed by a partnership as a qualified conservation contribution in a taxable year ending on or before Dec 31, 2025 (§2(a)(1)). It is not limited to Notice 2017-10 listed transactions.	"Covered transaction" means a syndicated conservation easement transaction as described in Notice 2017-10 where the deduction was for a contribution made before Dec 30, 2022 (§2(i)(1)), i.e., before the SECURE 2.0 2.5x rule.	Year cutoff moved from 12/31/2024 to 12/31/2025 . The definition now reaches contributions "claimed" as qualified (not ones that actually qualify).
Open-case requirement	Yes. There must be an "open matter" when the election is filed: the assessment period is still open (IRC 6501/6229/6235, including extensions), or the IRS has issued written notice of review/exam/proposed adjustment, or an appeal or court case is pending (§2(a)(3); §2(b)(1)).	No open-case requirement. The bill covers any "dispute" (audit, exam, enforcement action or litigation, §2(i)(4)) and cases already resolved (§2(e)).	Unchanged.
Settled / decided cases	Matters resolved by a §7121 closing agreement or §7122 compromise are excluded (§2(g)(1)). A stipulated decision lodged but not yet entered may be withdrawn so the partnership can elect (§2(g)(2)). Barred if a Tax Court decision is final under §7481 or another court judgment is final (§2(g)(3)). A §6226 push-out election must be revoked (§2(g)(4)).	Look-back refunds: where a "final disposition" was reached before enactment, Treasury pays the taxpayer what was paid in penalty, deficiency and interest above what §2(c) would have imposed (§2(e)). "Final disposition" is not defined.	Unchanged.
Deduction allowed / cap formula	Allowed deduction = lesser of the claimed deduction or the "settlement limitation amount" (§2(b)(4)(A)). The cap is 2.5x the aggregate capital contributed, directly or indirectly, by the ultimate taxpayer partners (§2(c)(1)). It is 3.2x for contributions meeting the IRC 170(h)(7)(C)-(E) exceptions (3-year holding period, family partnership, certified historic structure), tested as if 170(h)(7) applied (§2(c)(2)). A common marketing group (same principal organizer/manager) is computed on a combined basis (§2(a)(5), §2(d)).	No cap or multiple. For a " qualified easement " (easement still in effect, purpose not materially impaired, land still serves a conservation purpose, qualified donee actively monitoring; §2(i)(2)), the IRS may not assess any deficiency or penalty unless one of five exceptions applies: unqualified donee; not perpetual or purpose materially impaired; no qualified appraisal attached; knowing participation in fraud ; or gross valuation misstatement under IRC 6662(h)(2) (§2(c)(1)(A)). Non-qualified easements whose purposes are "substantially preserved" get at least an 80% reduction in deficiency, penalty and interest (§2(c)(1)(B)).	The 2.5x base changed from partners' " relevant basis " (IRC 170(h)(7)(B)) to capital contributed . The 3.2x tier is unchanged except for the "as if 170(h)(7) applied" wording.
Promoter-financed capital	In the 3.2x tier only , capital is counted excluding amounts derived from a loan, insurance arrangement or other financing provided by the principal organizer/manager or a related party (§2(c)(2)). The 2.5x general rule has no express exclusion (§2(c)(1)). Promoter penalties (IRC 6694, 6695, 6700, 6701) are preserved (§2(i)).	Not addressed. The fraud standard cannot rest on promoter, advisor or third-party conduct unless the investor had actual knowledge and willfully took part (§2(c)(2)(B)).	Exclusion text unchanged (it was also limited to the 3.2x tier in 9398).

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Election window & mechanics	Window of 360 days from enactment (§2(a)(4)). The election statement is filed where the partnership return is filed, with full payment by cashier's/certified check or money order (§2(b)(2)). Required contents are listed in §2(b)(3). Signed by the PR (§2(b)(9)). Courtesy copies go to the IRS team and courts within 10 days (§2(b)(5)). The mailbox rule applies (§2(b)(7)). The limitations period is suspended up to 2 years plus 90 days (§2(b)(8)). Group elections need authorizations from every partnership in the marketing group. A partnership excluded for lack of partner approval is permanently barred (§2(d)(3)-(5)).	There is no election . Treasury designs the application process; the bill gives no deadline or procedure (§2(a)). Until the program is set up, the IRS may not initiate a dispute on a covered transaction, and limitations periods are tolled (§2(b)).	Window doubled from 180 to 360 days . 9398's joint-and-several liability among group partnerships was dropped . A new carve-out lets a group exclude a partnership whose partners did not approve. A zero-amount election needs no remittance.
Cost: tax rate	Tax component = (claimed deduction minus cap) x the highest individual rate under IRC §1 for any year covered (§2(e)(1)(B)). This applies regardless of each investor's actual bracket.	No rate or formula. For a qualified easement with no exception, no deficiency at all (§2(c)(1)(A)). If an exception applies, the bill does not set terms.	Unchanged.
Cost: penalties	Tiered (§2(e)(3)): no penalty on the portion of the excess up to 150% of the cap; 20% (IRC 6662(a) rate) on the portion between 150% and 200%; 40% (IRC 6662(h) rate) on the portion above 200%. Applied without the reasonable-cause defense (IRC 6664(c)) or IRC 6662(e)(2).	No penalties under IRC 6662, 6662A or 6663 in any covered dispute (§2(c)(1)(C)). A timely Form 8886 creates a conclusive presumption of good faith and cannot be used as evidence of fraud (§2(h)).	9398 applied the 40% rate to the whole underpayment if the claim was over 200% of the cap, otherwise 20% on the whole. 10813's tiers are generally lower for the same claim.
Cost: interest	Interest is waived through day 90 after enactment on amounts paid within the window. After that it runs only from day 91 until payment (§2(e)(4)). No waiver for amounts not paid in the window. Non-contributing partners accrue interest from the end of the window (§2(f)(4)).	Only the general 80%-or-more reduction for non-qualified easements (§2(c)(1)(B)). Qualified easements have no deficiency, so no interest. Refunds of interest already paid under §2(e).	Narrower than 9398 , which waived all interest before remittance if paid in the window.
Partnership vs. partner level	Partnership level . The PR elects and pays, and the election binds every partner, pass-through and ultimate taxpayer partner (§2(b)(9)). Partners who don't fund their share are listed on a schedule and assessed directly for their share plus 25% of their share of the tax component . That amount is immediately assessable without deficiency procedures, and the only challenge is pay-and-sue for a refund (§2(f)(1)-(6)).	Silent. The text speaks of "the taxpayer" (§2(c), §2(e), §2(h)) and leaves the program's operation to Treasury. It does not address BBA/TEFRA partnership procedures.	Unchanged.
Binding / irrevocable; review	Irrevocable and binding , treated as a §7121 closing agreement deemed approved, and not subject to judicial review (§2(b)(9)). The IRS may check computations only , within 2 years, with Appeals and Tax Court review of any added amount. The election is void only if a finally determined added amount goes unpaid (§2(h)).	No irrevocability or closing-agreement language. Whether a program resolution binds the taxpayer is left to Treasury. Costs/fees under IRC 7430 are available without the net-worth limit (§2(g)).	Closing-agreement treatment now also covers the allowed deduction amount. Rules on computational discrepancies were clarified so a discrepancy does not void the election.
Pending litigation & IRS settlements (May 2026 terms; IR-2026-95)	Docketed cases qualify while still open. Courtesy notice goes to the court, but there is no automatic stay (§2(b)(5)). Partners who accepted the May 13 framework: if a stipulated decision is lodged but not entered, they can withdraw and elect (§2(g)(2)). Once the decision is final, they are out (§2(g)(3)).	Pre-enactment court cases are stayed on motion of any party until final disposition under the program (§2(d)). Those who already settled or lost could get §2(e) refunds. Valuation rules: the taxpayer's qualified appraisal is presumed accurate, the IRS must rebut by clear and convincing evidence with its own qualified appraisal including methodology, comps, assumptions and highest-and-best-use (HBU) analysis (§2(f)).	Unchanged. IR-2026-95 (Aug 19, 2026) ended uniform May 13 letters and deadlines but still processes prior elections. Pending cases can still request May terms through Exam/Counsel. Neither bill mentions the IRS Office of Conservation Easements.
Other material provisions	§2(i) no inference for non-electing cases. §3 : the historic-district "contributing building" standard for IRC 170(h)(4)(C) and §47, applied to open years and pending cases.	§3 : post-donation-improvement clauses in extinguishment-proceeds formulas do not break perpetuity (IRC 170(h)(5)(A)), applied to transactions after Dec 31, 2009. §4 : new IRC 170(h)(8) appraisal presumption and 170(h)(9) HBU must include mineral/mining/quarrying uses where physically possible, legally permissible, financially feasible and	§3 now includes the second "certified by Interior" prong (II) in the 170(h)(4)(C) amendment that 9398's text omitted.

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		maximally productive. \$5: annual Treasury reports for 5 years, with NTA review.	

Illustration (hypothetical numbers, not anyone's actual position)

This example assumes **\$100,000 cash invested**, a **\$450,000 deduction (4.5x)** for tax year 2016 (top rate 39.6%), and no promoter financing or 170(h)(7)(C)–(E) exception. It ignores state tax and actual brackets.

- **H.R. 10813:** cap \$250,000 and excess \$200,000, so tax is \$79,200. Penalty: none on excess up to \$375,000 (150% of cap), and 20% on the \$75,000 above that (\$29,700 of tax), which is \$5,940. **About \$85,100 total**, with interest waived through day 90 after enactment if paid in the window (§§2(c)(1), 2(e)).
- **H.R. 9398 (June version):** same \$79,200 tax. The claim is 180% of cap, so a 20% penalty applies to the whole underpayment (\$15,840). **About \$95,000**, with all prior interest waived.
- **H.R. 10510:** if the easement is "qualified" and no §2(c)(1)(A) exception applies, **\$0 deficiency and no penalties**. If the IRS shows a gross valuation misstatement (§2(c)(1)(A)(v)), the bill sets no settlement terms, though penalties are still barred (§2(c)(1)(C)).

Key takeaways

- **10813 is a defined, buy-out-style deal.** The deduction is capped at roughly 2.5x cash invested, with tax on the excess at the top rate, tiered penalties and partial interest relief. **The partnership decides, not the individual investor.** An investor who doesn't fund their share is assessed directly with a 25% add-on (§2(f)). Deals sharing a sponsor/manager may have to elect as a single "common marketing group" (§2(d)).
- **10510 is far more generous on paper:** full deductions for qualified easements, no penalties, refunds for closed cases, stays of litigation, and a taxpayer-favorable appraisal presumption with an HBU/mineral rule. But its relief depends on **Treasury writing the program**, with no deadline for applications, and the **gross-valuation-misstatement exception (§2(c)(1)(A)(v))** could exclude many syndicated deals unless the §2(f) presumption controls. It has **no cosponsors**; 10813 has four, including Georgia's Buddy Carter.
- **Timing matters for cases already in motion.** Under 10813, anyone whose Tax Court decision becomes final, or who signs a closing agreement, before enactment loses access (§2(g)). A stipulated decision that is lodged but not entered can still be pulled back. Under 10510, settled and decided cases could get refunds (§2(e)).