

By Representative Hafner

1                                   A bill to be entitled  
2           An act relating to community organizations;  
3           creating "The Community Asset Protection Act";  
4           providing that all records and procedures  
5           relating to the transfer of the assets or  
6           management authority of a community  
7           organization to outside interests are open to  
8           the public; providing definitions; providing  
9           legislative intent; providing notice; providing  
10          for inspection and copying of records;  
11          providing an effective date.

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13           WHEREAS, the Legislature recognizes that community  
14          organizations perform valuable services to their communities,  
15          often in lieu of or in addition to services performed by  
16          government agencies, and

17           WHEREAS, community organizations are often established  
18          or supported through charitable contributions and grants,  
19          including donations of money, valuables, and services  
20          performed by community volunteers, and

21           WHEREAS, community organizations are recognized as  
22          community assets that are exempt from a multitude of local,  
23          state, and federal taxes, and

24           WHEREAS, transfers of the assets or management control  
25          of these community assets to outside interests raises the very  
26          real concern that services performed by community  
27          organizations will be terminated or the cost of providing  
28          those services will be shifted to the taxpayers of the  
29          affected community, and

30           WHEREAS, the Legislature recognizes the need of the  
31          affected community to make a reasonable evaluation of the

1 fairness and effects of proposed transfers of its community  
2 assets to outside interests before such transfers are  
3 consummated, NOW, THEREFORE,

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5 Be It Enacted by the Legislature of the State of Florida:

6  
7 Section 1. Sale, lease, exchange, conveyance, merger,  
8 or other transfer of the assets or management authority of a  
9 community organization to outside interests.--

10 (1) This section may be cited as "The Community Asset  
11 Protection Act."

12 (2) It is the intent of the Legislature that all  
13 proposed transfers involving 20 percent or more of the assets  
14 or management authority of a community organization to outside  
15 interests be made public so that an affected community may  
16 reasonably evaluate the fairness and effects of such transfers  
17 before they are consummated. It is the further intent of the  
18 Legislature to make such proposed transfers public by  
19 requiring community organizations to give public notice at  
20 least 60 days before the transfers are consummated and to make  
21 all records relating to such transfers available for public  
22 inspection and copying as if community organizations were  
23 state agencies subject to the provisions of chapter 119,  
24 Florida Statutes.

25 (3) As used in this section, the term:

26 (a) "Affected community" means the citizens and  
27 political entities of this state that are served by, or  
28 receive the benefit of the services provided by, a community  
29 organization.

30 (b) "Community organization" means a nonprofit  
31 corporation, trust, foundation, society, league, order,

1 association, organization, or other entity recognized under 26  
2 U.S.C. s. 501(c) that has current gross assets with a fair  
3 market value of \$3 million or more and is organized under the  
4 laws of this state, or authorized to transact business in this  
5 state, for the purpose of providing health, medical, or  
6 hospital care, or charitable, social welfare, educational,  
7 scientific, literary, fraternal, financial, insurance, or  
8 similar services that benefit the community. A member-owned  
9 organization that makes available to its members all records  
10 relating to a proposed transaction for the purpose of  
11 inspecting, copying, and evaluating such records reasonably in  
12 advance of consummation of the transaction is not a community  
13 organization subject to the provisions of this section.

14 (c) "Outside interests" means an individual,  
15 partnership, corporation, trust, foundation, joint business  
16 venture, or other entity, whether for-profit or  
17 not-for-profit, that conducts business or provides services  
18 and whose assets are not entirely owned and entirely  
19 controlled by a community organization.

20 (d) "Public inspection period" means the 60 days  
21 immediately following the date of publication by a community  
22 organization of the first advertisement notifying the public  
23 of a proposed transaction, during which time public hearings  
24 are held, all records relating to the proposed transfer are  
25 made available for public inspection and copying, and the  
26 proposed transaction may not be consummated.

27 (e) "Transaction" means an action by a community  
28 organization to:

29 1. Sell, lease, exchange, convey, merge, or otherwise  
30 transfer control of 20 percent or more of its current gross  
31 assets in a single transaction, or 30 percent or more of its

1 current gross assets in a series of transactions occurring  
2 over a period of 3 years, to outside interests;  
3 2. Grant 20 percent or more of the vote on its board  
4 of directors or board of trustees in a single transaction, or  
5 30 percent or more of the vote of such board in a series of  
6 transactions occurring over a period of 3 years, to outside  
7 interests; or  
8 3. Enter into a joint venture, joint operating  
9 agreement, management agreement, partnership or other business  
10 agreement that transfers 20 percent or more of the community  
11 organization's management authority in a single transaction,  
12 or 30 percent or more of its management authority in a series  
13 of transactions occurring over a period of 3 years, to outside  
14 interests.  
15 (4)(a) When a community organization proposes to enter  
16 into a transaction, before providing notice under paragraph  
17 (b), the community organization shall:  
18 1. Obtain one or more written reports by independent  
19 experts assessing the following aspects of the proposed  
20 transaction:  
21 a. Whether the community organization is receiving  
22 fair market value for any assets or management authority,  
23 which shall include a detailed valuation of such assets or  
24 management authority and a detailed analysis of all competing  
25 offers, if any, made to the community organization;  
26 b. Whether the proposed use of the proceeds of the  
27 proposed transaction is consistent with the charitable  
28 services and benefits provided by the community organization  
29 and the donative intent of the benefactors of the community  
30 organization; and  
31

1           c. Whether the proposed transaction was negotiated at  
2 arms' length and is fair to the affected community from both a  
3 financial and community service standpoint.

4           2. Obtain signed affidavits regarding conflicts of  
5 interest from each member of its board of directors or board  
6 of trustees and each officer and executive employee. These  
7 affidavits must disclose whether the affiant has been offered  
8 or has accepted, orally or in writing, any personal or  
9 familial benefit, including future employment or stock  
10 options, from any outside interests or any affiliated  
11 entities. In addition, the affiants must disclose whether  
12 they have been offered or have accepted, orally or in writing,  
13 any position with a foundation, trust, corporation, or other  
14 entity that will direct the use of any part of the proceeds of  
15 the proposed transaction or otherwise function as a successor  
16 to the community organization.

17           3. State in writing whether there are any contractual  
18 or other agreements with outside interests regarding future  
19 use of the assets or future exercise of the management  
20 authority involved in the proposed transaction and, if so,  
21 what penalties are available if the outside interests do not  
22 comply with those agreements.

23           (b) After complying with the provisions of paragraph  
24 (a), a community organization must provide notice describing  
25 clearly and concisely the nature of the proposed transaction;  
26 the parties to the transaction; the geographical area of the  
27 affected community; the date, time, and location of the public  
28 hearings required by this section; and, for purposes of public  
29 examination and copying, the location of all records related  
30 to the proposed transaction.

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1           1. Such notice must be provided, before the public  
2 inspection period commences, to the state attorney where the  
3 community organization maintains its principal place of  
4 business and to the Attorney General.

5           2. Such notice must be provided to the affected  
6 community by placing 2 advertisements in a newspaper of  
7 general paid circulation in the affected community and of  
8 general interest and readership in the affected community, and  
9 not one of limited subject matter, under chapter 50, no less  
10 than 3 weeks apart, the first before the public inspection  
11 period commences and the other at least 30 days before the end  
12 of the public inspection period. The required advertisements  
13 must be no less than 2 columns wide by 10 inches long in a  
14 standard size or a tabloid size newspaper, and the headline in  
15 the advertisement must be in type no smaller than 18 point.  
16 The advertisements must not be placed in that portion of the  
17 newspaper where legal notices and classified advertisements  
18 appear. When possible, the advertisements must appear in a  
19 newspaper that is published at least 5 days a week unless the  
20 only newspaper in the affected community is published less  
21 frequently than 5 days a week. The advertisements must be in  
22 substantially the following form:

23  
24 NOTICE OF ... (TYPE OF TRANSACTION) ... INVOLVING SUBSTANTIAL  
25 ... (ASSETS OR MANAGEMENT AUTHORITY) ... OF ... (NAME OF  
26 COMMUNITY ORGANIZATION) ...

27  
28 The ... (name of community organization) ... proposes to  
29 (clear, concise description of proposed transaction, including  
30 the name of the outside interests) ... in no fewer than (60 or  
31 30 days, as appropriate) from the date of this Notice. All

1 records relating to this proposed transaction are available  
2 for public inspection and copying during regular business  
3 hours at ... (location where records will be made available)  
4 ... Public hearings regarding this proposed transaction will  
5 be held ... (date, time, and location of public hearings) ...,  
6 at which knowledgeable representatives of ... (name of  
7 community organization) ... will be available to explain the  
8 proposed transaction and respond to questions or comments  
9 regarding the nature, purpose, and effects of the proposed  
10 transaction.

11 (c) A community organization shall permit public  
12 inspection at no cost, and copying at the rate set forth in  
13 section 119.07(1), Florida Statutes, during the public  
14 inspection period, of all records relating to the transaction,  
15 including but not limited to records setting forth the terms,  
16 conditions and structure of the transaction, due diligence  
17 records, written reports of experts, relevant financial  
18 records, affidavits required by this section, records relating  
19 to collateral agreements, minutes of the board of directors or  
20 trustees of all meetings where the proposed transaction was  
21 considered and any reports or other materials presented at  
22 such meetings, and any other relevant records, including  
23 offers by other outside interests that are reasonably related  
24 to the proposed transaction. These records must be made  
25 available to the public in a single location during regular  
26 business hours in the locale where the community organization  
27 maintains its principal place of business.

28 (d) A community organization must hold no fewer than 2  
29 public hearings in the affected community during the public  
30 inspection period at times and locations that are reasonably  
31 convenient for members of the affected community to attend and

1 be heard. At such meetings, knowledgeable representatives of  
2 the community organization must be available to explain the  
3 proposed transaction and respond to questions or comments  
4 regarding the nature, purpose, and effects of the proposed  
5 transaction.

6 (5) The Attorney General or state attorney, on behalf  
7 of the affected community, may challenge a proposed  
8 transaction by bringing an action for declaratory judgment  
9 under chapter 86, Florida Statutes, in the circuit court. In  
10 such action, the court may address issues that might be  
11 brought before it in a common law cy-pres action. The court  
12 may declare that the proposed transaction or any part of it is  
13 invalid and may not be consummated, or it may establish a  
14 mechanism to monitor future compliance by the outside  
15 interests with the terms of the transaction, or it may order  
16 any other equitable or legal relief necessary to ensure that  
17 the proposed transaction is fair to the affected community,  
18 upon a finding that:

19 (a) The community organization failed to fully comply  
20 with the provisions of this section;

21 (b) The community organization will not receive fair  
22 market value for the assets or management authority involved  
23 in the proposed transaction;

24 (c) The proposed transaction permits assets held by  
25 the community organization for charitable purposes to be used,  
26 transferred, or distributed for non-charitable purposes;

27 (d) The proposed transaction is not the product of an  
28 arms-length negotiation; there exists a material conflict of  
29 interest relating to the proposed transaction; there has been  
30 a material breach of fiduciary duty; or there are other  
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1 aspects of the negotiating process that call into question the  
2 fairness of the proposed transaction;

3 (e) The proceeds from the proposed transaction will  
4 not be applied, or there are insufficient safeguards to ensure  
5 that such proceeds will be applied, in a manner consistent  
6 with either the current services and benefits provided to the  
7 affected community by the community organization or the  
8 donative intent of the benefactors of the community  
9 organization; or

10 (f) The proposed transaction is fundamentally unfair  
11 and not in the best interests of the affected community.

12 (6) Nothing in this section contravenes or limits  
13 state or federal antitrust laws or the existing authority of  
14 the Attorney General or a state attorney to protect the public  
15 interest in matters relating to charitable trusts.

16 Section 2. This act shall take effect July 1, 1997.

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19 SENATE SUMMARY

20 Creates "The Community Asset Protection Act". Provides  
21 that all records and procedures relating to the transfer  
22 of the assets or management authority of a community  
23 organization to outside interests are open to the public.  
Provides definitions. Provides legislative intent.  
Provides notice. Provides for inspection and copying of  
records.

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