

Date of Hearing: April 13, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 557 (Irwin) – As Introduced February 23, 2015

**SUBJECT:** Nonprofit corporations: abatement: dissolution: surrender

**SUMMARY:** Establishes an administrative dissolution process and an administrative surrender process for nonprofit corporations. Specifically, this bill:

- 1) Allows the Secretary of State (SOS) to obtain address information from the Franchise Tax Board (FTB) to use in providing notices to a foreign corporation, a nonprofit public benefit corporation, and a nonprofit mutual benefit corporation.
- 2) Provides that a nonprofit mutual benefit corporation, a nonprofit public benefit corporation, a nonprofit religious corporation or a foreign nonprofit corporation (all further references to nonprofits unless stated otherwise) shall be subject to administrative dissolution or administrative surrender if at least one of the following applies:
  - a) The nonprofit corporation's corporate powers are suspended or forfeited by the FTB and have been suspended or forfeited by the FTB for a period of not less than 48 continuous months; or,
  - b) The nonprofit corporation was incorporated in this state or qualified to transact intrastate business and has not filed a statement of information (SOI) with the SOS for a period of not less than 48 continuous months.
- 3) Prior to the administrative dissolution or administrative surrender of a nonprofit corporation the nonprofit corporation shall be notified by:
  - a) The FTB by mailing a written notice to the last known address of a nonprofit corporation;
  - b) The SOS who shall provide a notice to the last known address of the nonprofit corporation; and,
  - c) If the nonprofit does not have a valid address in the records of the FTB or the SOS, the notice required by the SOS on its Internet Web site of the pending administrative dissolution or administrative surrender shall be sufficient.
- 4) Requires the FTB to transmit to the SOS the names of nonprofits subject to administrative dissolution or administrative surrender.
- 5) Allows a nonprofit to provide the SOS and FTB with a written objection and requires the FTB and SOS to notify each other if a written objection is submitted.
- 6) Provides that if no objection is received by the SOS or the FTB during the 60 day period the nonprofit corporation shall be dissolved or surrendered. The SOS will provide a certificate

as prima facie evidence.

- 7) Provides that if a written objection is received by the FTB or SOS within the 60 day period then the nonprofit corporation shall have another 90 days from the date of the written objection to satisfy all debt and file a current SOI with the SOS.
- 8) Provides that if the conditions are satisfied as described in #7, then the dissolution or surrender shall be cancelled.
- 9) Provides that if the conditions are not satisfied as described in #7, the nonprofit corporation shall be dissolved or surrendered 90 days after the date of the written objection.
- 10) Allows the FTB or the SOS to extend the 90 day period for an additional 90 days.
- 11) Requires the corporation's liabilities for qualified taxes, interest and penalties to be abated and refunded if the nonprofit corporation has been dissolved or surrendered.
- 12) Specifies that if a nonprofit corporation is dissolved or surrendered that the liability to creditors is not discharged as well as clarifies that the measure does not diminish or adversely affect the ability of the Attorney General to enforce liabilities.
- 13) Allows the following related to nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations:
  - a) A corporation can dissolve when the corporation has not issued any membership if all of the following are verified on a certificate:
    - i) Certificate must be filed within 24 months from the date that the articles of incorporation (AOI) was filed;
    - ii) The corporation does not have any debts or liabilities;
    - iii) The tax liability shall be satisfied on a taxes-paid basis;
    - iv) A final franchise tax return;
    - v) The corporation was created in error;
    - vi) Distribution of assets;
    - vii) No issuance of membership; and
    - viii) That the corporation is dissolved.
  - b) Requires the certificate of dissolution signed and verified to be filed with the SOS. Requires the SOS to notify the FTB of the dissolution.
  - c) Provides that once the certificate is filed the corporation shall be dissolved.

- d) Specifies that the dissolution does not relieve liability to creditors.
- 14) Requires the FTB to abate upon written request by a qualified corporation, unpaid taxes, interest, and penalties for the taxable years the nonprofit corporation certifies under penalty of perjury that it was not doing business.
- a) Defines "qualified corporation" as a nonprofit mutual benefit corporation, a nonprofit public benefit corporation, and a nonprofit religious corporation incorporated in California or a nonprofit foreign corporation that satisfies any of the following:
    - i) Was operating and previously obtained tax-exempt status with the FTB but had the tax-exempt status revoked;
    - ii) Was operating and previously obtained tax-exempt status with the Internal Revenue Service (IRS) but had tax-exempt status revoked; or
    - iii) Never did business in California at any time after the time of its incorporation.
  - b) Defines "qualified taxes, interest, and penalties" as a tax imposed and associated interest and penalties but does not include taxes imposed under Revenue and Taxation Code Section 23731 or associated interest or penalties.
  - c) Requires the qualified corporation to show that it has ceased all business operations at the time of the filing request for abatement.
  - d) Provides that the abatement of unpaid qualified tax, interest, and penalties is conditioned on the dissolution of the qualified corporation within 12 months from the date of filing the request for abatement.
  - e) Specifies that if a qualified corporation is not dissolved within 12 months from the date of filing the request for abatement or restarts business operations, then the abatement of qualified tax, interest, and penalties shall be cancelled and treated as if the abatement never occurred.
  - f) Allows the FTB to prescribe rules and regulations as necessary.
- 15) Makes findings and declarations.

#### EXISTING LAW

- 1) Requires foreign corporations to file within 90 days and annually thereafter during the applicable filing period a statement containing specified information. [Corporations Code, Section 2117]
- 2) Requires nonprofit public benefit corporations and nonprofit mutual benefit corporations to file within 90 days and biennially thereafter a statement of information. [Corporations Code,

Section 6210 and 8210]

- 3) Establishes the process for voluntary windup and dissolution for nonprofit corporations which is initiated by an election to dissolve which may be made by the vote or written consent of a majority of all the members of the corporation or, if there are no members, by the board of directors. Following the election the corporation must file documents with the SOS such as a certificate of election to wind up and dissolve prior to or together with a certificate of dissolution. In addition dissolution documents can be filed only if the status of the corporation is active on the records of the SOS. Upon filing of the certificate of dissolution by the SOS, the corporation will be completely dissolved and its corporate existence will cease in California. [Corporation Code, Sections 6611, 6615, 8611, 8615, 9680, 12631 and 12625]
- 4) Requires that nonprofit public benefit corporations and nonprofit religious corporations provide a letter from the Attorney General's office that either waives objections to the distribution of the corporation's assets or confirms that the corporation has no assets accompanied with the certificate of dissolution. [Corporations Code, Sections 6615 and 9680]
- 5) Requires nonprofit mutual benefit corporations if holding assets in a charitable trust, the distribution of those assets must be approved by the Attorney General or be made by decree of a superior court. [Corporations Code, Section 8716]

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in AB 557 state:

- There are more than 150,000 nonprofit corporations in California that provide a variety of programs and services in areas as diverse as education, recreation, health care, legal, job training, and housing to millions of Californians. These organizations, depending on their formation status, are required to register with the office of the SOS, the FTB, and the office of the Attorney General.
- Every year, hundreds of nonprofit corporations seek administrative changes to expand their mission or alter their tax status, and, in some cases, to even go out of existence. This dissolution process, which involves the winding down of the nonprofit corporation's affairs, is very cumbersome and protracted.
- In order to more effectively analyze and monitor the status, finances, and activities of a nonprofit corporation, it is in the public's interest to establish a streamlined process to efficiently dissolve a nonprofit corporation. The act of dissolving the nonprofit corporation and abating unpaid taxes, interest, and penalties serves a statewide public purpose by ensuring that nonprofit corporations that have been suspended or forfeited tax exempt status are no longer able to do business in the state, which will relieve the citizens of California from unknowingly donating to a nonprofit corporation that is not complying with the laws of the state, and do not constitute a gift of public funds within the meaning of Section 6 of

Article XVI of the California Constitution.

The goal of AB 557 is to streamline the dissolution process for nonprofit corporations. According to the author's office,

There is a significant problem with non-profit corporations filing incorporation papers with the Secretary of State, and then failing to launch or continue operations and remain up to date and filing and tax requirements. These inactive non-profits never go through the formal dissolution process and become a hindrance to the state. The Secretary of State (SOS), Franchise Tax Board (FTB), and Attorney General are responsible for regulating nonprofit corporations and spend a significant amount of resources and time attempting to register, tax, and audit nonprofits that no longer exist. The SOS and FTB estimate that there are close to 60,000 nonprofits currently in their systems that would be eligible for the administrative dissolution process established under AB 557.

AB 557 creates a streamlined administrative dissolution process for nonprofits that have been suspended for at least 48 continuous months after proper notice has been served. This new process will allow FTB and SOS to dissolved non-profits that have been sitting inactive on the 'books'.

AB 557 allows the FTB to waive delinquent taxes, penalties and interest under specified conditions. AB 557 establishes a process for involuntary administrative dissolution for a nonprofit corporation, if the entity has been suspended or forfeited by the FTB or the SOS for not less than 48 months. In addition, the measure allows SOS to use the corporation address information obtained from the FTB and allows a nonprofit that was incorporated in error to use a short dissolution process that is currently available to for-profit corporations.

As pointed out in the measure's findings, a number of nonprofits have disbanded but do not take the proper steps to dissolve thus incur taxes, penalties and interest unnecessarily. AB 557 will put together a process that will allow inactive nonprofits to cease to exist in a more streamlined approach.

As noted below an identical bill to AB 557 was vetoed last year. There is no indication that the Governor's concerns regarding AB 1529 (Pérez) have been addressed or that he will sign AB 557.

#### Previous Legislation

AB 1529 (Pérez) of 2014 was substantially similar to AB 557 and passed Assembly Banking Committee 11-0. It was vetoed by the Governor with the following message:

*This bill would make it easier to dissolve a nonprofit corporation.*

*Implementing this bill, however, will require expensive reprogramming of an obsolescent computer system that will soon be replaced. It would be better to make this change when the new computer system is being designed.*

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Society of Enrolled Agents (CSEA)

**Opposition**

None on file.

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