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**AB-557 Nonprofit corporations: abatement: dissolution: surrender.** (2015-2016)

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**Assembly Bill No. 557**

**CHAPTER 363**

An act to add Sections 5008.9, 6610.5, 8610.5, and 9680.5 to the Corporations Code, and to add Section 23156 to the Revenue and Taxation Code, relating to nonprofit corporations.

[ Approved by Governor September 30, 2015. Filed with Secretary of State September 30, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 557, Irwin. Nonprofit corporations: abatement: dissolution: surrender.

The Nonprofit Corporation Law, among other things, generally regulates the organization and operation of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations.

(1) Existing law authorizes the corporate powers, rights, and privileges of a domestic taxpayer to be suspended, and the exercise of the corporate powers, rights, and privileges of a foreign taxpayer in this state to be forfeited, if certain tax liabilities are not paid or a taxpayer fails to file a tax return. Existing law also authorizes the corporate powers, rights, and privileges of a domestic corporation exempt from income tax to be suspended and the exercise of the corporate powers, rights, and privileges of a foreign corporation in this state exempt from income tax to be forfeited if the organization fails to file the annual information return or a specified statement for organizations not required to file the information return or pay a specified amount due. Existing law requires notice prior to the suspension or forfeiture of a taxpayer's corporate powers, rights, and privileges. Existing law requires the Franchise Tax Board to transmit to the Secretary of State the names of those taxpayers subject to these suspension or forfeiture provisions and thereby makes the suspension or forfeiture effective. Under existing law, the Secretary of State's certificate is prima facie evidence of the suspension or forfeiture.

This bill would make a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, and a foreign nonprofit corporation, subject to administrative dissolution or administrative surrender, as specified, if the nonprofit corporation's or foreign corporation's corporate powers are, and have been, suspended or forfeited by the Franchise Tax Board for a specified period of time. Prior to the administrative dissolution or administrative surrender of the nonprofit corporation or foreign corporation, the bill would require the Franchise Tax Board to provide notice to the corporation of the pending administrative dissolution or administrative surrender. The bill would require the Franchise Tax Board to transmit to the Secretary of State and the Attorney General's Registry of Charitable Trusts the names and Secretary of State file numbers of the corporations subject to administrative dissolution or administrative surrender. The bill would also require the Secretary of State to provide notice of the pending administrative dissolution or administrative surrender on its Internet Web site, as specified. The bill would authorize a nonprofit corporation or foreign corporation to provide the Franchise Tax Board with a written objection to the administrative dissolution or administrative surrender. If there is no written objection or the written objection fails, the bill would require the corporation to be administratively dissolved or administratively surrendered and would provide that the certificate of the Secretary of State is prima facie evidence of the administrative dissolution or administrative surrender. Upon administrative

dissolution or administrative surrender, the bill would abate the nonprofit corporation's liabilities for qualified taxes, interest, and penalties, as provided.

(2) Existing law, the Nonprofit Corporation Law, authorizes a nonprofit public benefit corporation, nonprofit mutual benefit corporation, and nonprofit religious corporation to elect voluntarily to wind up and dissolve by either approval of a majority of all members or approval of the board and approval of the members. Under existing law, the General Corporation Law, when a corporation has not issued shares, a majority of the directors, or, if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators, are authorized to sign and verify a specified certificate of dissolution. Existing law requires the certificate to be filed with the Secretary of State and requires the Secretary of State to notify the Franchise Tax Board of the dissolution. Existing law provides that, upon the filing of the certificate, a corporation is dissolved and its powers, rights, and privileges cease.

This bill would enact provisions similar to those General Corporation Law provisions and make them applicable to nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations. The bill would additionally provide that liability to creditors, if any, is not discharged, the liability of the directors of the dissolved nonprofit corporation is not discharged, and the dissolution of a nonprofit corporation does not diminish or adversely affect the ability of the Attorney General to enforce specified liabilities.

(3) Existing law requires every corporation doing business within the limits of this state and not expressly exempted from taxation to annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, as specified. Under existing law, every corporation, except as specified, is subject to the minimum franchise tax until the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the limits of this state. Upon certification by the Secretary of State that a nonprofit public benefit corporation or a nonprofit mutual benefit corporation has failed to file the required Statement of Information, existing law requires the Franchise Tax Board to assess a specified penalty.

This bill would require the Franchise Tax Board to abate, upon written request by a qualified nonprofit corporation, as defined, unpaid qualified taxes, interest, and penalties, as defined, for the taxable years in which the nonprofit corporation certifies, under penalty of perjury, that it was not doing business, as defined. The bill would make this abatement conditioned on the dissolution of the qualified corporation within a specified period of time of filing the request for abatement. The bill would require the Franchise Tax Board to prescribe rules and regulations to carry out these abatement provisions and would exempt these rules and regulations from the Administrative Procedure Act.

(4) Existing state constitutional law prohibits the Legislature from making any gift, or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation.

This bill would make certain legislative findings and declarations that abatement of a nonprofit corporation's liabilities for specified taxes, penalties, and interest serves a public purpose, as provided.

(5) By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** The Legislature finds and declares all of the following:

(a) 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 Secretary of State, the Franchise Tax Board, and the office of the Attorney General.

(b) 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.

(c) 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.

**SEC. 2.** Section 5008.9 is added to the Corporations Code, to read:

**5008.9.** (a) A nonprofit corporation described in Section 5059, 5060, or 5061, or a foreign nonprofit corporation, as defined in Section 5053, that has qualified to transact intrastate business, shall be subject to administrative dissolution or administrative surrender in accordance with this section if, as of January 1, 2016, or later, the nonprofit corporation's or foreign corporation's corporate powers are, and have been, suspended or forfeited by the Franchise Tax Board for a period of not less than 48 continuous months.

(b) Prior to the administrative dissolution or administrative surrender of the nonprofit corporation or foreign corporation, the corporation shall be notified of the pending administrative dissolution or administrative surrender as follows:

(1) The Franchise Tax Board shall mail written notice to the last known address of a nonprofit corporation or foreign corporation meeting the requirement described in subdivision (a).

(2) If the nonprofit corporation or foreign corporation does not have a valid address in the records of the Franchise Tax Board, the notice provided in subdivision (d) shall be deemed sufficient notice prior to administrative dissolution or administrative surrender.

(c) The Franchise Tax Board shall transmit to the Secretary of State and the Attorney General's Registry of Charitable Trusts the names and Secretary of State file numbers of nonprofit corporations and foreign corporations subject to the administrative dissolution or administrative surrender provisions of this section.

(d) The Secretary of State shall provide 60 calendar days' notice of the pending administrative dissolution or administrative surrender on its Internet Web site by listing the corporation name and the Secretary of State's file number for the nonprofit corporation or foreign corporation. The Secretary of State shall also, in conjunction with the information above, provide instructions for a nonprofit corporation or foreign corporation to submit a written objection of the pending administrative dissolution or administrative surrender to the Franchise Tax Board.

(e) (1) A nonprofit corporation or foreign corporation may provide the Franchise Tax Board with a written objection to the administrative dissolution or administrative surrender.

(2) The Franchise Tax Board shall notify the Secretary of State if a written objection has been received.

(f) If no written objection to the administrative dissolution or administrative surrender is received by the Franchise Tax Board during the 60-day period described in subdivision (d), the nonprofit corporation or foreign corporation shall be administratively dissolved or administratively surrendered in accordance with this section. The certificate of the Secretary of State shall be prima facie evidence of the administrative dissolution or administrative surrender.

(g) (1) If the written objection of a nonprofit corporation or foreign corporation to the administrative dissolution or administrative surrender has been received by the Franchise Tax Board before the expiration of the 60-day period described in subdivision (d), that nonprofit corporation or foreign corporation shall have an additional 90 days from the date the written objection is received by the Franchise Tax Board to pay or otherwise satisfy all accrued taxes, penalties, and interest and to file a current Statement of Information with the Secretary of State.

(2) (A) If the conditions in paragraph (1) are satisfied, the administrative dissolution or administrative surrender shall be canceled.

(B) If the conditions in paragraph (1) are not satisfied, the nonprofit corporation or foreign corporation shall be administratively dissolved or administratively surrendered in accordance with this section as of the date that is 90 days after the receipt of the written objection.

(3) The Franchise Tax Board may extend the 90-day period in paragraph (1), but for no more than one period of 90 days.

(h) Upon administrative dissolution or administrative surrender in accordance with this section, the nonprofit corporation's or the foreign corporation's liabilities for qualified taxes, interest, and penalties as defined in Section 23156 of the Revenue and Taxation Code, if any, shall be abated. Any actions taken by the Franchise Tax Board to collect that abated liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board, and no subsequent administrative or civil action shall be taken or brought to collect all or part of that amount. Any amounts erroneously received by the Franchise Tax Board in contravention of this section may be credited and refunded in accordance with Article 1 (commencing with Section 19301) of Chapter 6 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(i) If the nonprofit corporation or foreign corporation is administratively dissolved or administratively surrendered under this section, the liability to creditors, if any, is not discharged. The liability of the directors of, or other persons related to, the administratively dissolved or administratively surrendered nonprofit corporation or foreign corporation is not discharged. The administrative dissolution or administrative surrender of a nonprofit corporation or foreign corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

**SEC. 3.** Section 6610.5 is added to the Corporations Code, to read:

**6610.5.** (a) Notwithstanding any other provision of this division, when a corporation has not issued any memberships, a majority of the directors, or, if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators, may sign and verify a certificate of dissolution stating all of the following:

- (1) That the certificate of dissolution is being filed within 24 months from the date the articles of incorporation were filed.
- (2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3) and subdivision (d).
- (3) That the tax liability will be satisfied on a taxes-paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.
- (4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.
- (5) That the corporation was created in error.
- (6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed as required by law or that the corporation acquired no known assets, as the case may be.
- (7) That a majority of the directors, or, if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.
- (8) That the corporation has not issued any memberships, and if the corporation has received payments for memberships, those payments have been returned to those making the payments.
- (9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board and the Attorney General's Registry of Charitable Trusts of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

(d) Notwithstanding the dissolution of a corporation pursuant to this section, its liability to creditors, if any, is not discharged. The liability of the directors of, or other persons related to, the dissolved corporation is not discharged. The dissolution of a corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

**SEC. 4.** Section 8610.5 is added to the Corporations Code, to read:

**8610.5.** (a) Notwithstanding any other provision of this division, when a corporation has not issued any memberships, a majority of the directors, or, if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators, may sign and verify a certificate of dissolution stating the following:

- (1) That the certificate of dissolution is being filed within 24 months from the date the articles of incorporation were filed.
- (2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3) and subdivision (d).
- (3) That the tax liability will be satisfied on a taxes-paid basis, or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.
- (4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the corporation was created in error.

(6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed as required by law or that the corporation acquired no known assets, as the case may be.

(7) That a majority of the directors, or, if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.

(8) That the corporation has not issued any memberships, and if the corporation has received payments for memberships, those payments have been returned to those making the payments.

(9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board and the Attorney General's Registry of Charitable Trusts of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

(d) Notwithstanding the administrative dissolution of a corporation pursuant to this section, its liability to creditors, if any, is not discharged. The liability of the directors of, or other persons related to, the administratively dissolved corporation is not discharged. The dissolution of a corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

**SEC. 5.** Section 9680.5 is added to the Corporations Code, to read:

**9680.5.** (a) Notwithstanding any other provision of this division, when a corporation has not issued any memberships, a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators, may sign and verify a certificate of dissolution stating the following:

(1) That the certificate of dissolution is being filed within 24 months from the date the articles of incorporation were filed.

(2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3) and subdivision (d).

(3) That the tax liability will be satisfied on a taxes-paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the corporation was created in error.

(6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed as required by law or that the corporation acquired no known assets, as the case may be.

(7) That a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.

(8) That the corporation has not issued any memberships, and if the corporation has received payments for memberships, those payments have been returned to those making the payments.

(9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

(d) Notwithstanding the dissolution of a nonprofit corporation pursuant to this section, its liability to creditors, if any, is not discharged. The liability of the directors of, or other persons related to, the dissolved corporation is not discharged. The dissolution of a nonprofit corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

**SEC. 6.** Section 23156 is added to the Revenue and Taxation Code, to read:

**23156.** (a) The Franchise Tax Board shall abate, upon written request by a qualified nonprofit corporation, unpaid qualified taxes, interest, and penalties for the taxable years in which the qualified nonprofit corporation certifies, under penalty of perjury, that it was not doing business, within the meaning of subdivision (a) of Section 23101.

(b) For purposes of this section:

(1) "Qualified nonprofit corporation" means a nonprofit corporation identified in Section 5059, 5060, or 5061 of the Corporations Code or a foreign nonprofit corporation, as defined in Section 5053 of the Corporations Code that has qualified to transact intrastate business in this state and that satisfies any of the following conditions:

(A) Was operating and previously obtained tax-exempt status with the Franchise Tax Board, but had its tax-exempt status revoked under subdivision (c) of Section 23777.

(B) Was operating and previously obtained tax-exempt status with the Internal Revenue Service, but had its tax-exempt status revoked under Section 6033(j) of the Internal Revenue Code.

(C) Was never doing business, within the meaning of subdivision (a) of Section 23101, in this state at any time after the time of its incorporation in this state.

(2) "Qualified taxes, interest, and penalties" means tax imposed under Section 23153 and associated interest and penalties, and any penalties imposed under Section 19141. "Qualified taxes, interest, and penalties" does not include tax imposed under Section 23501 or 23731, or associated interest or penalties.

(c) The qualified corporation must establish that it has ceased all business operations at the time of filing the request for abatement under this section.

(d) (1) 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 under this section.

(2) If the qualified corporation is not dissolved within 12 months from the date of filing the request for abatement or restarts business operations at any time after requesting abatement under this section, the abatement of qualified tax, interest, and penalties under this section shall be canceled and the qualified taxes, interest, and penalties subject to that abatement shall be treated as if the abatement never occurred.

(e) The Franchise Tax Board shall prescribe any rules and regulations that may be necessary or appropriate to implement this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

**SEC. 7.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.