

## BILL ANALYSIS

Department, Board, Or Commission <b>Franchise Tax Board</b>	Author Irwin	Bill Number <b>AB 557</b>
--	-----------------	------------------------------

### SUBJECT

Nonprofit Corporation Administrative Dissolution or Administrative Surrender/Abatement of Qualified Taxes

### SUMMARY

This bill would modify the nonprofit corporate dissolution process under the Corporation Tax Law and Corporations Code.

This analysis only addresses the provisions of this bill that impact the department's programs and operations.

### REASON FOR THE BILL

The reason for the bill is to create a streamlined process to efficiently dissolve a nonprofit corporation. The existing dissolution process, which involves the Franchise Tax Board (FTB), the Secretary of State (SOS), and possibly the Attorney General's Office (AG), is cumbersome and protracted.

### EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2016.

### PROGRAM BACKGROUND

The current process for winding up a nonprofit corporation involves the SOS, the FTB, and the AG:

- The SOS administers the incorporation process for nonprofit entities that choose to incorporate and ensures that nonprofit corporations adhere to their stated mission.
- The FTB has the responsibility of determining, reviewing, and monitoring the state tax-exempt status of a nonprofit corporation to ensure that its tax-exempt status still applies.
- The California AG regulates the nonprofit organizations and individuals that administer or solicit charitable funds or assets in California and has broad legal and statutory authority to commence enforcement actions against charitable organizations and trusts.

---

Gail Hall, FTB Contact Person  
(916) 845-6333 (Office)

Executive Officer  
Selvi Stanislaus

Date  
8/28/15

## FEDERAL/STATE LAW

Existing state law provides that every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, is subject to the minimum franchise tax. Every corporation that incorporates on or after January 1, 2000, is not subject to the minimum franchise tax for its first taxable year. Additionally, the minimum franchise tax is not imposed if the taxable year is less than 15 days as long as the corporation has not done any business within this state.

Existing state law provides an exemption from franchise or corporate income tax for organizations that are organized and operated for one or more exempt purposes.

However, a tax-exempt organization that regularly carries on a trade or business not substantially related to its exempt purpose is required to pay tax on the unrelated trade or business income that results from such activity.

When a nonprofit corporation's tax-exempt status is revoked, the corporation is subject to the franchise or corporation income tax.

The yearly obligation to pay the franchise tax ends on the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the state.

Existing state law requires that a dissolving or withdrawing corporation subject to tax in this state must pay a tax for the year it ceases to do business in California. The amount of tax owed is measured by the corporation's net income for its final taxable year, but cannot be less than the minimum franchise tax.

*Nonprofit Corporation Dissolution Process (see Appendix 1 for flowchart of dissolution process)*

A nonprofit corporation must prepare and file a Certificate of Election to Wind Up and Dissolve ([Form ELEC NP](#)) prior to or together with a Certificate of Dissolution ([Form DISS NP](#)) with the SOS.

If the corporation does not have a requirement to file with the AG when dissolving, the SOS would process the request and the corporation would be completely dissolved and its corporate existence would cease in California.

The following types of corporations must file with the AG when dissolving:

- Public benefit or religious corporations: If the dissolving corporation is a public benefit or religious corporation, the Certificate of Dissolution must be accompanied by a letter from the AG that either waives objections to the distribution of the corporation's assets or confirms that the corporation has no assets.<sup>1</sup>

---

<sup>1</sup> Corporation Code sections 6615 and 9680.

- Mutual benefit corporations: If the dissolving corporation is a mutual benefit corporation, and that corporation is holding assets in a charitable trust, the distribution of those assets must be approved by the AG or be made by decree of a superior court.<sup>2</sup>

The public benefit, religious, or mutual benefit corporation must then submit final notice of submission to the SOS. The final dissolution packet must contain the following:

- A letter from the AG, either waiving objections to the proposed distribution of the corporation's assets or confirming that the corporation has no assets; and
- An executed Certificate of Dissolution.

After the SOS processes the corporation's paperwork, the corporation will be completely dissolved and its corporate existence will cease in California.

The final step for the public benefit, religious, or mutual benefit corporation requires that the corporation submit final notice of submission to the AG. The packet must contain the following:

- A copy of the Certificate of Dissolution filed by the SOS, or written confirmation that the Certificate of Dissolution has been filed with the SOS; and
- The final financial report for the corporation showing that all assets were distributed properly, resulting in a zero balance.

A dissolved corporation is no longer subject to the minimum franchise tax for taxable years beginning on or after the date of dissolution.

## **THIS BILL**

### *Administrative Dissolution or Administrative Surrender*

This bill would subject a nonprofit corporation to administrative dissolution or administrative surrender, as specified, if the nonprofit corporation's corporate powers are suspended or forfeited by the FTB and have been suspended or forfeited for a specified period of time.

Prior to the administrative dissolution or administrative surrender of the nonprofit corporation, the bill would require the FTB to provide written notice to the nonprofit corporation of the pending administrative dissolution or administrative surrender. The FTB would transmit to the SOS and the AG the names and SOS file numbers of nonprofit corporations and foreign corporations subject to the administrative dissolution or administrative surrender. Additionally, the SOS would be required to provide 60 calendar-days notice of a pending administrative dissolution or administrative surrender on its website by listing the corporation name, and the SOS's file number, as applicable.

---

<sup>2</sup> Corporation Code section 8716.

A nonprofit corporation would be allowed to file a written objection to the administrative dissolution or administrative surrender. If a timely written objection is received by the FTB, the nonprofit corporation would have an additional 90 days to pay or satisfy all accrued taxes, penalties, and interest, and to file a current Statement of Information with the SOS. The 90-day period may be extended for no more than one period of up to 90 days, by the FTB. If there is no written objection or the written objection fails, the nonprofit corporation would be administratively dissolved or administratively surrendered and the certificate of the SOS would be 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.

#### *Short Form Certificate of Dissolution*

This bill would enact provisions applicable to nonprofit corporations similar to General Corporation Law provisions that allow a domestic corporation that meets certain requirements to file a shortened form of dissolution. The bill would additionally provide that liability to creditors, if any, would not be discharged, the liability of the directors of the dissolved nonprofit corporation would not be discharged, and the dissolution of a nonprofit corporation would not diminish or adversely affect the ability of the Attorney General to enforce specified liabilities.

#### *Streamlined Voluntary Dissolution*

This bill would require the FTB to abate, upon written request by a qualified 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. Abatement would be conditional on the dissolution of the qualified corporation within a specified period of time of filing the request for abatement. The bill would require the FTB to prescribe rules and regulations to carry out these abatement provisions and would exempt these rules and regulations from the Administrative Procedures Act.

#### *Statewide Public Purpose*

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 statewide public purpose, as provided.

### **LEGISLATIVE HISTORY**

AB 1529 (Pérez, 2013/2014) was substantially similar to this bill. AB 1529 was vetoed by Governor Brown because it would have required expensive reprogramming of an obsolescent computer system that will soon be replaced and recommended the change be incorporated in the design phase for the new computer system.

AB 2341 (Villines, Chapter 773, Statutes of 2006) among other things, allows certain suspended corporations to seek dissolution without requiring payment of the accrued tax liability for years in which the corporation was inactive and not doing business.

AB 2519 (Keeley, Chapter 112, Statutes of 2002) requires that a nonprofit public benefit corporation's Certificate of Dissolution, when filed with the SOS, be accompanied by either the AG's written waiver of objections to the dissolution or the AG's written confirmation that the corporation has no assets. It also prohibits the SOS from accepting for filing a Certificate of Dissolution that is not accompanied by one of those two documents.

### **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

The above listed states have dissolution processes for nonprofit corporations similar to California's current nonprofit corporate dissolution process.

### **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

### **ECONOMIC IMPACT**

#### **Revenue Estimate:**

This bill would not change the amount of tax owed and would have no revenue impact.

#### **Revenue Discussion:**

This bill would not change the calculation or amount of tax an entity would owe; rather it is creating an easier process for nonprofit corporations to dissolve. Under current law, when tax exempt status is granted retroactively any outstanding liabilities assessed prior to the corporation obtaining tax-exempt status are waived. When a nonprofit is no longer operational and fails to file for dissolution, the FTB has found it is unable to collect from these corporations that no longer functionally exist. For both of these reasons, the FTB has determined there would be no revenue impact under the bill.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

### **APPOINTMENTS**

None.

**SUPPORT/OPPOSITION<sup>3</sup>**

Support: Secretary of State Alex Padilla, California Taxpayers Association, California Society of Enrolled Agents.

Opposition: None.

**VOTES**

	<b>Date</b>	<b>Yes</b>	<b>No</b>
Concurrence	08/27/15	78	0
Senate Floor	08/20/15	38	0
Assembly Floor	06/02/15	78	0

**LEGISLATIVE STAFF CONTACT****Contact**

Marybel Batjer, Agency Secretary, CalGovOps

Jennifer Osborn, Acting Deputy Secretary for Legislation, CalGovOps

Selvi Stanislaus, Executive Officer, FTB

Gail Hall, Legislative Director, FTB

**Work**

916-651-9024

916-651-9100

916-845-4543

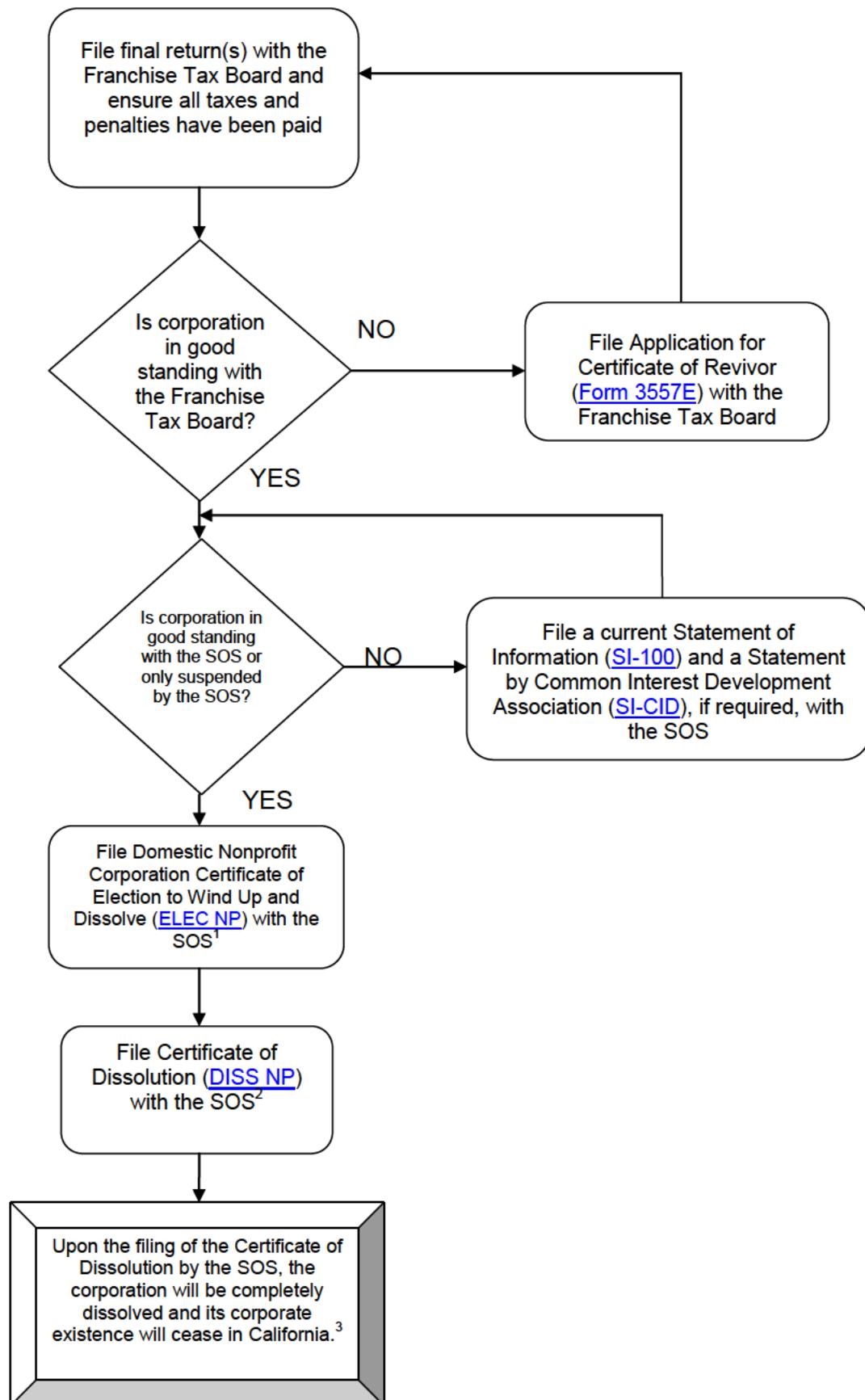
916-845-6333

---

<sup>3</sup> From the Senate Governance and Finance Committee analysis, dated July 13, 2015.

## Appendix I

### Dissolution Process for Nonprofit Corporations (Other than domestic public benefit, mutual benefit, and religious corporations holding charitable assets in trust)

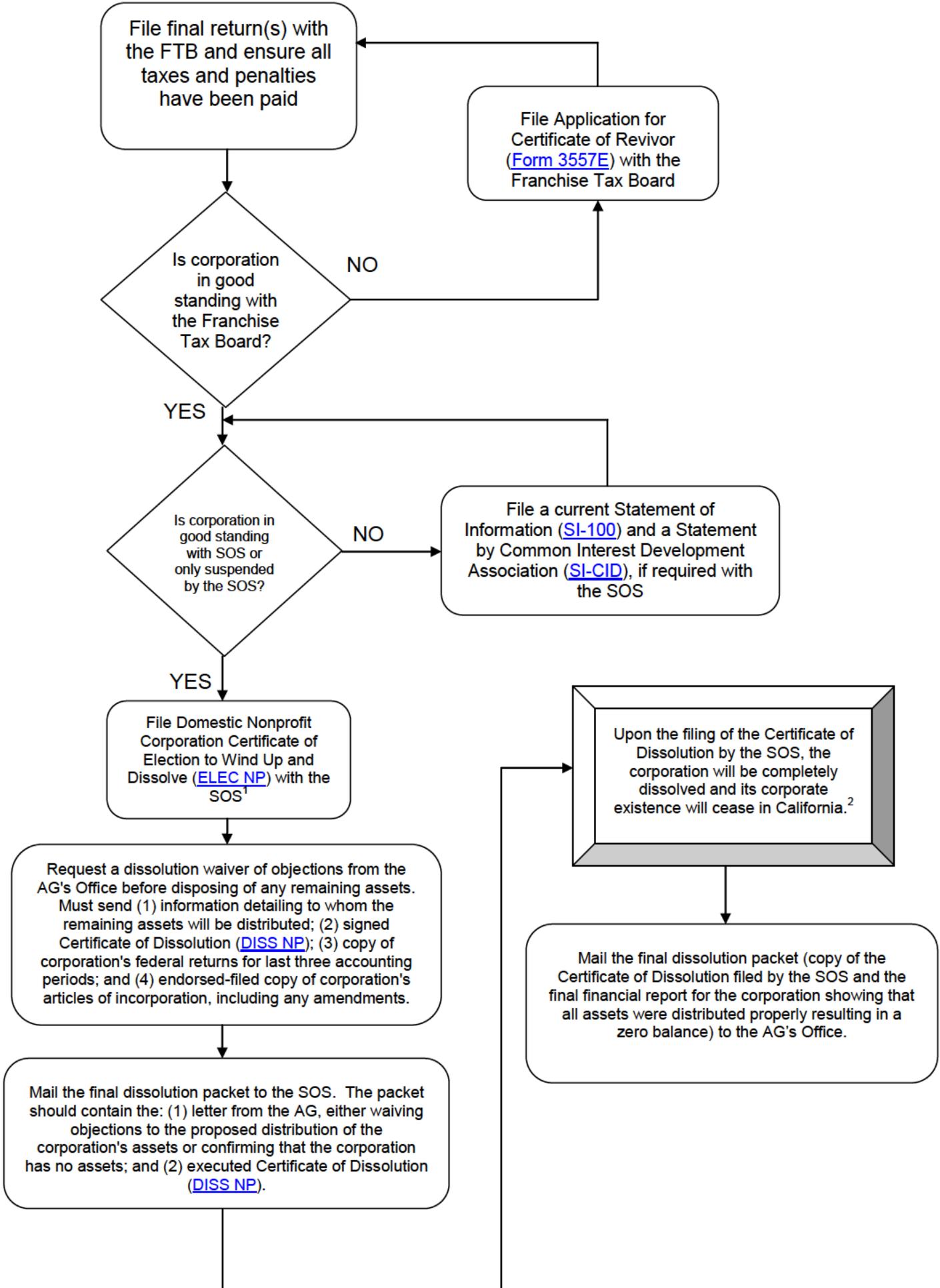


<sup>1</sup> The Certificate of Election to Wind Up and Dissolve ([ELEC NP](#)) is not required when the election to dissolve was approved by 100 percent of the members, or if the corporation has no members, by 100 percent of the directors, and if a statement to that effect is included in the Certificate of Dissolution ([DISS NP](#)).

<sup>2</sup> May be filed at the same time as [ELEC NP](#).

<sup>3</sup> The SOS sends dissolution status information to the FTB and the FTB's system is updated with the corporation's dissolution status.

**Dissolution Process for Nonprofit Corporations**  
(Domestic public benefit, mutual benefit, and religious corporations holding charitable assets in trust)



<sup>1</sup> The Certificate of Election to Wind Up and Dissolve (ELEC NP) is not required when the election to dissolve was approved by 100 percent of the members, or if the corporation has no members, by 100 percent of the directors, and if a statement to that effect is included in the Certificate of Dissolution (DISS NP).

<sup>2</sup> The SOS sends dissolution status information to the FTB and the AG's Office.