

APPENDIX 4

REQUEST FOR BOARD ACTION BY A BOARD MEMBER

Requester: Bruce Hamilton

December 3, 2015

Brief description of Requested Action: Direct the Board Executive Secretary to change the Board Procedures as shown in the attached document, that change being effective immediately upon approval of this Request.

Attachments (init) JBH (included clean version of any proposed document or modified document)

Summarize any time sensitive considerations:

Requestor signature B. Hamilton December 3, 2015

Assistant Executive secretary N. Shelly Qualls Click here to enter a date.

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICPATING	COMMENT	DATE
Joyce L. Connery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Jessie H. Roberson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Sean Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Daniel J. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bruce Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Final Disposition Summary						

Executive Secretary signature _____ Click here to enter a date.

ARCHIVE: Doc#2016-038, Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

Attachment to Request for Board Action by Bruce Hamilton, dated December 3, 2015.

Section 2.0.B of the Board Procedures is amended as follows:

Board action requiring a vote of the Board shall be approved if the total number of Board Member votes cast to “Approve” is greater than the number of votes cast to “Disapprove,” after a quorum has been established. A matter shall not be approved if the total number of Board Member votes cast to “Approve” is equal to or less than the number of votes cast to “Disapprove,” or if there is no quorum. Pursuant to 42 U.S.C. § 2286(e), three Board Members constitute a quorum. Board Members casting a vote to “Approve” or “Disapprove” and those choosing to “Abstain” from casting a vote shall be counted towards a quorum, while those choosing to “Abstain” shall not be counted in determining the outcome of a vote. Any Board Member who is unable to vote or who recuses himself or herself from participating in a particular matter in order to avoid any actual or apparent conflict of interest is considered as “Not Participating” and is not included for purposes of determining a quorum or the outcome of a vote.

Justification:

The revised language better aligns with the generally accepted meaning of “abstention.” It is axiomatic that “[a]n abstaining voter . . . is counted in determining the presence of a quorum.”¹ Although the old language embraces this principle, it is nonetheless problematic because it equates abstention with participation, thereby allowing “Abstain” to have the same effect as “Disapprove.”² This approach contradicts Robert’s Rules of Order, which explicitly states that “[t]o abstain means not to vote at all.”³ It is thus inconsistent to count “abstaining” as participating in a vote, since “abstaining” inherently means “to refrain from voting.”⁴ Where a majority vote is required, abstentions should “have absolutely no effect on the outcome of the vote,” since what is needed is a majority of the votes *cast*.⁵

¹ 59 Am. Jur. 2d Parliamentary Law § 9; see also 2 Am. Jur. 2d Admin. Law § 83 (“One who merely abstains, however, is counted toward the quorum.”).

² See, e.g., DEFENSE NUCLEAR FACILITIES SAFETY BOARD, AFFIRMATION OF BOARD VOTING RECORD, DOC. CONTROL No. 2015-171 (2015).

³ GEN. HENRY M. ROBERT, ROBERT’S RULES OF ORDER 45 (11th ed. 2011).

⁴ *Frequently Asked Questions*, THE OFFICIAL ROBERT’S RULES OF ORDER WEB SITE, <http://www.robertsrules.com/faq.html> (last visited Nov. 9, 2015) (emphasis added).

⁵ *Id.*

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

Doc Control#2016-038

The Board, with Board Member(s) Joyce L. Connery, Jessie H. Roberson, Daniel J. Santos, Bruce Hamilton *approving*, Board Member(s) Sean Sullivan *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to approve the above document on December 7, 2015.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12/04/15
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12/07/15
Sean Sullivan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	12/07/15
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12/04/15
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12/04/15

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

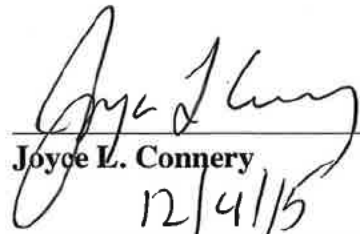
FROM: Joyce L. Connery

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

Doc Control#2016-038

Approved Disapproved Abstain
Recusal - Not Participating

COMMENTS: Below Attached None



Joyce L. Connery
12/4/15

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

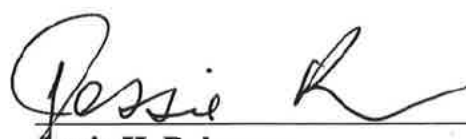
FROM: Jessie H. Roberson

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

Doc Control#2016-038

Approved **Disapproved** _____ **Abstain** _____
Recusal - Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None**



Jessie H. Roberson
December 7, 2018

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

Doc Control#2016-038

Approved _____ Disapproved X Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

The proposed revision would permit any action to be approved so long as the number of votes to approve exceeds the number to disapprove, regardless of abstentions. Thus, the revision would permit a recommendation to pass with only a single affirmative vote so long as at least two members abstained and the others did not participate. Similarly, two out of five (or four) members could approve a recommendation over the disapproval of another member so long as the others abstained. To 'abstain' is to voluntarily refrain from casting a vote. I am troubled by the notion that as few as one or two members out of five could approved of particular advice to the Secretary and still have that advice be deemed the advice of the Board.

I find the proposed language sufficient for governing internal matters such as policies directed at the staff. However, no recommendation should be made to the Secretary of Energy unless a majority of members constituting the Board cast an affirmative vote.



Sean Sullivan

12/7/15

Date

Shelby Qualls

From: Daniel J. Santos
Sent: Friday, December 04, 2015 3:47 PM
To: Shelby Qualls; Lotus Smith
Subject: RE: Notational Vote Doc#2016-038, Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention - BLUE FOLDER

Approved without comments.

From: Shelby Qualls
Sent: Friday, December 4, 2015 3:15 PM
To: Mark Welch; James Biggins; Steven Stokes; Richard Tontodonato; Bruce Hamilton; Daniel J. Santos; Jessie Roberson; Joyce Connery; Sean Sullivan
Cc: Lotus Smith; Shelby Qualls
Subject: Notational Vote Doc#2016-038, Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention - BLUE FOLDER

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

DOC# 2016-038

Office Directors are copied and should provide input, if applicable.

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____
None _____

Shelby Qualls
Assistant Executive Secretary
Office of the Chairman

Shelby Qualls

From: Bruce Hamilton
Sent: Friday, December 04, 2015 3:23 PM
To: Shelby Qualls; Lotus Smith
Subject: RE: Notational Vote Doc#2016-038, Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention - BLUE FOLDER

I approve.
I have no comments.

Bruce Hamilton
Global cell & text: 

From: [Shelby Qualls](#)
Sent: 12/4/2015 15:15
To: [Mark Welch](#); [James Biggins](#); [Steven Stokes](#); [Richard Tontodonato](#); [Bruce Hamilton](#); [Daniel J. Santos](#); [Jessie Roberson](#); [Joyce Connery](#); [Sean Sullivan](#)
Cc: [Lotus Smith](#); [Shelby Qualls](#)
Subject: Notational Vote Doc#2016-038, Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention - BLUE FOLDER

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Direct Executive Secretary to Change Board Procedures Regarding Abstention

DOC# 2016-038

Office Directors are copied and should provide input, if applicable.

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:
Below _____
Attached _____
None _____

Shelby Qualls
Assistant Executive Secretary