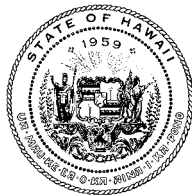


**HB 1043**

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510  
FAX NO: (808) 587-1560

## SENATE COMMITTEE ON EDUCATION AND HOUSING

### TESTIMONY REGARDING HB 1043, HD 1 RELATING TO LOW-INCOME HOUSING TAX CREDITS

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: MARCH 23, 2009**

**TIME: 2PM**

**ROOM: 225**

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This legislation amends Hawaii's low income housing tax credit provisions by shortening the credit payout to provide for a five-year credit period.

The Department **supports** this Lingle-Aiona Administration bill.

#### **I. THE DEPARTMENT DEFERS TO THE HOUSING AGENCIES ON THE MERITS.**

The Department defers to the various executive housing agencies on the merits of this bill in general (and with respect to Part II, in particular). Hawaii is currently facing an affordable housing crisis. It will take meaningful initiatives in order to eliminate the shortage of affordable housing suitable for Hawaii residents.

#### **II. THE ISSUE OF AFFORDABLE HOUSING IS IMPORTANT AND MAKING HAWAII'S CREDIT MORE ATTRACTIVE IS CRITICAL.**

The Department recognizes that affordable housing is an important issue. To properly eliminate the affordable housing crisis, sufficient incentives must be available in order to leverage public-private partnerships to construct additional housing in Hawaii. Through the use of the Low-Income Housing Tax Credit, partnerships between the state and private developers are leveraged through tax incentives that subsidize investments in projects.

Under current law, §235-110.8, HRS, allows an eligible taxpayer to claim 50% of the federal low income housing credit over a period of ten years. The federal low-income housing tax credit is claimed over ten years. §42 of the Internal Revenue Code (the "Code"), which Hawaii conforms to,

allows eligible taxpayers to obtain a credit equal to the present value of 70% of the qualified basis of new low income housing buildings that are not federally subsidized. Thus, Hawaii's current law effectively allows low income housing investors to obtain 35% (or 50% of 70% ) of their qualified basis in low income housing projects in the form of credits.

This legislation is a positive solution. This legislation effectively reduces the horizon of years over which the Low-Income Housing Tax Credit must be claimed. Currently, the Hawaii credit must be claimed over a 10-year period. This bill reduces that period to 5 years. The reduction in the claim period makes the credit far more attractive to investors. The reduction also makes the credit more useful to project partnerships because cash from the government is released in a much shorter time.

The Department recommends that a technical clarification be made to § 235-110.8(c), HRS, to clarify that taxpayers may claim Hawaii low-income housing credit in an amount equal to the federal low-income housing credit that may be claimed for the first five years of the ten-year federal credit period (not to be confused with the adjusted five year credit period defined in § 235-110.8(f), as amended by this measure).<sup>1</sup> Without this technical clarification, taxpayers may mistakenly believe that the federal low-income housing tax credit is first recomputed over a 5-year credit period, and then the provisions of §235-110.8(b) are applied, which would effectively result in doubling the cost of the credit to Hawaii (i.e., result in paying 100% of the aggregate federal credit).

Notwithstanding the above, as noted in Part II of this measure, the American Recovery and Reinvestment Act of 2009 (the "Federal Stimulus Bill") allows states to elect to receive grants instead of tax credits to finance low-income housing for 2009 (the grants reduce the amount of the state credit allocation). *The Department is currently reviewing the impact of the Federal Stimulus Bill on this measure, and whether additional amendments will need to be made.*

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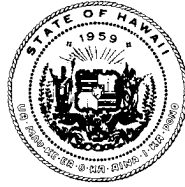
1 §235-110.8(c) should be amended to read as follows (amendments noted in bold):

c) The amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be [~~fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.~~] equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed pursuant to section 42 of the Internal Revenue Code for the same taxable year with respect to each qualified low-income building located in Hawaii; provided that, for purposes of subsection (b), the taxpayer may claim a low-income housing tax credit only with respect to the amount of federal low-income housing tax credit claimed for the first five years of the credit period (as defined in section 42(f)(1) of the Internal Revenue Code, without regard to section 235-110.8(f)) for each respective qualified low-income building that is located in Hawaii; provided further that the amount of the low-income housing tax credit claimed by a taxpayer shall be computed without regard to any federal low-income housing tax credit that is carried forward from a prior taxable year.

**III. BUDGETED REVENUE IMPACT**

The Department supports the budget impact of this measure because it has already been factored into the executive budget. The revenue loss for this measure is estimated to be as follows:

Revenue Loss		
FY 2011	\$	1,275,000
FY 2012	\$	2,550,000
FY 2013	\$	3,187,500
FY 2014	\$	3,442,500
FY 2015	\$	3,697,500



**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO

Statement of  
**Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the  
**SENATE COMMITTEE ON EDUCATION AND HOUSING**

March 23, 2009, 2:00 p.m.  
Room 225, State Capitol

In consideration of  
**H.B. 1043, H.D. 1**  
**RELATING TO LOW-INCOME HOUSING TAX CREDITS.**

The Hawaii Housing Finance and Development Corporation (HHFDC) **supports** H.B. 1043, H.D. 1, which is similar to S.B. 1118, S.D. 2, a bill previously heard by this Committee.

H.B. 1043, H.D. 1 reduces the period over which state low-income housing tax credits (LIHTC) are taken from 10 years to 5 years. H.B. 1043, H.D. 1 also allows a qualified low-income building that has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, to be eligible for the state LIHTC.

The LIHTC program promotes the development and rehabilitation of low-income rental housing through the use of federal and state LIHTCs. Eligible projects must either set aside 20 percent of units for tenants earning less than 50 percent of the area median income (AMI) as determined by the U.S. Department of Housing and Urban Development (HUD); or 40 percent of units for tenants earning less than 60 percent AMI. The program continues to be a needed financing tool for affordable rental housing development, especially when awarded in conjunction with state Rental Housing Trust Funds.

Because of the limited market for state credits and the current financial climate, owner-developers are having difficulty selling their state LIHTCs. Amending the period over which state LIHTCs are taken from ten years to five years would increase the present value of the credits when sold to investors, and provide a more attractive financing incentive to potential developers of affordable rental housing.

Thank you for the opportunity to testify.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Low-income housing credit

BILL NUMBER: HB 1043, HD-1

INTRODUCED BY: House Committee on Finance

**BRIEF SUMMARY:** Amends HRS section 235-110.8 to provide that the low-income housing tax credit shall be equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed pursuant to IRC section 42 with respect to each qualified low-income building located in Hawaii. Stipulates that the amount of the low-income housing tax credit claimed by a taxpayer shall be computed without regard to any federal low-income housing tax credit that is carried forward from a prior taxable year. The definitions and special rules relating to credit periods in IRC section 42(f) shall be operative for the purposes of this section; except that the credit period in section 42(f)(1) of the Internal Revenue Code shall be a five-year period instead of a 10-year period for Hawaii income tax purposes.

This measure shall be applicable to buildings placed in service after December 31, 2009.

Also authorizes the state to elect to receive the maximum low-income housing grant permitted under the American Recovery and Reinvestment Act of 2009, designate the HHFDC as the “state housing credit agency,” appropriate funds from the housing and finance revolving fund in the amount of the low-income housing grant, and provide that a qualified low-income building that has been awarded a subaward shall be eligible for the low-income housing tax credit.

EFFECTIVE DATE: January 1, 2010

**STAFF COMMENTS:** This was an administration measure submitted by the department of business, economic development and tourism BED-02 (09). The legislature by Act 216, SLH 1988, adopted the federal low-income housing credit which was part of the Tax Reform Act of 1986. The credit was enacted to offset the repeal of tax shelters and other incentives to build rental housing under prior law, such as accelerated depreciation, capital gains preference, certain tax-exempt bonds, etc., and to specifically target low-income rentals.

The federal credit is a 70% present value credit for qualified new construction and rehabilitation expenditures which are not federally subsidized, and 30% for those that are federally subsidized. While the existing state credit allows for a credit of 50% of the “applicable percentage of the qualified basis” allowed under federal law taken over a period of 10 years, the proposed measure would shorten the time period to five years.

It should be noted that Congress has provided under the American Recovery and Reinvestment Act (ARRA) that states may elect to substitute a portion of their low-income housing credit allocation for 2009 grants. States would receive a grant equal up to 85% of 40% of the state’s low-income housing tax

credit allocation in lieu of the low-income housing tax credits they would have received. Congress had contemplated, as part of the stimulus package, an acceleration of the low-income tax credit to a five-year period as this measure proposes for the state's low-income housing tax credits, but in the end the monetization of credit was adopted because the current market has no appetite for the credits. As part of the ARRA, Congress added \$4 billion in additional stimulus funds for public and Indian housing to fill the "gap" in this market.

While the low-income housing tax credit is just one incentive to encourage developers to build affordable housing, consideration should be given to a number of strategies including the debt financing, partnerships with financial institutions who could then turn around and sell the credits, and the use of federal private activity bonds. Finally, apparently public officials still have not recognized that one of the greatest contributors to the cost of housing in Hawaii is the draconian maze of permitting and regulatory processes in order to bring those homes to market. While those regulatory guidelines are to insure the health and safety of the public, streamlining the process would accelerate the time needed to secure those permits thereby reducing the cost of financing. This savings would go a long way toward reducing the final cost of the house to the consumer. For example, for one housing project on Kauai it took nearly five years to secure the necessary permits to build 14 affordable homes.

Finally, it should be noted that while it has been difficult to sell the state tax credits because of the freeze in the credit markets, the state low-income housing tax credits are also being by-passed because they must now compete with more generous credits such as the credit for investment in qualified high technology businesses. Thus, the incentive for affordable housing is being thwarted by those other generous credits.

Digested 3/19/09.



SEATTLE  
SAN DIEGO  
HONOLULU

**Senate Committee on Education and Housing  
Testimony Regarding HB 1043, HD 1  
Relating to Low-Income Housing Tax Credits**

Testimony Submitted by: Makani Maeva, Director of Pacific Housing Advisors  
Hearing Date: March 23, 2009  
Time: 2:00 p.m.  
Room: Conference Room 225

Dear Honorable Chair Norman Sakamoto & Committee members:

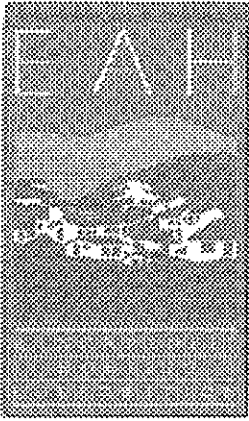
My name is Makani Maeva, and I am the Director of Pacific Housing Advisors ("PHA"), a private affordable housing developer. PHA strongly supports HB 1043, HD 1, which shortens the period over which state low-income housing tax credits (LIHTCs) are taken from 10 years to 5 years. Accelerating the period in which the credits may be claimed will make the state LIHTCs significantly more valuable to potential investors and will ultimately increase the supply of affordable housing in Hawaii.

PHA is a private affordable housing developer that owns and manages nearly 5,000 affordable housing rental units nationwide, including 36 units at Kekaha Elderly Plantation on the island of Kauai. In December 2008, PHA began construction of Lokahi Affordable Apartments, a 306-unit affordable rental project in Kailua-Kona. All 306 units will be rented to individuals and families that earn 60% or less of the area median income. Construction of these 306 affordable rental units was financed, in part, by the sale of state LIHTCs to John Hancock.

When we closed on our Kauai project in 2007, the value of the state LIHTCs was \$0.50. In contrast, when we closed on the Big Island project in November 2008, the price had deteriorated to \$0.39. The price was adversely affected by the recent financial credit crisis, as well as competition from the state high-tech tax credits, which can be claimed over a 5-year period and is more attractive to investors. This decrease in value required us to pursue other state funding sources to fill the gap. By using more of the State resources, it reduced the total number of units the State was able to provide.

We support HB 1043, HD 1, which reduces the period over which state low-income housing tax credits are taken from 10 years to 5 years.





March 20, 2009

Senator Norman Sakamoto, Chair  
Senate Committee on Education and Housing  
State Capitol, Room 230  
Honolulu, Hawaii 96813

Subject: H.B. 1043 H.D.1, Hearing March 23, 2009, 2:00PM  
**Testimony In Support**

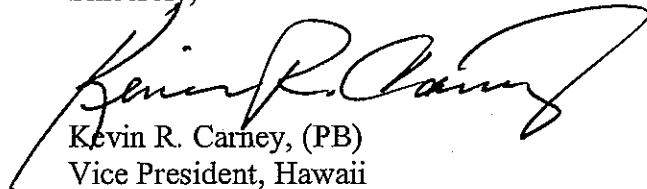
Dear Senator Sakamoto and Members of the Senate Committee on Education and Housing:

EAH Housing is in strong support of HB 1043 HD1 which reduces the credit period of low income housing tax credits (LIHTCs) from 10 years to 5 years. EAH Housing thanks the legislature and this committee for entertaining measures such as this that would increase the value of low income housing tax credits and make them more attractive to potential investors. We depend on the low income housing tax credit (LIHTC) as a primary source of equity financing for new developments and for acquisition and preservation of existing affordable rental housing. The higher the price we are able to receive when selling tax credits the less dependent we are on other sources of financing such as the Rental Housing Trust Fund, Community Development Block Grants and the HOME program.

With a state tax credit marketplace as small as Hawaii's it is critical to the growth of affordable rental housing that the LIHTC program be as competitive as possible in order to attract potential investors. As it stands today, even with a reduction of the LIHTC period to 5 years, the high technology business investment tax credit is still more attractive to potential investors because of its accelerated redemption in the first couple of years.

Please consider making the LIHTC as competitive as ACT 221 credits and allow investors to decide where they want to place their support. Thank you for this opportunity to submit our thoughts.

Sincerely,



Kevin R. Carney, (PB)  
Vice President, Hawaii

March 22, 2009

**The Honorable Norman Sakamoto, Chair**  
Senate Committee on Education and Housing  
State Capitol, Room 225  
Honolulu, Hawaii 96813

**RE: H.B. 1043, H.D.1, Relating to Low-Income Housing Tax Credits**

**HEARING DATE:** Monday, March 23, 2009 at 2:00 p.m.

Aloha Chair Sakamoto and Members of the Committee.

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawai'i Association of REALTORS® ("HAR"), here to testify on behalf of the HAR and its 9,600 members in Hawai'i. HAR **supports** H.B. 1043, H.D.1, Relating to Low-Income Housing Tax Credits, which makes state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from 10 years to 5 years.

HAR has historically supported mechanisms to help increase the supply of low and moderate income affordable housing such as the Rental Housing Trust Fund Program which can help integrate the use of mixed-income and mixed-use projects, special purpose revenue bonds, low-interest loans, block grants, low-income housing tax credit programs and deferred loan programs to provide rental housing opportunities.

Amending the period over which state low-income housing tax credits are taken from 10 years to 5 years would increase the present value of the credits when sold to investors, and provide a more attractive financing incentive to potential developers of affordable rental housing.

HAR would also note that Sections 1602 and 1404 of the American Recovery and Reinvestment Tax Act of 2009 give state housing credit agencies such as the Hawaii Housing Finance and Development Corporation (HHFDC) an election to substitute grants from the federal government for low-income housing projects in lieu of a low-income housing credit allocation for 2009. H.B. 1043, H.D.1, Relating to Low-Income Housing Tax Credits, allows for the use of the State Low-Income Housing Tax Credit under HRS §235-110.8 if the HHFDC should, as is likely, make such an election.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



Via Capitol Website

March 23, 2009

**House Committee on Education and Housing  
Hearing Date: Monday, March 23, 2009, 2:00 p.m. in CR 225**

**Testimony in Support of HB 1043, HD1 – Relating to Low-Income  
Housing Tax Credits  
(Reduces period over which low-income tax credits are taken from 10 to 5  
years.)**

The Honorable Chair Senator Norman Sakamoto, Vice-Chair Michelle Kidani,  
And Education and Housing Committee Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF is writing **in support** of **HB 1043, HD1**, which shortens the period over which the state low-income housing tax credits are taken from 10 years to 5 years.

**Background.** The lack of affordable housing remains a significant problem affecting Hawaii. Finding ways to provide sufficient affordable housing and market housing for Hawaii's residents has been a major objective for our elected officials, and state and county agencies, and members of the housing industry and business community. For the past two years, LURF has participated in a statewide task force comprised of representatives from all four counties, business, labor, developers, architects, nonprofit providers of services, the State, and the legislature, whose purpose was to identify, address and propose regulatory reform and solutions to remove the barriers to the production of affordable housing.

**HB 1043, HD1.** The purpose of this Bill is to make state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from ten years to five years.

HB 1043, HD1 proposes to amend HRS §235-110.8, to by making the tax credit to be claimed equal to the amount of the federal low-income housing tax credit (LIHTC), by adding the following provision:

(c) The amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be [fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.] equal to the amount of the federal low-income housing tax credit that the taxpayer claimed or could have claimed pursuant to Section 42 of the Internal Revenue Code for the same taxable year with respect to each qualified low-income building located in Hawaii; provided that, for purposes of subsection (b), the taxpayer may claim a low-income housing tax credit only with respect to the amount of federal low-income housing tax credit claimed for the first five years of the credit period for each respective qualified low-income building, as defined in Section 42(f)(1) of the Internal Revenue Code that is located in Hawaii; and, further provided that the amount of the low-income housing tax credit claimed by a taxpayer shall be computed without regard to any federal low-income housing tax credit that is carried forward from a prior taxable year.

HD1 amends this bill by

- adding a new part II based on language solicited by the House Finance Committee from HHFDC. Basically, part II authorizes the State to elect to receive the maximum low-income housing grant amount permitted under the American Recovery and Reinvestment Act of 2009. Part II also designates HHFDC to serve as the "state housing credit agency" and make subawards for the purpose authorized under the Act. Another provision makes a qualified low-income building that has received a subaward also eligible for the state low-income housing tax credit;
- Part II also includes an appropriation section as a contingency should one be necessary. Since federal regulations have not yet been promulgated, it is not known whether the grant will be kept in a federal account, with the State allowed to draw down, or transmitted in cash to the State. If the latter occurs, part II requires the grant to be deposited into the Housing Finance Revolving Fund and appropriates the full amount for making subawards for low-income housing projects.
- Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

HB 1043, HD1 would allow make the LIHTC tax credit more valuable when sold to investors, and provide more attractive financing incentive to potential developers of affordable rental housing.

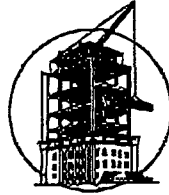
According to the Hawaii Housing Finance and Development Corporation (HHFDC), the LIHTC program promotes the development and rehabilitation of low-income rental housing through the use of federal and state LIHTCs. The program continues to be a needed financing tool for affordable rental housing

development, especially when awarded in conjunction with state rental housing trust funds. Right now, the LIHTCs are taken over a ten-year period by the project owner. However, because of the limited market for state credits and the current economic situation, owner-developers find it hard to sell their state LIHTCs. Shortening the period over which state LIHTCs are taken from ten years to five years would increase the present value of the credits when sold to investors and provide more attractive financing incentives to potential developers.

**LURF's Position.** The housing crisis in Hawaii has affected many families who are now forced to live with extended families because of high costs. Access to affordable housing is critical to our communities.

Any further delay of any affordable housing type projects will cause an even bigger crisis in the near future. LURF supports incentives, such as HB 1043, HD1, that could allow affordable housing projects to be developed on a timely basis.

Thank you for the opportunity to submit testimony in **support** of HB 1043, HD1.



## HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817  
(808) 524-2249 • FAX (808) 524-6893

March 22, 2009

Honorable Senator Norman Sakamoto, Chair  
Honorable Senator Michelle Kidani, Vice Chair  
Members of the Senate Committee on Education and Housing  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: **IN SUPPORT OF HB 1043, HD1**  
RELATING TO LOW-INCOME HOUSING TAX CREDITS  
Hearing: Monday, March 23, 2009, 2:00 p.m., Room 225

Dear Chair Sakamoto, Vice Chair Kidani and the Senate Committee on Education and Housing:

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

The Council SUPPORTS the passage of HB 1043, HD1 that makes state low-income housing tax credits more valuable by shortening the period over which the credits can be taken from ten years to five years. Authorizes the election of the maximum amount of grant in lieu of tax credits authorized under the American Recovery and Reinvestment Act of 2009.

Thank you for the opportunity to submit this testimony in support of HB 1043, HD1.

Sincerely,

William "Buzz" Hong  
Executive Director

WBH/dg

**NOLAN MORIWAKI**  
President  
Bricklayers & Ceramic Tile Setters  
Local 1 & Plasterers/Cement  
Masons Local 630

**JOSEPH O'DONNELL**  
Vice President  
Iron Workers Local 625

**DAMIEN T. K. KIM**  
Financial Secretary  
International Brotherhood of  
Electrical Workers Local 1186

**ARTHUR TOLENTINO**  
Treasurer  
Sheet Metal Workers I.A. Local 293

**MALCOLM K. AHLG**  
Carpenter-At-Arms  
Carpenter, Lumber, & Soft Tile  
Local 1298

**REGINALD CASTANARES**  
Justice  
Carpenters & Joiners Local 675

**HADDEUS TOMEI**  
Elevator Constructors Local 128

**JOSEPH BAZEMORE**  
Drywall, Tapers, & Finishers  
Local 1944

**RICHARD TAGGERE**  
Carpenters, Architectural Metal &  
Ironworkers Local Union 1689

**AUGHN CHONG**  
Roofers, Waterproofers & Allied  
Workers United Union of Roofers  
Local 221

**MARY AYCOCK**  
Millwrights, Ironship Builders  
Local 627

**ANN KINNEY**  
District Council 50  
Painters & Allied Trades  
Local 1791

**ALANI MAHOE**  
Structuring Engineers Local 3

**EDWARD SEBRESOS**  
International Assoc. of  
Cement & Frost Insulators  
Allied Workers Local 132