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Good afternoon, Chair Marsh, Vice-Chair Andersen, Vice-Chair Breese-Iverson, and members of the committee,

For the record, my name is Toby White, and I am the Vice President of Forensic Building Consultants. I am here today to testify in opposition to HB 3746.

Forensic has been a licensed contractor in the state of Oregon for 22 years and holds licenses in several other states as well. In 2010, I had the honor of authoring Chapter 10 of the State of Oregon Contractors Reference Manual. Additionally, I provide expert witness testimony in construction defect litigation and currently serve as the State of Oregon Department of Justice's construction expert on an ongoing matter.

We specialize in the evaluation, design, and construction of exterior building enclosures. Our clientele includes homeowners, homeowners' associations, commercial property owners, developers, school districts, architects, engineers, and federal, state, and local government agencies. Our clients hire us to diagnose issues with their buildings, so we can identify the cause of the problems and recommend appropriate repair solutions.

In today's market, in addition to evaluating existing buildings, we are frequently engaged by owners, developers, and affordable housing entities during the new construction phase to ensure the proper installation of critical waterproofing and weatherproofing components. This helps them avoid construction defects that can affect the long-term durability of a building. These inspection services are typically very affordable—often a fraction of the overall project cost—and do not cause delays. An issue I see with HB 3746, in addition to other items, is the lack of clear definition for Supplemental Quality Assurance inspection frequency and timing during new construction.

While I appreciate specific facets of HB 3746, the primary reason I am opposed to it can be summarized as follows:

I conducted a survey of 31 condominium litigation cases we assisted on spanning from 2014 to 2024, where construction defects were discovered. This analysis revealed a critical finding: approximately 50% of the defective cases—15 out of the 31 cases—were discovered more than six years after construction was completed.

Now, you may be wondering: why were these defects not discovered until after the six-year mark?

The answer is simple. You cannot see through the exterior siding. While the siding serves as the first line of defense against water intrusion, there is an additional layer of protection behind it—a weather-resistant barrier and flashing components—that is not visible. If these secondary defenses are improperly constructed, the defects are hidden from view. Equally important, damage behind the siding is not visible.

The same principle applies to other building enclosure systems. Asphalt roof shingles, for instance, are the primary defense against weather elements, but beneath them lies an underlayment sheet and flashing components, which serves as a secondary barrier. Like the weather-resistant barrier behind the siding, the underlayment is concealed by the shingles, meaning defects in this layer cannot be detected for years.

Thank you for your time, and I am happy to answer any questions you may have.

Toby White