



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2018 Sunset Review:  
Passenger Tramway Safety Board**

*October 15, 2018*

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**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2018

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Colorado Passenger Tramway Safety Board. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Part 7 of Article 5 of Title 25, C.R.S. The report also discusses the effectiveness of the Division of Professions and Occupations staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar  
Executive Director





# COLORADO

## Department of Regulatory Agencies

Colorado Office of Policy, Research &  
Regulatory Reform

## 2018 Sunset Review Passenger Tramway Safety Board

### SUMMARY

#### ***What is regulated?***

Passenger tramways are devices used to transport passengers uphill on skis or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans.

#### ***Why is it regulated?***

Passenger tramways transport skiers, mountain bikers, sightseers and hikers from the base of a mountain to the top. Safety of passenger tramways passengers is a paramount concern, and as such, licensing them ensures public protection.

#### ***Who is regulated?***

Passenger tramways, except those specifically exempted by law, which are located in private residences, must obtain a license from the Board prior to operation. Area operators who operate the passenger tramways are subject to discipline by the Board for violations of the statute or applicable rules.

#### ***How is it regulated?***

The Passenger Tramway Safety Board (Board), located in the Division of Professions and Occupations, regulates passenger tramways by ordering the routine and periodic inspection of passenger tramways, ordering that deficiencies be corrected and taking disciplinary action against area operators who fail to make necessary repairs in a timely manner.

#### ***What does it cost?***

The fiscal year 16-17 expenditure to oversee this program was \$675,831, and there were 2.20 full-time equivalent employees associated with this program.

#### ***What disciplinary activity is there?***

Between fiscal years 12-13 and 16-17, the Board's enforcement activities consisted of:

- Inspections conducted - 3,876
  - Deficiencies identified - 9,474
  - Letters of Admonition - 16
  - Stipulations - 4
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## KEY RECOMMENDATIONS

### ***Continue the regulation of passenger tramways and the Board for 11 years, until 2030.***

The absence of regulating passenger tramways could potentially harm the public. The State of Colorado requires all passenger tramways to be licensed, except those specifically exempted by law. Prior to obtaining a license, a passenger tramway must have an inspection completed by a contract inspection engineer and any deficiencies identified must be corrected. Without requiring a license to operate, a passenger tramway potentially presents a safety hazard and leaves the public vulnerable to harm. Also, the Board has demonstrated a commitment to ensuring that passenger tramways are effectively regulated in Colorado. This is evidenced by the slight increase in disciplinary actions imposed on licensees from the previous sunset review, which was conducted in 2007.

As such, the regulation of passenger tramways and the Board should be continued by the General Assembly for 11 years, until 2030.

### ***Revise the provision in statute that requires proof of “willful and wanton misconduct” before the Board can discipline a licensee.***

Passenger tramways are substantial and intricate pieces of machinery that are utilized by the public for recreational purposes - many times in inclement weather conditions. As such, when negligence exists in the operation or maintenance of passenger tramways, it can have serious consequences to the public, including the loss of life. The current statute allows the Board to consider disciplinary action only when the high standard of “willful and wanton” conduct can be proven. Repealing the “willful and wanton” requirement in the statute will enable the Board to take disciplinary action, when necessary, if a licensee is negligent in the operation or maintenance of a passenger tramway, regardless of whether the act was “willful or wanton,” which will serve to strengthen the statute and enhance consumer protection.

## METHODOLOGY

As part of this review, COPRRR staff attended Board meetings, interviewed stakeholders reviewed records, interviewed Division staff, officials with state and national professional associations, interviewed Board members, and reviewed Colorado statutes and rules.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Division of Professions and Occupations  
National Ski Area Association  
Passenger Tramway Safety Board members  
Society of Ropeway Technicians

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
Colorado Department of Regulatory Agencies  
Colorado Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr)



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# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.



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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

The functions of the Passenger Tramway Safety Board (Board) as enumerated in Part 7, Article 5 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2019, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Board and Division of Professions and Occupations (Division) staff. During this review, the Board and Division staff must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, COPRRR staff attended Board meetings, interviewed Division staff and other stakeholders, reviewed records, interviewed officials with state and national professional associations, interviewed Board members, and reviewed Colorado statutes and rules.

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## Profile of the Profession

Passenger tramways are an important element to the success of the tourism industry in Colorado. Passenger tramways operate largely at ski areas, and provide the important function of transporting skiers, mountain bikers, sightseers and hikers from the base of a mountain to the top. There are a variety of passenger tramways in Colorado, including:

- Detachable grips,
- Fixed grips,
- Funiculars,
- Surface lifts,
- Rope tows,
- Conveyors, and
- Reversible aerial tramways.

Detachable grip passenger tramways detach from the haul rope to go through the terminals.<sup>2</sup> The detachable grip allows carriers to move slowly through the terminals, making it easier to get on and off, and travel rapidly in the line, giving skiers and snowboarders a fast lift ride.<sup>3</sup>

Conversely, fixed grip passenger tramways are designed to remain engaged with the haul rope, even when the lift is in the terminal. In other words, fixed grip passenger tramways are “fixed” to the haul cable, and the passenger tramway moves at a constant speed, which is determined by the speed of the haul rope.

Funicular passenger tramways are devices in which a passenger car runs on steel or wooden tracks and is attached to, and propelled by, a steel cable.<sup>4</sup>

Surface passenger tramways are any lifts on which a skier’s or snowboarder’s skis or snowboard remain in contact with the snow. Surface lift types include:<sup>5</sup>

- Tow ropes,
- Handle tows,
- J-bars,
- T-bars, and
- Poma lifts.

Rope tows are a type of transportation that pulls a skier riding on skis as the skier manually grasps the rope.<sup>6</sup>

Conveyors are passenger tramways that transport skiers uphill on top of a flexible, moving element such as a belt or a series of rollers.<sup>7</sup> Conveyors located at ski areas are

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<sup>2</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 30, 2018, from <http://www.skilifts.org/old/glossary.htm>

<sup>3</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 30, 2018, from <http://www.skilifts.org/old/glossary.htm>

<sup>4</sup> § 25-5-702(4)(c), C.R.S.

<sup>5</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 30, 2018, from <http://www.skilifts.org/old/glossary.htm>

<sup>6</sup> § 25-5-702(4)(f), C.R.S.

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similar to the conveyors used at airports to transport people from one location to another.

The final type of passenger tramway used in Colorado is the reversible aerial tramway. Reversible aerial tramways are devices that transport passengers in cable-supported carriers that are not in contact with the ground or snow surface.<sup>8</sup>

Colorado boasts a substantial tourism industry that has a significant impact on the state's economy. To that end, the ski industry, including passenger tramways, are a major factor in Colorado's economy. In 2016, total direct travel spending in Colorado surpassed \$19 billion.<sup>9</sup>

Although the state of Colorado does not possess the greatest number of ski areas in the United States, it does boast the largest number of skier visits. In fact, Colorado hosts between 20 and 25 percent of all skier visits and is the country's leading state for ski tourism.<sup>10</sup>

The tremendous volume of tourism dollars funneled into the state via the ski industry coupled with the large percentage of skiers visiting the ski areas, make passenger tramways a vital component in Colorado's tourism industry.

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<sup>7</sup> § 25-5-702(4)(k), C.R.S.

<sup>8</sup> § 25-5-702(4)(j), C.R.S.

<sup>9</sup> Colorado Tourism Office. *Colorado Tourism Sets All-Time Records for Sixth Consecutive Year*. Retrieved May 30, 2018, from <https://www.colorado.com/news/colorado-tourism-sets-all-time-records-sixth-consecutive-year>

<sup>10</sup> Snowsports Industries America. *The Top States Delivering Skiers May Not be What You Think*. Retrieved May 30, 2018, from <https://www.snowsports.org/top-states-skiers-arent-think/>

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# Legal Framework

## History of Regulation

During the 1950s, a trade organization in Colorado known as the Rocky Mountain Ski Area Operator's Association (RMSA) began an effort to regulate ski lifts as part of its effort to promote Colorado's ski industry. As a result of RMSA's efforts, the Passenger Tramway Safety Board (Board) was created in 1965 to inspect ski lifts and tramways in Colorado. Originally, the composition of the Board included:

- One member appointed by the United States Forest Service,
- Two members representing tramway operators,
- One member representing the tramway manufacturing industry, and
- One member representing the tramway insurance industry.

The initial purpose of the Board was twofold: to establish a registration process and to establish registration fees for passenger tramways.

In 1967, House Bill 1118 required the Board to adopt lift design and safety standards as formulated in the American National Standards Institute's (ANSI) "Safety Requirements for Aerial Tramways and Lifts, Surface Lifts, Tows and Conveyors."<sup>11</sup>

The Board continued to evolve over time, both in its regulatory oversight and its composition. In 1976, a major accident involving a ski resort gondola resulted in legislation that made major changes to tramway regulation. Specifically, House Bill 1122 included a number of changes, such as:

- The Board was given authority to employ a full-time supervisory engineer, and
- New passenger tramways were required to be certified by a qualified design and/or construction engineer before a registration certificate would be issued.

In subsequent years, the composition of the Board has changed in an effort to provide an adequate level of public protection, as well as balance the industry representation. As a result, the 2000 sunset review of the Board recommended a change to the Board's composition. Specifically, the sunset review recommended that one of the industry-related members be a licensed professional engineer not employed by a ski area or related industry. This recommendation was implemented.

The 2007 sunset review recommended continuation of the Board for 11 years.

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<sup>11</sup> Colorado Department of Regulatory Agencies. *Colorado Passenger Tramway Safety Board: Program Information*. Retrieved May 30, 2018, from [https://www.colorado.gov/pacific/dora/Tramway\\_Program\\_Info](https://www.colorado.gov/pacific/dora/Tramway_Program_Info)

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## Legal Summary

State statutes and the rules promulgated thereunder by the Board govern passenger tramways in Colorado. Specifically, Part 7 of Article 5 of Title 25, Colorado Revised Statutes (C.R.S.) (Act), outlines the composition and the responsibilities of the Board.

The Board,

was established to prevent mechanical hazards in the operation of passenger tramways and to assure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of passenger tramways.<sup>12</sup>

Passenger tramways are defined as devices used to transport passengers uphill on skis or in cars on tracks, or suspended in the air by the use of steel cables, chins, or belts, or by ropes, and usually supported by trestles or towers with one or more spans.<sup>13</sup>

The Board's composition, as outlined in the Act, includes six appointed members and one member designated by the U.S. Forest Service.<sup>14</sup> The appointed members must be appointed by the Governor from persons representing the following interests:<sup>15</sup>

- Two members representing the ski industry or area operators,
- Two members representing the public at large,
- One member who is a licensed professional engineer not employed by a ski area or related industry, and
- One member familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry or an area operator.

Members appointed to the Board are limited to serving two consecutive four-year terms. Upon completing two four-year terms, a Board member must vacate the Board for one four-year term prior to being reappointed to the Board.

The role of the Board is to promulgate rules and regulations necessary to carry out the provisions in the Act.<sup>16</sup> In adopting rules, the Board is authorized to use or adopt the standards contained in the "American National Standard for Passenger Ropeways - Aerial Tramways and Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirement," which is published by ANSI.

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<sup>12</sup> § 25-5-701, C.R.S.

<sup>13</sup> § 25-5-702(4), C.R.S.

<sup>14</sup> § 25-5-703(1), C.R.S.

<sup>15</sup> § 25-5-703(1), C.R.S.

<sup>16</sup> § 25-5-704(1)(a), C.R.S.

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The Board also has the authority to:

Establish standing or temporary technical committees composed of persons with expertise in tramway-related fields to review, as the Board deems necessary, the design, construction, maintenance and operation of passenger tramways and to make recommendations to the Board concerning their findings.<sup>17</sup>

The Board has established a standing technical committee (committee), the composition of which, as well as the prescribed length of service of its members, are outlined in the Policy Statements located in Appendix B of the Colorado Passenger Tramway Safety Board Rules and Regulations (Rules).

The composition of the committee is as follows:<sup>18</sup>

- One United States Forest Service representative (professional engineer),
- The State’s Supervisory Engineer,
- Two professional engineers (other than the State’s Supervisory Engineer), and
- Two area representatives who possess experience in the operation and maintenance of passenger tramways.

The committee, which is appointed by the Board, has limitations on length of service with the exception of the U.S. Forest Service representative and the State’s Supervisory Engineer, which are permanent appointees to the committee.<sup>19</sup> The remaining appointments are eligible to serve on the committee for two years, and are not permitted to serve more than two consecutive terms.

The Board licenses all passenger tramways in Colorado, except those specifically exempted by law, which are passenger tramways located in private residences. Further, the Board does not have jurisdiction over the construction of a new private residence tramway or over any modifications to an existing private residence tramway when the tramway is not used by the general public.<sup>20</sup>

Area operators must obtain a new license for each passenger tramway prior to operation. The license is issued by the Board upon completion of the annual licensing inspection, which is performed by a contract inspector hired by the State of Colorado, as well as completion of the noted deficiencies in the inspector’s report.<sup>21</sup> The Board will not issue a license until it has received verification from the area operator that the deficiencies have been remedied.<sup>22</sup>

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<sup>17</sup> § 25-5-704(1)(h), C.R.S.

<sup>18</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board.*

<sup>19</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board.*

<sup>20</sup> § 25-5-709(3), C.R.S.

<sup>21</sup> § 25-5-709(2), C.R.S.

<sup>22</sup> 3 CCR 718-1 § 20.2. Passenger Tramway Safety Board Rule.

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Any Board member, as well as the State’s Supervisory Engineer, has emergency shutdown authority if an unreasonable hazard exists concerning a passenger tramway. The emergency order must be in writing and signed by a member of the Board or the State’s Supervisory Engineer.<sup>23</sup>

The Board is authorized, in section 25-5-706, C.R.S., to impose discipline on passenger tramway operators. Disciplinary action imposed by the Board must be in compliance with the State Administrative Procedure Act.<sup>24</sup> The Board may deny, suspend, revoke or refuse to renew a passenger tramway license, as well as invoke summary suspension authority.<sup>25</sup>

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<sup>23</sup> § 25-5-716, C.R.S.

<sup>24</sup> § 25-5-706(1), C.R.S.

<sup>25</sup> § 25-5-706(2)(a), C.R.S.

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## Program Description and Administration

The Passenger Tramway Safety Board (Board) is a Type 1 board that operates within the Department of Regulatory Agencies, Division of Professions and Occupations (Division). A Type 1 board is a policy autonomous subdivision of the state. The regulatory and disciplinary actions imposed by the Board are considered final actions for administrative purposes and may only be appealed through the court system.

The Board's composition includes six appointed members and one member designated by the U.S. Forest Service.<sup>26</sup> The appointed members must be appointed by the Governor from persons representing the following interests:<sup>27</sup>

- Two members representing the ski industry or area operators,
- Two members representing the public at large,
- One member who is a licensed professional engineer not employed by a ski area or related industry, and
- One member familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry or an area operator.

The Board meets bi-monthly. If, however, an issue arises that needs the Board's formal approval, it is permitted to convene more frequently.

One of the primary functions of the Board is to approve variances (both permanent and temporary) related to passenger tramways. Variances are exceptions to current Board rules and regulations. The strict application of the provisions of this standard may not be appropriate in every instance,<sup>28</sup>

[w]henver it may be proposed to depart from the provisions of this standard, the authority having jurisdiction may grant exceptions from the literal requirements or permit the use of other devices or methods that provide features comparable to those included in this standard.

Prior to approving a variance for a passenger tramway, the technical committee (committee), which is created by the Board, examines each variance request and renders a recommendation to the Board based on its knowledge and expertise of passenger tramways. The Board, in turn, may choose to adopt all or part of the committee's recommendation, or develop its own solution.

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<sup>26</sup> § 25-5-703(1), C.R.S.

<sup>27</sup> § 25-5-703(1), C.R.S.

<sup>28</sup> 3 CCR 781-1 § 1.2.3. Passenger Tramway Safety Board Rule.



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The composition of the committee is as follows:<sup>29</sup>

- One United States Forest Service representative (professional engineer),
- The State’s Supervisory Engineer,
- Two professional engineers (other than the State’s Supervisory Engineer), and
- Two area representatives who possess experience in the operation and maintenance of passenger tramways.

Examples of temporary variances include: granting permission for a crane to operate in an area in close proximity to a passenger tramway and the construction and presence of a temporary building or the presence of temporary scaffolding, which could be used, for example, during the World Cup ski event.

Table 1 shows the total number of temporary variances granted by the Board in fiscal years 12-13 through 16-17.

**Table 1**  
**Total Number of Temporary Variances in Fiscal Years 12-13 through 16-17**

<b>Fiscal Year</b>	<b>Total Temporary Variances</b>
12-13	17
13-14	2
14-15	5
15-16	7
16-17	8

As highlighted in Table 1, the number of temporary variances varies from year-to-year, depending on the needs of ski areas.

An example of a permanent variance is the granting of permission to construct a building that is in the airspace of a passenger tramway.

The Board also requires verbal notification within 24 hours for possible malfunctions of passenger tramways. Area operators are then required to file a written incident report to the Board within five days of the incident. Reportable incidents include injuries occurring on or caused by a passenger tramway, equipment failures (both mechanical and electrical), hazardous operating conditions, and fires involving passenger tramway equipment. Area operators who fail to report an incident within the allotted windows are subject to disciplinary action by the Board.

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<sup>29</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board.*

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Table 2 highlights the total number of verbal notifications.

**Table 2**  
**Total Number of Incident Reports in Fiscal Years 12-13 through 16-17**

Fiscal Year	Total Incident Reports
12-13	87
13-14	94
14-15	144
15-16	119
16-17	98

Incident reports serve several purposes. First, area operators can use incident reports related to equipment failures to schedule additional preventative maintenance and evaluate equipment replacement. Incidents involving operator errors alert the area operators to potential training deficiencies.

Employees within the Division staff the Board, and are responsible for various administrative functions related to the Board. For instance, Division staff is responsible for issuing licenses, conducting investigations and preparing Board meeting agendas and advising Board members on regulatory issues. In fiscal year 17-18, the Division devoted 2.2 full-time equivalent (FTE) employees to provide professional support to the Board. The FTE are as follows:

- Program Assistant II (1.0 FTE),
- Professional Engineer III (1.0 FTE), and
- Program Management I (0.2 FTE).

In addition to these employees, the Division contracts with six private consulting engineers to conduct inspections of Colorado’s passenger tramways. The State’s Supervisory Engineer rotates inspector assignments, ensuring that the same inspector does not inspect the same area for at least four years.

Also, the aforementioned FTE do not include staffing in the centralized offices of the Division, which include the following:

- Director’s Office,
- Office of Investigations,
- Office of Expedited Settlement,
- Office of Examination Services,
- Office of Licensing, and
- Office of Support Services.

Table 3 delineates the total expenditures for the program in the years indicated.

**Table 3  
Total Expenditures in Fiscal Years 12-13 through 16-17**

<b>Fiscal Year</b>	<b>Total Program Expenditures</b>
12-13	\$569,344
13-14	\$572,279
14-15	\$612,028
15-16	\$625,797
16-17	\$675,831

As highlighted in Table 3, the expenditures for the program have increased in each of the last five fiscal years. Generally, the increase is attributable to legal services arising from complex legal circumstances associated with complaints and ultimately formal disciplinary actions imposed by the Board.

## Licensing

Colorado has continued to expand the number of passenger tramways that have been issued a license by the Board. Table 4 illustrates the increase in passenger tramways for the past five fiscal years.

**Table 4  
Total Licenses in Fiscal Years 12-13 through 16-17**

<b>Passenger Tramways</b>	<b>FY 12-13</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>FY 16-17</b>
Detachable grips	108	111	114	116	120
Fixed grips	136	135	133	131	130
Funiculars	2	2	2	2	2
Surface lifts	29	30	27	27	27
Rope tows	19	19	18	18	18
Conveyors	75	76	80	80	80
Reversible aerial tramways	2	2	1	1	1
<b>Total</b>	<b>371</b>	<b>375</b>	<b>375</b>	<b>375</b>	<b>378</b>

As highlighted in Table 4, the total number of licensed passenger tramways has remained fairly constant in the past five fiscal years.

Prior to operating a passenger tramway in Colorado, the area operator is required to obtain a license from the Board. In order to obtain a license, passenger tramways must have an inspection and any deficiencies identified must be corrected. Additionally, the area operators must pay any applicable fees.

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Each of the following events regarding passenger tramways triggers the need to obtain a new license.

### **New Tramways**

A new installation is any passenger tramway installation not previously licensed and includes both new and relocated passenger tramways.<sup>30</sup> Obtaining a license for new or relocated passenger tramways is a complex process. Prior to receiving a license to operate in Colorado, new passenger tramways must adhere to the new installation requirements, which are located in the *Submissions to the Colorado Passenger Tramway Safety Board for New, Relocated or Modified Tramways* or on the Division's website. Additionally, new passenger tramways must pass an acceptance test inspection.

A contract inspector conducts the acceptance test inspection and all aspects of the tramway operation are tested, including all safety systems, drives, brakes and control systems.<sup>31</sup> In subsequent years, the passenger tramway must receive an annual licensing inspection.

### **Previously Licensed Tramways**

Prior to operation, area operators are required to obtain licenses for each passenger tramway; the area operator must renew each license annually. However, an area operator must complete several steps prior to the issuance of a renewal license. Initially, the area must pay the applicable fee to the Division. Next, the passenger tramway must receive an inspection, which is completed by a contract inspector, who issues an inspection report outlining deficiencies related to the passenger tramway. Upon completion of the aforementioned inspection, the area operator must inform the Board, in writing, that all of the deficiencies outlined in the inspection report have been completed.

Additionally, there are a variety of modifications that may be made to the certified design of passenger tramways, including:

- Major modifications,
- Minor modifications, and
- Minor alterations.

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<sup>30</sup> 3 CCR 781-1 § 21.1.1. Passenger Tramway Safety Board Rule.

<sup>31</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board*.

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## **Major Modifications**

Major modifications include any modifications made to a passenger tramway which alter its verified design or verified construction and which result in a substantive change in:<sup>32</sup>

- Design speed of the system;
- Capacity, by changing the number of carriers, spacing of carriers, or load capacity of carriers;
- The path of the rope;
- The type of brakes and/or backstops or components thereof;
- Structural arrangements;
- Power or type of prime mover or auxiliary engine; or
- Control system logic.

Major modifications are treated similarly to the installation of new passenger tramways. Major modifications require the submittal of appropriate documentation as outlined for new passenger tramways; the major modification must have an acceptance test completed prior to receiving a license to operate.

One example of a major modification might include the relocation of a tramway tower. Relocating a tower requires that a new foundation be poured as well as a new tower (or the existing tower) being installed. Upon completion of the installation of the new tower, testing would be conducted in order to check the foundation capacity, anchor bolts and the assembly of the tower. The test would take place with a contract inspection engineer present.

## **Minor modifications**

Passenger tramways also receive minor modifications. A minor modification includes:

Any modification, addition, or deletion to passenger tramways which does not meet the criteria of a major modification but which results in a significant change in the tramway's verified design or verified construction and materially affects its integrity, operation or control.<sup>33</sup>

An example of a minor modification is an addition or deletion of restraining devices, bike racks, or sled hangers.

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<sup>32</sup> 3 CCR 718-1 § 21.1.2. Passenger Tramway Safety Board Rule.

<sup>33</sup> 3 CCR 718-1 § 21.1.3. Passenger Tramway Safety Board Rule.

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## Minor Alteration

A minor alteration is:

Any other addition or deletion to passenger tramways which does not meet the criteria of a major modification but which results in a significant change in the tramway's verified design or verified construction and materially affects its integrity, operation or control.<sup>34</sup>

One example of a minor alteration is the addition of safety equipment such as machinery guards. Area operators are not required to complete an inspection after completing a minor alteration; however, area operators are required to document the changes in a log that will be reviewed during an inspection.

## Inspections

Passenger tramways in Colorado receive a minimum of two formal inspections annually; inspections are facilitated by contract inspection engineers. The first inspection is the annual licensing inspection (ALI). The ALI is conducted prior to issuing a license for a passenger tramway. The ALI is a comprehensive inspection of a passenger tramway. All aspects of the passenger tramway are inspected from each control system to each brake and drive system.<sup>35</sup> In addition to the mechanical aspects of a passenger tramway, the ALI reviews every electrical system for adequate maintenance and correct operations.<sup>36</sup>

Upon completion of the ALI, the contract inspection engineer provides an inspection report to the area operator, or designated agent, and he or she is responsible for correcting all of the deficiencies noted in the inspection report. The designated agent submits documentation to the Board that the deficiencies have been corrected, including the corrective action(s) taken. Upon receiving the written response, including electronic correspondence from the designated agent, the Board, if satisfied that all of the deficiencies have been addressed appropriately, may issue the license to operate.

The second inspection passenger tramways receive during a year is the annual unannounced inspection (AUI). The AUI is conducted during the passenger tramway's operating season. An AUI inspection focuses on the operation and maintenance of a passenger tramway. Similar to the ALI inspection, a contract inspection engineer performs the inspection and notes all deficiencies in an inspection report. The designated agent must respond to the deficiencies outlined in the report within 28 days from the date of the inspection. The response to any deficiencies identified in the AUI is required to submit to the Board in writing, including electronically, and must include

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<sup>34</sup> 3 CCR 718-1 § 21.1.4. Passenger Tramway Safety Board Rule.

<sup>35</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board*, p.3.

<sup>36</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board*, p.3.

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action(s) taken to correct identified deficiencies. The failure to respond and correct the deficiencies on any AUI within 28 days is a rule violation and subjects the area to possible disciplinary action by the Board.<sup>37</sup>

The Board also has the authority to order special inspections of passenger tramways. A special inspection is usually ordered when an unusually large number of deficiencies have been cited or when operational problems have been documented.<sup>38</sup>

The other inspections that passenger tramways may receive are additional required inspections after 2,000 hours of operation.

Table 5 outlines the total number of inspections completed by contract inspection engineers in fiscal years 12-13 through 16-17.

**Table 5**  
**Total Inspections in Fiscal Years 12-13 through 16-17**

<b>Fiscal Year</b>	<b>Total Number of Inspections</b>
12-13	761
13-14	764
14-15	788
15-16	780
16-17	783

Table 5 shows that the total number of inspections completed in the past five fiscal years has remained fairly constant. Data pertaining to each type of inspection are unavailable.

Table 6 details the total number of deficiencies identified during inspections of passenger tramways in the last five fiscal years.

**Table 6**  
**Total Deficiencies in Fiscal Years 12-13 through 16-17**

<b>Fiscal Year</b>	<b>Total Number of Deficiencies Identified</b>
12-13	1,772
13-14	1,799
14-15	1,849
15-16	2,020
16-17	2,034

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<sup>37</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board, p.4*

<sup>38</sup> Department of Regulatory Agencies, Division of Professions and Occupations. *Introduction to the Colorado Passenger Tramway Safety Board, p.5*

Table 6 shows that the total number of deficiencies identified during passenger tramway inspections has varied less than two percent in the last five fiscal years.

### Complaints/Disciplinary Actions

One of the major functions of the Board is to discipline area operators who violate the passenger tramway statute or regulations. The Board has a range of disciplinary actions available, including:

- Letters of Admonition,
- Suspensions,
- Revocations, and
- Fines.

As with most regulatory programs, the Board also has the ability to enter into stipulations. In fact, the Board, during the past five fiscal years, has entered into five stipulations with area operators.

Table 7 highlights the total number of complaints, including nature of complaints, the Board has received in fiscal years 12-13 through 16-17.

**Table 7  
Total Complaints in Fiscal Years 12-13 through 16-17**

Nature of Complaint	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Operating with an Expired License	0	1	1	1	0
Late Response to Deficiencies	1	2	2	1	7
Failure to Correct Previous Deficiencies	0	1	0	0	1
Late Reportable Incident	0	1	1	1	0
<b>Total</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>8</b>

As illustrated above, the Board receives few complaints. The most common complaint the Board received was related to licensed passenger tramway area operators failing to respond to deficiencies in a timely manner.



Additionally, Table 8 shows the disciplinary actions imposed by the Board, including type of action, on area operators of licensed passenger tramways during fiscal years 12-13 through 16-17. There were very few disciplinary actions compared to the number of inspections completed on passenger tramways. For example, in fiscal year 16-17, there were 783 inspections completed and only seven disciplinary actions.

**Table 8**  
**Total Disciplinary Actions in Fiscal Years 12-13 through 16-17**

Type of Action	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Revocations	0	0	0	0	0
Suspensions	0	0	0	0	0
Revocation/Suspension Held in Abeyance or Stayed or Stayed Suspended	0	0	0	0	0
Stipulations	1	1	1	0	1
Letters of Admonition	0	4	3	3	6
Other (cease and desist, injunctions, etc.)	0	0	0	0	0
<b>Total Disciplinary Actions</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>7</b>

As highlighted in Table 8, the most common type of disciplinary action imposed by the Board is a letter of admonition (LOA). Typically, area operators of licensed passenger tramways received an LOA because they failed to respond to deficiencies in a timely manner.

The Board is authorized to impose fines on area operators of licensed passenger tramways for violations of the statute or applicable rules. Table 9 shows the fines imposed by the Board in fiscal years 12-13 through 16-17.

**Table 9**  
**Total Fines in Fiscal Years 12-13 through 16-17**

Fiscal Year	Total Fines Collected
12-13	\$3,000
13-14	\$500
14-15	\$1,000
15-16	\$0
16-17	\$1,000

Typically, fines imposed by the Board are included in stipulations for failing to respond to deficiencies identified during an inspection.

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## Collateral Consequences - Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Board does not have statutory authority to impose any disqualifications on applicants of licensees based on past criminal history.

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## Analysis and Recommendations

### **Recommendation 1 - Continue the regulation of passenger tramways and the Passenger Tramway Safety Board for 11 years, until 2030.**

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. The absence of regulating passenger tramways could potentially harm the public. The State of Colorado requires all passenger tramways to be licensed, except those specifically exempted by law. Prior to obtaining a license, a passenger tramway must have an inspection completed by a contract inspection engineer and any deficiencies identified must be corrected. Without requiring a license to operate, a passenger tramway potentially presents a safety hazard and leaves the public vulnerable to harm.

In the last five fiscal years, contract inspection engineers completed more than 3,500 inspections of passenger tramways. Some inspections identified deficiencies that area operators were required to correct. Correcting deficiencies identified during inspections enhances protection to consumers by ensuring that passenger tramways are safe to ride. As such, regulatory oversight of passenger tramways is necessary to protect the public.

Regulatory oversight can be accomplished in a variety of ways. At present, the Passenger Tramway Safety Board (Board) is responsible for licensing passenger tramways, imposing discipline on area operators, approving variances (temporary and permanent) and responding to area-related complaints.

The Board has demonstrated a commitment to ensuring that passenger tramways are effectively regulated in Colorado. This is evidenced by the slight increase in disciplinary actions imposed on licensees from the previous sunset review, which was conducted in 2007. Still, the most common reason for the Board to impose discipline is when area operators fail to submit their deficiency statements in a timely manner. Deficiency statements are written documentation that any deficiencies have been corrected.

Deficiency statements are required to be submitted to the Board within 28 days of an inspection. Failing to reply within the 28-day timeframe could potentially represent a public safety risk. Therefore, the General Assembly should continue the Board as the mechanism for providing regulatory oversight.

As such, the regulation of passenger tramways and the Board should be continued by the General Assembly for 11 years, until 2030. Doing so will ensure that passenger tramways are effectively regulated, and violations of the statute or applicable rules could result in formal disciplinary action by the Board, which ultimately protects the public who utilize passenger tramways in Colorado.

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**Recommendation 2 - Revise the provision in statute that requires proof of “willful and wanton misconduct” before the Board can discipline a licensee.**

Passenger tramways are substantial and intricate pieces of machinery that are utilized by the public for recreational purposes - many times in inclement weather conditions. As such, when negligence exists in the operation or maintenance of passenger tramways, it can have serious consequences to the public, including the loss of life. The current statute allows the Board to consider disciplinary action only when the high standard of “willful and wanton” conduct can be proven.

Although such incidents are not common, due to the potential seriousness of the effect to the public, the General Assembly should amend the statute to remove the “willful and wanton” requirement in the statute. Doing so will enable the Board to take disciplinary action, when necessary, if a licensee is negligent in the operation or maintenance of a passenger tramway, regardless of whether the act was “willful or wanton,” which will serve to strengthen the statute and enhance consumer protection.

**Recommendation 3 - Repeal the requirement that the Board send a letter of admonition by certified mail.**

Section 25-5-706(2)(b)(I), Colorado Revised Statutes (C.R.S.), requires the Board to send a letter of admonition (LOA) to a licensee via certified mail. Certified mail is a service offered by the U.S. Postal Service, and its purpose is to provide a delivery confirmation. For example, when the Board sends an LOA to a licensee via certified mail, the Board receives confirmation that the letter was delivered. However, a certified letter does not guarantee the letter was reviewed by the recipient. Sending a letter via certified mail is more costly than sending a letter via first class priority mail.

LOAs are the only form of discipline that the statute requires to be sent to licensees via certified mail. This process is inconsistent with other practice acts in Colorado as well as more costly.

Therefore, the General Assembly should remove the requirement in section 25-5-706(2)(b)(I), C.R.S., that the Board send an LOA to licensees via certified mail. Doing so removes an unnecessary requirement that is both more costly for the Division of Professions and Occupations and inconsistent with other practice acts.

**Recommendation 4 - Make technical changes to the statute.**

Replace all references in the statute to program “administer” with program “director.”