

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO PASSENGER TRAMWAY SAFETY BOARD

2000 Sunset Review



October 15, 2000

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 Department of Regulatory Agencies 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 my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall 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 report discusses the question of whether there is a need for the regulation provided under Article 5 of Title 25, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The Colorado Passenger Tramway Safety Board (Board), in the Division of Registrations, Department of Regulatory Agencies (DORA) shall terminate July 1, 2001 unless continued by the General Assembly. During the year prior to this date, it is the responsibility of DORA to conduct an analysis of the program in compliance with §24-34-104, Colorado Revised Statutes, (C.R.S.).

The purpose of this review is to determine whether continued regulation of the passenger tramway industry is necessary for the protection of the public health, safety, and welfare. The report also evaluates the performance of the Board and the Division of Registrations as it relates to this program. During the review, the Board and Division must demonstrate that the regulation is the least restrictive structure possible consistent with the public interest.

The sunset review process includes an analysis of the statute, interviews with program staff, past and present Board members, professional trade association representatives, tramway manufacturers, regulated parties, and other interested parties. Every effort is made to elicit information and comments from all interested parties.

Historical Background

In the 1950s, a trade organization known as the Rocky Mountain Ski Area Operator's Association (RMSA) began an effort to regulate ski lifts as part of their effort to promote the ski industry in Colorado. A requirement for membership in the organization was an annual independent inspection of all lifts operated by the ski area. Although membership in RMSA was voluntary, the organization is credited with establishing minimum safety standards for the industry.

A 1965 ruling by a Denver District Court established the possibility that ski lifts could be considered common carriers, and as such subject to regulation by the Public Utilities Commission (PUC). However, the PUC never attempted to regulate tramways. The Colorado Tramway Safety Board was the result of legislation promoted by RMSA to prevent regulation by the PUC. The 1965 legislation went beyond ski area regulation and gave the Board regulatory authority over passenger devices in other amusement/recreational areas such as the Royal Gorge, Santa's Workshop, Heritage Square and others.

The original Board consisted of one public member, one member appointed by the U.S. Forest Service, two members representing tramway operators, one from the tramway manufacturing industry and one representing the tramway insurance industry. The Board contracted with an engineer to perform inspections and provide technical assistance necessary to implement the regulatory program. Beginning in 1968, the Board trained and contracted with five engineers to perform passenger tramway inspections. It was believed that using several contract engineers would be more efficient than using a single contractor. In 1975 four additional engineers were trained and issued contracts.

In 1976, a major accident involving a ski resort gondola resulted in legislation making major changes to tramway regulation. The composition of the Board was changed, adding an additional public member and changing the industry representation. The new composition included one U. S. Forest Service member, two public members, two members representing permitted entities, and two members representing the manufacturing or design industry. Another change was the authorization to employ a full-time supervisory tramway engineer. However, when the supervisory engineer position became vacant in 1980, the Board and DORA elected to again expand the use of contract employees rather than fill the full-time position.

The 1982 sunset review of the Board questioned the consistency and quality of the inspections by contract engineers and recommended the reinstatement of a full-time supervising engineer. Senate Bill 83-20 was introduced to implement recommendations contained in the 1982 sunset report. The bill redefined qualifications for the supervising engineer and established specific responsibilities for training contract inspectors and authorizing the supervising engineer to order emergency shut downs of lifts in specific situations.

The 1992 sunset review made recommendations to change many of the definitions used in the Act, including changing references to ski lifts and replacing them with passenger tramways to accurately reflect the broader scope of the Boards responsibility. The review also recommended changes to the Board composition, defined that a majority of the Board members present constitutes a quorum and implemented a requirement that members must be a resident of the state for at least one year prior to appointment to the Board.

Summary of Statute

The statutory authority to regulate passenger tramways is found in §25-5-701, et seq., C.R.S., (Act). The Act is included in this report as Appendix B. The Act begins with a legislative declaration which states it is the policy of the state to establish a board to prevent unnecessary mechanical hazards related to the operation of passenger tramways.

The Act contains a definition section for terms used throughout the Act, as well as technical definitions used in the tramway industry. The Act defines a passenger tramway as "...a device 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."

The Board is comprised of one member designated by the United States Forest Service and six members appointed by the Governor as follows:

- Two members representing the industry or ski areas;
- Two members representing the public at large; and
- Two members familiar with or experienced in the tramway industry to represent the tramway manufacturing or design industry.

Board members serve staggered four-year terms. Board members may not be appointed to more than two consecutive terms. Board members are prohibited from participating in regulatory functions when a conflict of interest exists.

The Board has the authority to promulgate rules and regulations necessary to carry out the provisions of the Act. The Board is authorized to use or adopt the rules and regulations contained in the "American National Standards for Passenger Ropeways", which is published by the American National Standards Institute (ANSI) and updated annually.

The Board is authorized to form sub-committees to make recommendations to the Board on design, construction, and safety issues related to passenger tramways. The Board may conduct meetings and hold hearings on issues related to passenger tramway safety and operations. The Board is authorized to investigate complaints or to initiate investigations on its own motion. The Board has the ability to compel the testimony of witnesses and may subpoena records relevant to an investigation. Disciplinary hearings may be held by the Board or delegated to an administrative law judge (ALJ). The Board may seek an injunction in District Court for violations of the Act or regulations promulgated under the authority of the Act.

The Board has the authority to discipline any licensee. All disciplinary actions must be conducted in accordance with the "State Administrative Procedure Act" (APA). The Board has the authority to deny, suspend, revoke, or refuse to renew any license. The Board also has the ability to issue letters of admonition or to impose conditions on the license of a passenger tramway. In addition to these disciplinary options, the Board may assess fines of up to \$10,000 per violation. Fines may be increased up to \$50,000 if the violation is found to be willful.

The Board may issue orders for corrective actions for deficiencies found during an investigation. If an area operator fails to comply with the orders, injunctive relief may be sought in a district court. Persons who violate orders of the Board are subject to fines of up to \$5,000. All fines collected by the Board are deposited in the General Fund.

The Board is required to license all passenger tramways in the state, except those specifically exempted by law. Passenger tramways located in private residences are not subject to the licensing provisions of the statute. However, owners of private residence tramways must obtain Board approval before new construction or a major modification of an existing tramway can begin. The Board must establish reasonable standards for design and operational practices and inspect all licensed passenger tramways.

Area operators of passenger tramways must apply for a new license annually. All tramways must be inspected prior to the issuance of a license. Area operators must post the tramway license at a location visible to the passenger loading area.

The area operators (licensees) are required to pay fees established by the Board for all licenses, permits, and inspections. All fees collected by the Board are deposited in the Division of Registrations Cash Fund and are subject to appropriation by the General Assembly.

The Board may employ independent contractors to perform inspections under the direction of the Supervising Tramway Engineer. Expenses associated with tramway inspections by independent contractor inspectors are charged to the area operator for reimbursement.

Board members, witnesses, contractors, and staff of the Board are protected by the governmental immunity provisions of the Act while acting in good faith in the performance of their duties. When the operation of a passenger tramway presents an unreasonable hazard to public safety, any member of the Board, or the Supervising Tramway Engineer may order an emergency shutdown of the tramway for a period not to exceed 72 hours to allow for corrections or further action by the Board.

Users of passenger tramways are subject to the provisions of §33-44-101, C.R.S., et seq., the Ski Safety and Liability Act. Contained in this act is a requirement that passengers on tramways must obey posted rules of safety for tramways and to refrain from activities that may present a hazard to themselves or other passengers on the tramway.

Related Regulatory Programs

There are no other state regulatory programs that directly address passenger tramways. However, some tramways are located in amusement parks, which are subject to additional regulatory oversight. The Director of the Division of Labor in the Department of Labor and Employment has the authority to regulate carnivals and amusement parks under the provisions of §8-1-107 (2) (o), C.R.S., the powers and duties of the director. This provisions reads:

(o) Ascertain, fix, and order such reasonable standards, rules, or regulations for the construction, repair, and maintenance of carnivals and amusement parks and provide for annual registration fees not to exceed one hundred dollars and for the financial responsibilities of operators. All fees collected by the division pursuant to this paragraph (o) shall be transmitted to the state treasurer, who shall credit the same to the public safety inspection fund created pursuant to section 8-1-151. After notifying the director of the division of labor, any carnival or amusement park which is inspected and licensed or issued a permit by a home rule municipality for operation within that jurisdiction shall be exempt from the requirements of this paragraph (o).

The Public Safety Inspection Program funded by §8-1-151, C.R.S. is used to perform inspections on amusement parks, permitted explosive facilities under §9-7-108.5, C.R.S., and building inspections for public schools under the provisions of §22-32-124(2), C.R.S. There are some amusement parks such as Santa's Workshop in Colorado Springs, and Hyland Hills Water Park in Federal Heights that have tramways licensed by the Board in addition to their amusement park license.

The inspection program by the Division of Labor is not comparable to the inspections required by the Board. There are no statutory requirements for the qualifications of the inspectors and inspectors are not required to inspect according to any national standards. Division of Labor inspections do not include engineering reviews of the design and operation of amusement rides.

Most passenger tramways in Colorado are ski lifts operated on federal lands. The U.S. Forest Service has jurisdiction over most of the ski areas in the state. Forest Service approvals include a review of the engineering design and operation of tramways. However, the Forest Service does not conduct regularly scheduled inspections. Forest Service inspections are conducted on a spot check basis and do not always cover the operation of the lift in as much detail as Board inspections. Forest Service personnel sometimes conduct joint inspections with Board engineers. The Forest Service has no jurisdiction over lifts on private or state owned land.

**Program
Description
and
Administration**

Industry Growth

The number of tramways registered with the Board increased steadily from a total of 27 lifts registered in the early 1960s to over 170 in 1971. By 1985, there were 261 lifts registered with the Board. The number of tramways in the state has increased by 27 percent since the last sunset review which was conducted in 1992. Table 1 details the growth in the number of lifts from 1985 to present.

TABLE 1

TOTAL LIFT REGISTRATIONS

YEAR END	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Chairlifts	202	202	210	212	212	212	212	178	184	189	196	206	213	224
Surface	31	28	28	28	28	29	29	29	30	31	32	36	36	36
Tow	19	17	19	19	22	21	22	14	15	15	16	24	29	32
Gondola	3	5	5	5	5	5	5	4	4	5	8	8	8	8
Conveyor	0	0	0	0	0	0	0	2	10	11	12	20	35	37
Funicular	4	3	3	3	2	2	2	2	2	2	2	4	4	4
Rev Tram	2	2	2	2	2	2	3	3	3	3	3	3	3	3
Total	261	257	267	270	272	271	270	232	248	256	269	301	328	344

Program Description

The Passenger Tramway Safety Board is a Type I agency housed in the Department of Regulatory Agencies (DORA), Division of Registrations (Division). A Type I agency is a policy autonomous subdivision of state government. Regulatory and disciplinary actions of a Type I agency are considered final agency actions for administrative purposes and may only be appealed through the court system. Permitting and inspection fees paid by the operators of licensed tramways fund the functions of the Board and the associated regulatory program.

Classified state employees staff the program. Currently, the Division devotes one Full Time Equivalent (FTE) program assistant, one FTE supervising engineer, and a .2 FTE program manager to staff the program. In addition, the Division contracts with private consulting engineers to conduct inspections of tramways.

There are several types of tramways regulated by the Board and the Act defines the various types. However, the majority of tramways are ski lifts which come in two major types, fixed grip and detachable. A fixed grip lift has a chair which is attached to a cable at a fixed point and moves at a constant speed determined by the speed of the cable. A detachable grip uses a clamping mechanism to attach and release from the drive cable at the loading and unloading areas. This is a more complex design and requires more frequent maintenance than fixed grip tramways.

Detachables are able to carry more skiers at higher speeds, something ski areas desire for customer service. The most significant growth in tramways has been in the detachable grip type, up from 35 in 1992 to 78 in 1999. Since most of the new tramways are ski lifts with higher capacity than older lifts, the increase in the number of consumers impacted by the regulatory program has increased even more than the increase in number of lifts indicates. The figures below detail the growth in passenger tramways since 1992.

Figure 1

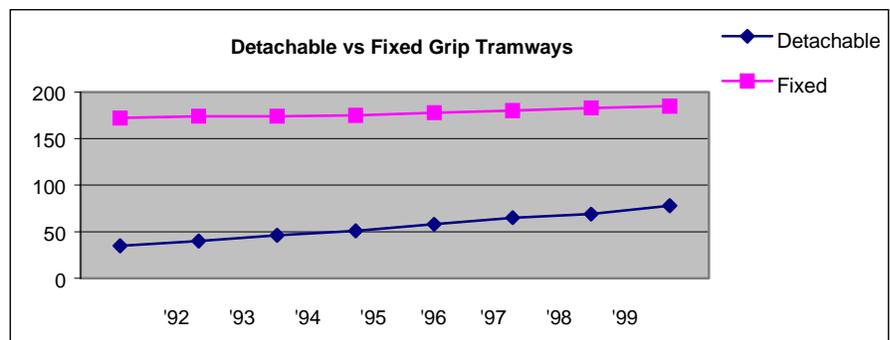
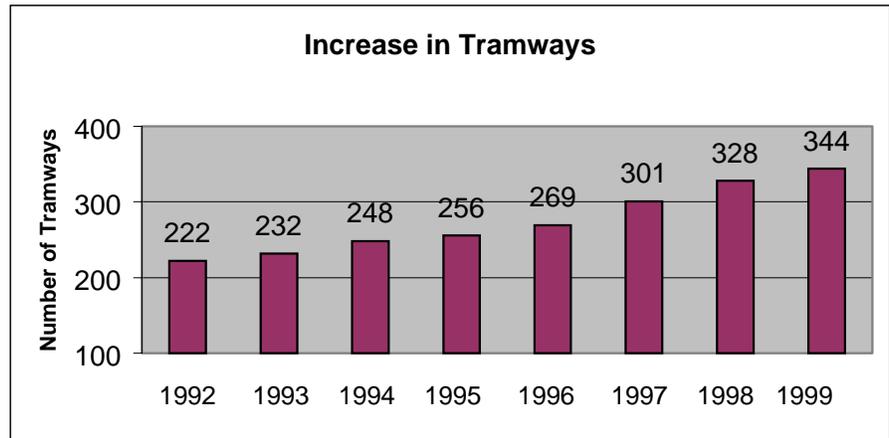


Figure 2



Licensing

Licensing a new lift can be a very complex process. Most lifts regulated by the Board are at ski areas located on federal land. Ski area operators must first obtain permission from the appropriate federal agencies before beginning construction of a new lift. Federal agencies involved generally include the U.S. Forest Service and may include the Federal Bureau of Land Management and the Environmental Protection Agency in some cases. In addition, local governments at the city and county level may require hearings and permits before authorizing a new lift.

Federal and local government authorizations must be obtained before a tramway operator may obtain a permit from the Board. Plans for new tramways are submitted to the supervising engineer for review. The supervising engineer will review the plans for compliance with Board regulations. The Board and tramway operators have found that this preliminary review reduces the possibility of deficiencies during licensing inspections.

Most tramway owners do not begin construction of a new tramway until the plan review has been completed. Again, since most tramways are ski lifts, construction season is short and it is important to ski areas to minimize delays. During the construction process, ski area operators generally keep in close contact with the Board to inform them of any complications with the lift construction and installation.

Once the lift construction is completed, the lift operator must ensure that it is in compliance with all Board regulations. When the operator believes the lift is in compliance with regulations, the operator contacts the Board to arrange for an inspection. The application for tramway license must identify a responsible party for the Board to contact. This is usually an officer of the corporation that operates the ski area; it may also be the lift maintenance supervisor.

The inspection is usually conducted by one of the consulting engineers under contract with the Board. Depending on the type of lift, the inspector will spend a few hours to several days completing a mechanical inspection and a partial regulatory compliance review with the lift staff observing. After the completion of the review, the inspector immediately provides a copy of the inspection notes to the responsible party and then sends a written report to the Board. The inspection notes and the written report both identify any deficiencies found during the inspection. The Board then sends a formal inspection report to the operator identifying deficiencies that must be corrected prior to licensing.

New lift inspections generally find fewer than 10 deficiencies. If the number of deficiencies is unusually high or involve serious life/safety issues, the Board may require an additional inspection prior to licensing. Most new lifts will not require an additional inspection prior to licensing.

Once the inspection is complete, the operator may begin correcting any deficiencies. When the formal report is received from the Board the responsible party for the operator must respond and certify that all deficiencies have been corrected. Certification is accomplished by sending a notarized letter to the Board detailing what has been done to address the deficiencies. When the Board receives the self-certification from the responsible party, and the required licensing fee, the Board will issue a license for the lift. All licenses issued by the Board are valid for one year from the date of issuance.

Applications for major modifications of existing lifts, which may include relocation of an existing lift, are treated in much the same manner as new lift applications by the Board. The Board also has applications for minor modifications and lift renewals.

Minor modifications and renewal applications are processed similarly. The lift operator contacts the supervising engineer to arrange for a pre-licensing inspection. Since most lifts are in ski areas, this inspection is generally conducted in the fall and is known as the fall inspection.

Again, a contract inspector usually conducts the inspection. The inspection consists of a complete mechanical inspection as well as a partial regulatory compliance inspection (it is not always possible to conduct a complete compliance inspection since lack of snow and other factors make operational observations invalid). Generally, ski areas schedule inspections for several lifts at one time to create efficiencies for both the ski area and the inspector. Any deficiencies found during the inspection are noted on the inspection notes and a copy is left with the responsible party for the lift. Again a written report is sent to the Board and the Board sends an inspection notice to the responsible party.

The responsible party then must self-certify that all deficiencies have been corrected and send a notarized response to the Board. Once the response and the appropriate fee are received, the Board issues a license for the lift. It should be noted that §24-4-104 (13) (b), C.R.S., prohibits an agency from requiring an application for a license to be notarized. While the deficiency response is not technically a license application, it would seem to fall within the intent of the prohibition.

Inspections

After a tramway is licensed and operating, an unannounced operational/regulatory compliance inspection is conducted at some point during the licensing period. This inspection must be done during regular business hours of the lift. One key element of the unannounced inspection is a review of all previously noted deficiencies. Operational inspections focus on regulatory compliance and include reviews of lift operator and attendant knowledge and training, signage issues, access and egress issues, and staffing. In addition, the inspector will review maintenance records and perform an abbreviated mechanical inspection.

In most cases, all previously noted deficiencies have been corrected and are noted as such on the inspection report. Any new deficiencies are noted and a written report is made to the Board. The Board then sends a response to the lift operator identifying any deficiencies and requesting a response from the responsible party identified by the lift owner. The response will again be self-certification by the responsible party that all deficiencies have been corrected.

Any Board member or the supervising engineer has the authority to order the immediate closing of a lift at any time if they find a situation that presents an immediate threat to the health and safety of the public. In addition, the supervising inspector has been delegated by the Board the authority to order an emergency closure of a lift if the continued operation of the lift presents a significant potential harm to the public.

The lift owner pays for all inspection expenses, including travel and lodging if necessary. As a result, the fall inspections are grouped together whenever possible, as are the unannounced inspections, to minimize travel and lodging costs to the area operator.

The Board tracks inspections using several measures to evaluate the inspection process. Statistics showing the total number of inspections performed in a given year, the average number of inspections per inspector and the number of deficiencies corrected are maintained. Table 2 below details the measurements for inspections since the last sunset review.

TABLE 2

TRAMWAY INSPECTIONS

Fiscal Year	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Number of inspections	554	543	615	619	632	640	665	689	699
Avg. number of inspections per inspector	92	90	102	103	105	128	111	115	140
Deficiencies corrected	1782	1531	1637	1690	1775	1987	2165	3935	2270

Footnote: All numbers of deficiencies corrected are estimates with the exception of FY 2000 which was an actual count of number of deficiencies corrected.

Independent consulting engineers under contract to the Board perform the majority of both licensing (fall) and unannounced inspections. The Board contracts annually with inspectors to perform inspections under the direction of the supervising engineer. The supervising engineer schedules all inspections to minimize the travel and related expenses of the tramway owners.

Reportable Incidents

Board regulations require lift owners to notify the Board of the occurrence of specified events within certain timeframes. Reportable incidents include injuries occurring on or caused by a tramway, equipment failures, hazardous operating conditions and other events designated in regulations. Most incidents require verbal notification to the Board within 24 hours, followed by a written report within five days. Copies of the incident report summary are sent to all licensees annually.

Incident reports serve several purposes. Lift operators can use information related to equipment failures to schedule additional preventative maintenance and evaluate equipment replacement or purchasing decisions. Incidents involving operator errors alert the area operator and the Board to potential training deficiencies for tramway attendants.

Since incidents are self-reported, there is the potential that tramway owners may not be completely forthcoming. This is a potential hazard for any self-reporting program. However, since the public may also independently report incidents, the possibility of the Board receiving independent information regarding an incident provides motivation to the tramway operator to report all incidents.

An examination of reportable incidents is more meaningful when reviewed in comparison to the potential for a reportable incident. In the case of tramways, the most readily available measure is to compare skier visits. Table 3 compares the number of skier visits in Colorado to the number of reportable incidents. While there are no national standards to compare reportable incidents to, the rate of less than one incident per 1,000 skier visits seems reasonable.

TABLE 3

RATE OF REPORTABLE INCIDENT PER 1,000 SKIER VISITS

FISCAL YEAR	COLORADO SKIER VISITS	INCIDENTS	RATE/ 1,000
1992/93	11,111,290	115	.010
1993/94	11,164,232	138	.012
1994/95	11,105,106	187	.017
1995/96	11,387,058	222	.019
1996/97	11,845,052	238	.020
1997/98	11,979,719	308*	.026
1998/99	11,405,344	153	.013
1999/00	10,891,318	123	.011

* The Board modified the reporting requirements for reportable incidents in 1998 resulting in a reduction in the types of incidents requiring Board notification.

Disciplinary Actions

A major function of any regulatory authority is to discipline licensees who violate the statute or regulations. The Board has a broad range of disciplinary options including, Letters of Admonition (LOA), suspensions, revocations, and fines. In addition, the Board, under §25-5-706 (2)(d), C.R.S., has authority to issue an order imposing "reasonable conditions upon the continued licensing of a passenger tramway or upon the suspension of further disciplinary action against an area operator." The Board frequently uses this authority to enter into what it terms a "letter of agreement" in place of disciplinary action. As with most regulatory programs the Board also has the ability to enter into stipulated agreements as an alternative to formal disciplinary action.

The 1992 Sunset Review of the Board noted an unusually low number of disciplinary actions taken by the Board. That review pointed out that since the Board had been granted disciplinary authority in 1986 it had never issued a suspension, or revocation, and issued only two fines. The review made the following administrative recommendation and analysis:

"The Board needs to review its reluctance to impose disciplinary actions on any area operators.

One reason for the Board's reluctance to impose disciplinary measures is the emphasis on cooperation between the passenger tramway industry and the Colorado Passenger Tramway Safety Board. This philosophy is valid to a point, but when the industry and the Board become too familiar, the public's health and safety may not be well protected. There does exist an information network between area operators whereby they exchange experience and knowledge related to passenger tramways."¹

In the four years following the 1992 review the Board issued a total of seven LOAs: four for late reporting of incidents, one for failure to obtain a permit for a major modification, one for deficiencies on an inspection and one for an accident involving injuries to a skier. The Board has not issued an LOA since 1996. The Board has yet to take more severe disciplinary action such as suspension or revocation. Table 4 identifies the Board's disciplinary history since the 1991/92 fiscal year.

TABLE 4

BOARD DISCIPLINARY HISTORY

Type of Action	FY 91-92	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00 (to date)
Letter of Admonition		1	4	1	1				
Fine							1 @ \$20,000		1 @ \$20,000
Other	2	2	1	2	1		1	2	1
TOTAL	2	3	5	3	2	0	2	2	2

¹ Sunset Review "Passenger Tramway Safety Board" 1992, p33.

As previously mentioned, the Board does make use of alternative forms of discipline. The column in Table 4 labeled "Other Discipline" usually refers to either a stipulated agreement or an agency order in the form of a letter of agreement. A letter of agreement is a formal agreement between the Board and an area operator. The Board uses letters of agreement to achieve compliance by operators with the statute and/or regulations of the Board without taking formal disciplinary action.

In addition, the Board has required emergency shutdowns of some lifts when there are concerns about immediate public safety issues. In the view of some individuals contacted for this review, an emergency shutdown is equivalent to a fine, since the operator loses revenue during the shutdown period. However, unless the ski area is extremely small, it is unlikely the closing of a single lift will result in a significant revenue loss.

Analysis and Recommendations

The ski industry in Colorado is recognized nationally as one of the strongest in the country. According to Colorado Ski Country USA, the state has averaged over 21 percent of all skier visits nationally since the 1992/93 ski season. Colorado has more ski lifts than any other state; over 11 percent of the ski lifts operating in the country are under the jurisdiction of the Board. Table 5 identifies the states with the most lifts nationally.

TABLE 5
SKI LIFTS BY STATE

STATE	# LIFTS	PERCENT	ADMINISTRATIVE AGENCY	BOARD COMPOSITION
CO	310	11.7%	DORA Division of Registrations	2 ski area reps 2 manufacture/design reps 2 public members 1 US Forest Service rep
CA	279	10.6%	Department of Labor	No board
PA	184	7.0%	Department of Labor & Industry	No board
MI	175	6.6%	Department of Commerce	Advisory Board 3 ski area reps 2 public members 1 ski association rep 1 licensed engineer 1 Department member 1 tourism council member
VT	168	6.3%	Department of Labor	2 ski area reps 2 public members 1 Department rep
NY	164	6.2%	Department of Labor	Advisory Board 5 ski area reps 4 public members 1 licensed engineer 1 insurance rep 1 manufacturer rep 1 Department rep
UT	126	4.8%	Department of Transportation	2 ski area reps 2 public members 1 licensed engineer 1 US Forest Service 1 Department rep
NH	117	4.4%	Department of Labor	2 ski area reps 1 public member 1 insurance rep 1 Department rep
MN*	114	4.3%	No Agency	No board
WI	114	4.3%	Department of Commerce	No board
All others	892	33.8%		

*Minnesota does not have an agency or commission that does enforcement or rule making. Operators are required to comply with the ANSI B-77 Code and have an annual inspection by an independent engineer.

Protection of the public utilizing ski lifts is a major concern of the ski industry, the state, and is the primary function of the Board. While it is common to relate actions of the Board as actions against a ski area, this is an incorrect perception. The Board has regulatory jurisdiction over individual lifts only. Most ski areas are located on US Forest Service land and the Forest Service permits the areas themselves. The state does not have a specific regulatory program for the operation of a ski resort.

According to industry representatives, Colorado tramway regulations are used as a model for other states in regulating tramways and ski lifts. Lift manufacturers and nationally recognized consulting engineers in the industry have offices in, or are headquartered in Colorado.

Although the number of skier visits is a significant portion of the national ski industry, in reality, the tramway industry is small in terms of raw numbers. The 344 total regulated tramways in the state are divided among approximately 46 separate entities. A few of these entities, such as special transportation districts, amusement parks, and specialized tourist attractions such as the Royal Gorge have only one tramway. The majority of tramways (310) are ski lifts at large ski areas. This fact is significant when examining the composition of the Board and reviewing Board activities and actions.

The Board is one of the few regulatory bodies in DORA, and the only board in the Division of Registrations that does not regulate professional individuals. Like most regulatory boards, the Board is composed of individuals from the industry. However, in reality, the industry this Board regulates is very small in comparison to other programs with Type I boards.

Previous sunsets have noted the apparent lack of disciplinary actions taken by the Board. Interviews with current and former Board members, industry representatives, and program staff resulted in a difference of opinion regarding the level and appropriateness of Board disciplinary actions. Almost all individuals interviewed believe that one reason for the low level of disciplinary actions is concern by ski areas that a record of disciplinary actions could negatively impact the area in future legal actions. Ski areas would rather accept a Board order for action (letter of agreement) because it does not have the stigma of formal discipline attached to it.

In general, individual members of the ski industry and ski industry trade association representatives contacted for this review believe that the Board is operating effectively and efficiently. These individuals expressed a belief that disciplinary actions by the Board have been appropriate and effective. They believe that the use of letters of agreement promote open communication between the industry and the Board and serve the public interest by implementing changes at the lifts in a non-adversarial manner.

Program staff acknowledges that, statistically, the Board does not appear to have taken significant disciplinary actions. However, they point out that the Board has emphasized cooperative agreements to achieve operational changes at ski areas to enhance public protection. They also note that, for the first time in Board history, the Board has referred cases of alleged violations to the Complaints and Investigations Unit in DORA for an independent investigation.

However, some current and former Board members expressed concern that the small size of the industry presents obstacles for independent, impartial decisions by the Board. They point out that the composition of the Board requires two individuals "familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry...." Individuals representing manufacturers or insurance companies specializing in the ski industry have typically filled these positions. These individuals have an economic dependence on the ski industry.

When the Board is considering disciplinary action, it is acting in a quasi-judicial position. In formal legal proceedings, it is incumbent on the presiding judge to remove him/herself from the case if the judge has personal knowledge of one of the parties involved. In an industry as small as the ski industry, any non-public Board member is likely to personally know the responsible party in a disciplinary action. Board members properly recuse themselves in discussions involving the ski areas by which they are employed. However, the issue of personal knowledge is still potentially an issue.

Potential conflicts become even more involved for the Board members who represent manufacturers or the insurance industry. These Board members properly recuse themselves if the lift involved was manufactured or insured by their company. However, every ski area is a potential customer for these Board members, therefore a potential conflict of interest exists for any action involving a ski area.

Some Board members expressed a belief that if the Board had the ability to submit secret ballots on disciplinary matters that more formal discipline would be initiated by the Board. Secret ballots would be similar to an executive session, which is provided for in Colorado Open Meetings Law, commonly referred to as the Sunshine Law.

In the declaration of policy preceding the Open Meetings Law the General Assembly states "It is declared to be a matter of statewide concern and policy of this state that the information of public policy is public business and may not be conducted in secret" (24-6-401, C.R.S.). The provision for an executive session is contained in §24-6-402 (3), C.R.S.:

(3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session that is not open to the public:

It is clear that the Board falls under the definition of a state public body under the definition of this law. It is also apparent that a disciplinary action by the Board would not fall under the approved activities provided for in §24-6-402 (3), C.R.S. Secret ballots are not appropriate when considering discipline. It is concerning that some Board members would suggest that violating the Open Meeting Act is the only way vigorous enforcement of the statute and regulations will occur.

According to the minutes of Board meetings reviewed for this report, the Board utilizes executive sessions from time to time. It is not always apparent from the minutes why the Board went into executive session or if the statutory procedure for the executive session was followed.² This is required by §24-6-402 (2)(d), C.R.S.:

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

There is no evidence that the Board is misusing executive sessions. However, documentation of Board executive sessions does not meet the requirements of the Open Meetings Act and therefore raises a cloud of suspicion to the casual observer. The Board should verify with their attorney that the topic falls under the letter of the law and then determine if the executive session is necessary.

Once it has been determined that the session is necessary and legal, all documentation requirements should be adhered to. The Board should be aware that Board orders might not qualify as legal matters authorized under the Act for executive session.

The Board does not make use of the full range of available disciplinary options. In fact, the Board and ski industry expressed a desire to codify in statute the practice of issuing letters of agreement in place of formal disciplinary action. Under current law, letters of agreement are considered Board orders and are not classified as disciplinary actions.

A potential argument for the current Board policy of issuing letters of agreement instead of imposing formal disciplinary actions is that it promotes operational changes at ski areas that serve to protect the public. Also, letters of agreement are less adversarial and therefore require less legal resources and promote cooperation and communication between the Board and the industry.

² Passenger Tramway Safety Board official minutes for meetings June 1997, August 1997, June 1998, August 1998, and February 2000.

The industry as has been previously documented is small. Communication between Board members and the regulated community is not an issue. Most ski areas send representatives to Board meetings on a regular basis and tramway operators are well represented on technical and other committees formed by the Board to evaluate regulatory issues.

There is nothing to prevent the Board from entering into a letter of agreement in addition to other formal disciplinary action. In fact, since the statutory authority for the letter of agreement is technically called a Board Order, the Board is not required to negotiate with a violator before issuing the order. As it is used currently, a letter of agreement is a Board order for an area that has violated a regulation to agree to follow the regulations and provide the Board with documentation that the regulations are being followed.

In fact, what the Board is doing is placing the operator on a form of probation without creating a record of formal discipline. In most regulatory programs, it is an expectation that licensees comply with the regulations when they obtain their license. The act of applying for and accepting the license is considered written notification of intent to follow the requirements for licensure and violations are subject to disciplinary actions.

Board actions on violations of the statute and regulations are inconsistent and could be considered arbitrary. Violations with similar fact patterns are treated differently, usually without formal disciplinary action and the records do not reflect the justification for the actions. Some examples of disciplinary inconsistencies are provided:

In December of 1996, a ski area failed to respond to the licensing inspection deficiency notice and send in the necessary fees prior to opening one of the ski area lifts. The lift operated for several days before the oversight was noticed and the necessary paperwork was filed for a license to be issued. The Board voted to take no action.

In April of 1997, the Board reviewed a situation that occurred at an area that had not opened for the 1996-97 season. Therefore, none of the lifts at this area were licensed. The owner of the area lived in Texas and was in town to show the property to a prospective buyer. While in town, he activated one lift and allowed friends, family, and former employees of the area to ski, free of charge for the weekend. The Board found the owner operated a lift without a license and issued a \$20,000 fine, one of only two fines the Board has ever issued.

During the February 1999 Board meeting, facts related to a ski area operating a lift without a license were reviewed. According to the record, this area did not properly fill out the deficiency response reply sent in with the licensing fees. As a result, a license was not issued. The ski area then opened a lift for two weekends. The Board voted to issue a letter of agreement (Board order) which required the area to provide documentation of compliance with Board regulations.

There are numerous examples in the Board records of actions and inactions for similar violations. Following the last sunset review, the Board issued a few Letters of Admonition for late reporting of incidents. Current Board policy appears to be to take no action when an area fails to comply with the incident reporting requirements. This gives rise to the question of whether the reporting requirement is necessary to protect the public.

A more critical question is raised regarding the lack of action taken by the Board when a licensee fails to correct deficiencies from a licensing inspection. The Board has repeatedly overridden recommendations of its inspectors and staff for disciplinary actions.³ Inspectors and staff no longer make formal recommendations. The result of this policy is that the Board does not go on record disagreeing with a staff recommendation for discipline.

³ Board minutes, February 1996, December 1996, February 1997.

Regulatory programs that contain provisions for self-certification are more cost effective and efficient for the regulated community than those that are not. For example, in construction related programs it is common for periodic inspections to be required. If an inspector finds a code violation, an order for correction is issued and in most cases, a reinspection is required before the project can move to the next phase. In any situation, an occupancy permit is not issued until the building receives a final inspection and the inspector is satisfied that the building meets all applicable codes.

The same process could be used in the tramway industry. Following an inspection, deficiencies could be noted and a follow-up inspection required to ensure compliance prior to issuing a license. This would be time consuming and expensive for the areas. The self-certification alternative offered by the Board is a reasonable, less restrictive regulatory approach. However, if there are not penalties attached for failure to comply with the requirements of self-certification, the program has the potential to place the public at risk.

A common defense used by licensees when a deficiency is discovered and not corrected is to assert that the maintenance order was given but not properly carried out.⁴ When a responsible party signs a notice to the Board that all deficiencies have been properly addressed in order for a license to be issued, that person should be held accountable. Other programs, most notably environmental regulatory programs, impose stiff criminal and civil penalties on both the company and the responsible party when it is proven that certified corrections have not been made. It is not a valid defense for the responsible party to claim that a repair order was given but not carried out. Proper supervision and follow-up is an accepted responsibility for a self-certification program.

Previous sunset reviews noted inconsistencies in the quality of inspections and pointed out that the use of independent contractors reduces the control the state has over the work product. Tramway owners contacted for this review supported the continuance of the Board and indicated general satisfaction with the inspection process and the inspectors.

⁴ Board minutes, July 1992, February 1994, April 1998.

Some individuals contacted questioned the objectivity of inspectors as well as the potential for conflicts of interest. The inspectors are all independent, licensed engineers; most operate independent consulting companies. These consulting companies generate a significant portion of their revenue from ski areas and lift manufacturers. There is at least a potential for the appearance of a conflict of interest in this type of arrangement. All contracts require inspectors to disclose any potential conflict of interest and the supervising engineer avoids scheduling an inspector at an area where a conflict could exist. However, this does not eliminate the potential for an inspector to solicit additional consulting work from an area the inspector visits during a fall or unannounced inspection.

To address concerns regarding potential conflicts the Board has passed regulation 22.5.2:

22.5.2 Inspector conflict of interest. No person, except a full-time employee of the Board, shall observe an acceptance test or conduct an inspection of a passenger tramway if:

- (a) during the past two (2) years he has been an employee of the owner or area operator of the tramway; or
- (b) he was the Design or Construction Engineer of record for said tramway within the past five (5) years.

Each year, prior to July 1st, each contract inspector shall make known all potential conflicts of interest on appropriate forms provided by the Board.

The Board currently requires deficiency responses to be notarized. This conflicts with §24-4-104(13)(b), C.R.S., which prohibits requiring notarized signatures on licensing applications. While it could be argued that a deficiency response is not an application, it was the intent of the General Assembly to remove this burdensome and unnecessary requirement from the licensing process.

A notarization provides independent verification that the person signing a document has provided identification. Notarization does not provide any assurance as to the authenticity of information contained in the document. It is unlikely that anyone other than a responsible party would sign a deficiency response. The issues the Board has dealt with regarding deficiency responses involve the accuracy of the information contained in the response. Notarization does not resolve that issue and is an unnecessary and burdensome procedure for tramway operators.

Recommendation 1 - Change the Board to a Type II Board and Continue the Regulatory Authority until the Year 2006 With a Change to the Composition of the Board.

The technical expertise of the Board is necessary to promulgate regulations designed to protect the public. The Board is considered an industry leader nationally for the quality of the regulations it promulgates. The regulations promulgated by the Board are necessary to protect the public and the Board appears to be flexible in granting variances to regulations when appropriate and modifies regulations when necessary to provide the least restrictive form of regulation necessary to protect the public.

Sunset criterion VII asks the question "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." Interviews with Board and industry members as well as a review of the Board disciplinary history show the Board is overly concerned about the impact disciplinary actions may have on the image of a ski area rather than on enforcement of the regulations.

Board members repeatedly stated in conversations and interviews that ski areas will not willingly accept the lowest form of discipline, a Letter of Admonition, because it may negatively impact future civil claims or insurance rates. The Board should be concerned about the facts of the violation and enforcement of the regulations, not the impact of enforcement on future potential litigation for a licensee. Aggravating and mitigating circumstances are appropriate to consider when determining a disciplinary action. For example, the Board has not imposed disciplinary action for late reporting of an incident when the delay was reasonable, such as weather delayed the mail, or the responsible party reported the incident as soon as it was brought to his or her attention.

However, there are also instances in which the Board has taken no action even though the reason for the delay was poor management practices under the direct control of the licensee.⁵ By way of comparison, if a vehicle driver is inattentive and fails to stop at a red light, the driver is subject to a traffic ticket even if the driver claims he or she did not see the light and there was not an accident. A driver is responsible for compliance with all traffic laws. The police officer should not consider the fact that a ticket may result in higher insurance rates for the vehicle driver.

A major difference in a Type II agency from a Type I is the level of autonomy. A Type I agency is completely policy autonomous and may delegate some authority authorized by the statute to a regulatory agency. (The Board has delegated some authority to the program administrator and the supervising engineer.) In disciplinary actions, the decisions of the Board are the final agency action; appeals are permitted through the court system.

A Type II agency is responsible to an executive agency. The executive agency may delegate authority to the Board, such as rule making for example. However, an executive authority has the responsibility for making final agency actions in disciplinary hearings. In most cases, an executive agency uses the Board in an advisory capacity for disciplinary matters, however, the final decision is the responsibility of the executive authority.

⁵ Board minutes, February 1994, June, 1998

This recommendation is not made lightly. It is likely that the ski industry will oppose this concept. However, it is evident from the record of the Board that the Board is unwilling to enforce regulations in a manner consistent with the public interest. In fact, after the last sunset review pointed out inappropriate disciplinary procedures, the Board discussed the issue on the record and disagreed with the findings of the report. However, no justification for the disagreement was noted.⁶

It is very rare for a public member to vote against the disciplinary recommendation of an industry related Board member. However, the records show that industry related Board members frequently vote against disciplinary recommendations made by public Board members.⁷ This raises the question of whether the composition of the Board adequately represents the public interest as required by sunset criterion V.

The program staff performs their duties efficiently and effectively, in compliance with criterion IV. Applications are processed in a timely manner, inspecting engineers note deficiencies and program staff conduct investigations to provide necessary objective information to the Board for consideration during public meetings. However, the Board as a public policy body falls short of its responsibilities when it comes to enforcement of the regulations.

The General Assembly should change the composition of the Board to replace one representative of the tramway manufacturing or design industry with a licensed professional engineer not employed by a ski area or related industry. This will maintain a level of technical expertise on the Board and reduce the conflicts that occur with the present composition.

⁶ Board minutes, June, 93.

⁷ Board minutes, December, 96, June, 97, February, 98, April, 00.

Four of the current seven member Board are closely linked to the relatively small ski industry. Two of the members represent the manufacturing industry. Every ski area is a potential customer for a lift manufacturer. Also, the lift manufacturer and design industry is small. Therefore, it is common for a manufacturer representative to be compelled to recuse because of a conflict. When the disciplinary or variance action under consideration involves a ski area member of the Board two of the seven (over 25%) members of the Board are now ineligible to discuss or vote on the issue.

Industry representatives may argue that the tramway industry is highly specialized and requires specific experience to understand the issues. This is true to a certain extent. However, the current contract tramway inspectors come from a varied background, made up of mostly civil and mechanical engineers. Testimony from experts is always available to the Board. Therefore, an engineer should be able to evaluate information provided by experts with a reasonable level of competence. It does not take specialized tramway experience to recognize when a regulation has been violated and when disciplinary action is warranted. In fact, it appears that specific industry experience is a detriment to an objective disciplinary process.

Recommendation 2 - Amend §25-5-716, C.R.S., to Allow the Director to Issue Orders for Emergency Shutdown of a Tramway.

Currently, any Board member or the supervising engineer may issue an emergency shutdown order. An emergency shutdown order should only be issued in situations where there is an unreasonable hazard presenting a danger to the public. It is questionable whether it is good public policy to allow any Board member such broad discretionary authority. The General Assembly should consider restricting emergency shutdown authority to employees of DORA.

During winter operations, it is not uncommon for the supervising engineer to be in the field assisting with inspections or investigating incidents. Most Board members are employed privately and may not be readily available in an emergency situation. As an additional safety measure, it would be prudent of the General Assembly to grant the Director, who is readily available during peak ski season, the authority to issue emergency shutdown orders.

Technical Housekeeping Issues

The following proposed amendments to the Passenger Tramway Safety Act were agreed upon by the Board staff, the Board, and industry representatives as meeting the intent of sunset criterion IX "...statutory changes are necessary to improve agency operations to enhance the public interest."

Recommendation 3 - Amend §25-5-706 (3), C.R.S., to add Subsection (f) to Require the Board to Impose Penalties for Providing False or Inaccurate Information on a Deficiency Response

The Board currently requires deficiency responses to be notarized. This potentially conflicts with §24-4-104(13)(b), C.R.S., which prohibits requiring notarized signatures on licensing applications. While it could be argued that a deficiency response is not an application, it was the intent of the General Assembly to remove the burdensome and unnecessary notarization requirement from the licensing process. However, the Board and program staff believe it is an important tool to ensure deficiency responses are complete and accurate.

A notarization provides independent verification that the person signing a document has provided identification. Notarization does not provide any assurance as to the authenticity of information contained in the document. It is unlikely that anyone other than a responsible party would sign a deficiency response. The issues the Board has dealt with regarding deficiency responses involve the accuracy of the information contained in the response. The Board should require the person signing the document to state under penalty of perjury that all of the information contained in the document is true and complete.

To hold area operators accountable for the accuracy of responses, the Board should hold the person signing the response personally liable for the accuracy of the information. This is common in other self-certification programs including environmental programs that issue air and water quality permits. In these programs, the person signing the application can be personally fined in addition to any penalty imposed on the company if the information is inaccurate. The disciplinary action provision of the Act should be amended to include a new subsection:

(f) any individual who provides false or inaccurate information on a deficiency response shall be fined \$500 for the first offense and \$1,000 for a second offense.

Recommendation 4a – Add Conveyor Definition

25-5-702. Definitions.

(4) (k) Conveyors. “Conveyor” means a type of transportation by which skiers, or passengers on recreational devices, are transported uphill on top of a flexible moving element. The circulating, flexible moving element (conveyor belt) travels uphill on one path and generally returns underneath the uphill portion.

Board staff proposes to add this definition which is the same definition found in the ANSI Standard for Passenger Ropeways, with the addition of “on top of” to further clarify the usage of the equipment.

Recommendation 4b – Update the Name of National Code

25-5-704. Powers and duties of the board.

(1) (a) To promulgate, amend, and repeal such rules and regulations as may be necessary and proper to carry out the provisions of this article. In adopting such rules and regulations the board may use as general guidelines the standards contained in the “American National Standard for Passenger Tramways Ropeways – Aerial Tramways and Aerial Lifts, Surface Lifts, and Tows and Conveyors – Safety Requirements”, as adopted by the American national standards institute, incorporated, as amended, from time to time. Such rules and regulations shall not be discriminatory in their application to area operators and procedures of the board with respect thereto shall be as provided in section 24-4-103, C.R.S., with respect to rule-making.

This change is proposed to correct the name of the ANSI B77.1 reference document.

Recommendation 4c – Repeal Jurisdiction Over Private Residence Tramways

25-5-709. Passenger tramway licensing required.

~~(3) Any new construction of a private residence tramway or any modification of an existing installation shall not be commenced until an application to begin construction or major modification has been submitted to and approved by the board. The board shall have the authority to promulgate rules and regulations regarding construction and modification of private residence tramways as set forth in section 25-5-704. Annual licensing of private residence tramways is not required. The board shall have no jurisdiction over any new construction of or modifications to an existing private residence tramway when it is not used or intended to be used by the general public.~~

The current law requires the submittal and approval of applications for new installations and major modifications but does not require inspections or licensing.

The Board has not exercised its authority in this area because it has had no meaningful way to address it. It is difficult to know about such installations or communicate to those involved with them. Further, it would be difficult for owners to know about such regulations. Therefore, the current provision is unworkable and unenforceable. Board staff believes there are only two such installations in the state.

It is suggested that this type of installation be exempted when it is not used for the general public thus becoming compatible with other portions of this statute.

Recommendation 4d – Modify Jurisdiction Over Portable Tramway Devices

25-5-709. Passenger tramway licensing required.

(4) The board shall have no jurisdiction over a portable aerial tramway device.

(5) The board shall have no jurisdiction over a portable tramway device ~~when used outside the boundary of a recognized commercial recreational area~~ it is not used or intended to be used by the general public.

There has been confusion over the difference in jurisdiction between portable aerial tramway devices and portable tramway devices, based on their definitions. Board staff suggests that the exemption in (5) is inconsistent with (4) and cannot be justified in terms of public safety. It is illogical to base the determination on location and should be predicated on the basis of usage.

In light of the definitions for the two types of equipment, the proposed language brings portable tramway devices into comparable jurisdiction with portable aerial tramway devices.

Recommendation 4e – Repeal the Provision for Supplemental Applications

25-5-703. Powers and duties of the board.

- (1) (i) To collect fees, established pursuant to section 24-34-105, C.R.S., for any application for a new construction or major modification, for any application for licensing ~~or supplemental application~~ and for inspections and accident investigations;

25-5-712. Licensing for passenger tramways.

~~(3) When an area operator installs a passenger tramway subsequent to annual licensing dates established by the board, such area operator shall file a supplemental application for licensing of such passenger tramway. Upon the receipt of such supplemental application, the board shall proceed immediately to initiate proceedings leading to licensing or rejection of licensing of such passenger tramway pursuant to the provisions of this part 7.~~

25-5-713. Licensing and certification fees.

The application for new construction or major modification and the application for licensing ~~or any supplemental application~~ shall be accompanied by a fee established pursuant to section 24-34-105, C.R.S.

With the recent change in the rules eliminating the fixed annual licensing dates, there is no need to specify requirements for “supplemental applications”. Furthermore, the Board has not addressed such applications recently, if ever, and has designated no associated fees. This is an unnecessary provision and should be removed from the statute.

Appendix A - Sunset Statutory Evaluation Criteria

- (I) 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;
- (II) 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;
- (III) 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;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) 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;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) 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;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

**Appendix B -
Passenger
Tramway Safety
Statute**

25-5-701. Legislative declaration. In order to assist in safeguarding life, health, property, and the welfare of this state, it is the policy of the state of Colorado to establish a board empowered to prevent unnecessary mechanical hazards in the operation of passenger tramways and to assure that reasonable design and construction are used for, 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.

25-5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Area operator" means a person who owns, manages, or directs the operation and maintenance of a passenger tramway. "Area operator" may apply to the state or any political subdivision or instrumentality thereof.

(1.5) "Board" means the passenger tramway safety board created by section 25-5-703.

(1.7) "Commercial recreational area" means an entity using passenger tramways to provide recreational opportunities to the public for a fee.

(2) "Industry" means the activities of all those persons in this state who own, manage, or direct the operation of passenger tramways.

(3) "License" means the formal, legal, written permission of the board to operate a passenger tramway.

(4) "Passenger tramway" means a device 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. "Passenger tramway" includes, but is not limited to, the following devices:

(a) Fixed-grip lifts. "Fixed-grip lift" means an aerial lift on which carriers remain attached to a haul rope. The tramway system may be either continuously or intermittently circulating, and may be either monocable or bicable.

(b) Detachable-grip lifts. "Detachable-grip lift" means an aerial lift on which carriers alternately attach to and detach from a moving haul rope. The tramway system may be monocable or bicable.

(c) Funiculars. "Funicular" means a device in which a passenger car running on steel or wooden tracks is attached to and propelled by a steel cable, and any similar devices.

(d) Chair lifts. "Chair lift" means a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, and any similar devices.

(e) Surface lifts. "Surface lift" means a J-bar, T-bar, or platter pull and any similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.

(f) Rope tows. "Rope tow" means a type of transportation which pulls the skier riding on skis as the skier grasps the rope manually, and any similar devices.

(g) Portable aerial tramway devices. "Portable aerial tramway device" means any device designed for temporary use and operation, without permanent foundations, in changing or variable locations, with a capacity of less than five persons, which transports equipment or personnel, and is not used or intended to be used by the general public.

(h) Portable tramway devices. "Portable tramway device" means any device designed to be used and operated as a rope tow or surface lift without permanent foundations and intended for temporary use in changing or variable locations, when used within the boundary of a recognized ski area.

(i) Private residence tramways. "Private residence tramway" means a device installed at a private residence or installed in multiple dwellings as a means of access to a private residence in such multiple dwelling buildings, so long as the tramway is so installed that it is not accessible to the general public or to other occupants of the building.

(j) Reversible aerial tramways. "Reversible aerial tramway" means a device on which passengers are transported in cable-supported carriers and are not in contact with the ground or snow surface, and in which the carriers reciprocate between terminals.

(4.5) "Program administrator" means the person who manages the board's offices on a day-to-day basis and works with the supervisory tramway engineer and the board in implementing the policies, decisions, and orders of the board.

(5) "Qualified tramway design engineer" or "qualified tramway construction engineer" means an engineer registered by the state board of registration for professional engineers and professional land surveyors pursuant to part 1 of article 25 of title 12, C.R.S., to practice professional engineering in this state.

(6) "Staff" means the program administrator, the supervisory tramway engineer, and their clerical staff.

(7) "Supervisory tramway engineer" means the tramway engineer who works with the program administrator and the board in implementing the policies, decisions, and orders of the board.

25-5-703. Passenger tramway safety board - composition - termination. (1) There is hereby created a passenger tramway safety board of six appointive members and one member designated by the United States forest service. The appointive members shall be appointed by the governor from persons representing the following interests: Two members to represent the industry or area operators; two members to represent the public at large; and two members familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry. No person shall be so appointed or designated except those who, by reason of knowledge or experience, shall be deemed to be qualified. Such knowledge or experience shall be either from active involvement in the design, manufacture, or operation of passenger tramways or as a result of extensive involvement in related activities. The governor, in making such appointments, shall consider recommendations made to him by the membership of the particular interest from which the appointments are to be made.

(2) Each of the appointed members shall be appointed for a term of four years and until a successor is appointed and qualified and no board member shall serve more than two consecutive four-year terms. A former board member may be reappointed to the board after having vacated the board for one four-year term. Vacancies on the board, for either an unexpired term or for a new term, shall be filled through prompt appointment by the governor. The member of the board designated by the United States forest service shall serve for such period as such federal agency shall determine and shall serve without compensation or reimbursement of expenses.

(3) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) Board members appointed by the governor shall have been residents of this state for at least three years.

(5) No member of the board who has any form of conflict of interest or the potential thereof shall participate in consideration of the deliberations on matters to which such conflict may relate; such conflicts may include, but are not limited to, a member of the board having acted in any consulting relationship or being directly or indirectly involved in the operation of the tramway in question.

(6) A majority of the board shall constitute a quorum. When necessary, the board may conduct business telephonically during a public meeting for purposes of obtaining a quorum, facilitating the participation of members in remote locations, or both.

(7) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the passenger tramway safety board created by this section.

25-5-703.5. Board subject to termination - repeal of article.
(Repealed)

25-5-704. Powers and duties of the board. (1) The board has the following powers and duties in addition to those otherwise described by this part 7:

(a) To promulgate, amend, and repeal such rules and regulations as may be necessary and proper to carry out the provisions of this article. In adopting such rules and regulations the board may use as general guidelines the standards contained in the "American National Standard for Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows - Safety Requirements", as adopted by the American national standards institute, incorporated, as amended from time to time. Such rules and regulations shall not be discriminatory in their application to area operators and procedures of the board with respect thereto shall be as provided in section 24-4-103, C.R.S., with respect to rule-making.

(b) To investigate matters relating to the exercise and performance of the powers and duties of the board;

(c) To receive complaints concerning violations of this part 7;

(d) To conduct meetings, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties of the board, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to the subject inquiry. The program administrator may issue subpoenas on behalf of the board at the board's direction. If any person refuses to obey any subpoena so issued, the board may petition the district court, setting forth the facts, and thereupon the court in a proper case shall issue its subpoena. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The board may elect to hear the matter itself with the assistance of an administrative law judge, who shall rule on the evidence and otherwise conduct the hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(e) To discipline area operators in accordance with this part 7;

(f) To approve and renew licenses in accordance with this part 7;

(g) To elect officers;

(h) To establish standing or temporary technical and safety 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. Committees established pursuant to this paragraph (h) shall meet as deemed necessary by the board or the supervisory tramway engineer.

(i) To collect fees, established pursuant to section 24-34-105, C.R.S., for any application for a new construction or major modification, for any application for licensing or supplemental application, and for inspections and accident investigations;

(j) To cause the prosecution and enjoinder of all persons violating such provisions and to incur the necessary expenses thereof;

(k) To delegate duties to the program administrator;

(l) To keep records of its proceedings and of all applications.

25-5-705. Responsibilities of area operators. The primary responsibility for design, construction, maintenance, operation, and inspection rests with the area operators of passenger tramway devices.

25-5-706. Disciplinary action - administrative sanctions - grounds. (1) Disciplinary action of the board pursuant to this section shall be taken in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) Disciplinary action of the board may be imposed as an alternative to or in conjunction with the issuance of orders or the pursuit of other remedies provided by section 25-5-707 or 25-5-716, and may consist of any of the following:

(a) Denial, suspension, revocation, or refusal to renew the license of any passenger tramway. The board may summarily suspend a license pursuant to the authority granted by this part 7 or article 4 of title 24, C.R.S.

(b) Issuance of a letter of admonition to an area operator, which may be issued based on any of the disciplinary grounds specified in this part 7 without the necessity of a hearing as might otherwise be required under section 25-5-708. The letter of admonition shall be sent to the area operator by certified mail and shall advise the area operator that the area operator may, within twenty days after receipt of the letter, make a written request to the board to institute formal disciplinary proceedings in accordance with section 25-5-708 to formally adjudicate the conduct upon which the letter was based.

(c) Assessment of a fine, not to exceed ten thousand dollars per act or omission or, in the case of acts or omissions found to be willful, fifty thousand dollars per act or omission, against any area operator;

(d) Imposition of reasonable conditions upon the continued licensing of a passenger tramway or upon the suspension of further disciplinary action against an area operator.

(3) The board may take disciplinary action for any of the following acts or omissions:

(a) Any violation of the provisions of this part 7 or of any rule or regulation of the board promulgated pursuant to section 25-5-704 when the act or omission upon which the violation is based was known to, or reasonably should have been known to, the area operator;

(b) Violation of any order of the board issued pursuant to provisions of this part 7;

(c) Failure to report any incident or accident to the board as required by any provision of this part 7 or any rule or regulation of the board promulgated pursuant to section 25-5-704 when the incident or accident was known to, or reasonably should have been known to, the area operator;

(d) Willful or wanton misconduct in the operation or maintenance of a passenger tramway;

(e) Operation of a passenger tramway while a condition exists in the design, construction, operation, or maintenance of the passenger tramway which endangers the public health, safety, or welfare, which condition was known, or reasonably should have been known, by the area operator.

25-5-707. Orders - enforcement. (1) If, after investigation, the board finds that a violation of any of its rules or regulations exists or that there is a condition in passenger tramway design, construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings and the corrective action to be taken and fixing a reasonable time for compliance therewith. Such order shall be served upon the area operator involved in accordance with the Colorado rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and shall become final unless the area operator applies to the board for a hearing in the manner provided in section 24-4-105, C.R.S.

(2) If any area operator fails to comply with a lawful order of the board issued under this section within the time fixed thereby, the board may take further action as permitted by sections 25-5-706 and 25-5-716 and may commence an action seeking injunctive relief in the district court of the judicial district in which the relevant passenger tramway is located.

(3) Any person who violates an order issued pursuant to this section shall be subject to a civil penalty of not more than five thousand dollars for each day during which such violation occurs.

(4) Any area operator who operates a passenger tramway which has not been licensed by the board or the license of which has been suspended, or who fails to comply with an order issued under this section or section 25-5-716, commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Fines collected pursuant to this section shall be deposited in the general fund of the state.

25-5-708. Disciplinary proceedings. (1) The board may investigate all matters which present grounds for disciplinary action as specified in this part 7.

(2) Disciplinary hearings shall be conducted by the board or by an administrative law judge in accordance with section 25-5-704 (1) (d).

(3) Any person aggrieved by a final action or order of the board may appeal such action to the Colorado court of appeals in accordance with section 24-4-106 (11), C.R.S.

25-5-709. Passenger tramway licensing required. (1) The state, through the board, shall license all passenger tramways, unless specifically exempted by law, establish reasonable standards of design and operational practices, and cause to be made such inspections as may be necessary in carrying out the provisions of this section.

(2) A passenger tramway shall not be operated in this state unless it has been licensed by the board. No new passenger tramway shall be initially licensed in this state unless its design and construction have been certified to this state as complying with the rules and regulations of the board promulgated pursuant to section 25-5-704. Such certification shall be made by a qualified tramway design engineer or a qualified tramway construction engineer, whichever the case requires.

(3) Any new construction of a private residence tramway or any modification of an existing installation shall not be commenced until an application to begin construction or major modification has been submitted to and approved by the board. The board shall have the authority to promulgate rules and regulations regarding construction and modification of private residence tramways as set forth in section 25-5-704. Annual licensing of private residence tramways is not required.

(4) The board shall have no jurisdiction over a portable aerial tramway device.

(5) The board shall have no jurisdiction over a portable tramway device when used outside the boundary of a recognized commercial recreational area.

25-5-710. Application for new construction or major modification. Any new construction of a passenger tramway or any major modification to an existing installation shall not be initiated unless an application for such construction or major modification has been made to the board and a permit therefor has been issued by the board.

25-5-711. Application for licensing. Each year, every area operator of a passenger tramway shall apply to the board, in such form as the board shall designate, for licensing of the passenger tramways which such area operator owns or manages or the operation of which such area operator directs. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramway sought to be licensed by such area operator complies with the intent of this part 7 as specified in section 25-5-701 and the rules and regulations promulgated by the board pursuant to section 25-5-704.

25-5-712. Licensing of passenger tramways. (1) The board shall issue to the applying area operator without delay licensing certificates for each passenger tramway owned, managed, or the operation of which is directed by such area operator when the board is satisfied:

(a) That the facts stated in the application are sufficient to enable the board to fulfill its duties under this part 7; and

(b) That each such passenger tramway sought to be licensed has been inspected by an inspector designated by the board according to procedures established by the board and that such inspection disclosed no unreasonable safety hazard and no violations of the provisions of this part 7 or the rules and regulations of the board promulgated pursuant to section 25-5-704.

(2) In order to satisfy itself that the conditions described in subsection (1) of this section have been fulfilled, the board may cause to be made such inspections described in section 25-5-715 as it may reasonably deem necessary.

(3) When an area operator installs a passenger tramway subsequent to annual licensing dates established by the board, such area operator shall file a supplemental application for licensing of such passenger tramway. Upon the receipt of such supplemental application, the board shall proceed immediately to initiate proceedings leading to the licensing or rejection of licensing of such passenger tramway pursuant to the provisions of this part 7.

(4) Licenses shall expire on dates established by the board.

(5) Each area operator shall cause the licensing certificate, or a copy thereof, for each passenger tramway thus licensed to be displayed prominently at the place where passengers are loaded thereon.

25-5-713. Licensing and certification fees. The application for new construction or major modification and the application for licensing or any supplemental application shall be accompanied by a fee established pursuant to section 24-34-105, C.R.S.

25-5-714. Disposition of fees. All fees collected by the board under the provisions of this part 7 shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board incurred in the performance of its duties under this part 7, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

25-5-715. Inspections and investigations - costs - reports.

(1) The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require.

(2) Such inspections shall include, at a minimum, two inspections per year or per two thousand hours of operation, whichever occurs first, of each passenger tramway, one of which inspections shall be during the high use season and shall be unannounced, and shall be carried out under contract by independent contractors selected by the board or by the supervisory tramway engineer. Additional inspections may be required by the board if the area operator does not, in the opinion of the board, make reasonable efforts to correct any deficiencies identified in any prior inspection or if the board otherwise deems such additional inspections necessary. The board shall provide in its rules and regulations that no facility shall be shut down for the purposes of a regular inspection during normal operating hours unless sufficient daylight is not available for the inspection.

(3) The board may employ independent contractors to make such inspections for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of inspections provided for in this part 7 shall be paid in the first instance by the board, but each area operator of the passenger tramway which was the subject of such inspection shall, upon notification by the board of the amount due, reimburse the board for any charges made by such personnel for such services and for the actual expenses of each inspection.

(4) The board may cause an investigation to be made in response to an accident or incident involving a passenger tramway, as the board may reasonably require. The board may employ independent contractors to make such investigations for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of investigations provided for in this part 7 shall be paid in the first instance by the board, and thereafter one or more area operators may be billed for work performed pursuant to subsection (3) of this section.

(5) If, as the result of an inspection, it is found that a violation of the board's rules and regulations exists, or a condition in passenger tramway design, construction, operation, or maintenance exists, endangering the safety of the public, an immediate report shall be made to the board for appropriate investigation and order.

25-5-716. Emergency shutdown. When facts are presented tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, after such verification of said facts as is practical under the circumstances and consistent with the public safety, the board, any member thereof, or the supervisory tramway engineer may, by an emergency order, require the area operator of said tramway forthwith to cease using the same for the transportation of passengers. Such emergency order shall be in writing and signed by a member of the board or the supervisory tramway engineer, and notice thereof may be served by the supervisory tramway engineer, any member of the board, or as provided by the Colorado rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Such service shall be made upon the area operator or the area operator's agent immediately in control of said tramway. Such emergency shutdown shall be effective for a period not to exceed seventy-two hours from the time of service. The board shall conduct an investigation into the facts of the case and shall take such action under this part 7 as may be appropriate.

25-5-717. Provisions in lieu of others. The provisions for regulation, registration, and licensing of passenger tramways and the area operators thereof under this part 7 shall be in lieu of all other regulations or registration or licensing requirements, and passenger tramways shall not be construed to be common carriers within the meaning of the laws of this state.

25-5-718. Governmental immunity - limitations on liability. The board, any member of the board, any person on the staff of the board, any technical advisor appointed by the board, any member of an advisory committee appointed by the board, and any independent contractor hired to perform or acting as a state tramway inspector on behalf of the board with whom the board contracts for assistance shall be provided all protections of governmental immunity provided to public employees by article 10 of title 24, C.R.S., including but not limited to the payment of judgments and settlements, the provision of legal defense, and the payment of costs incurred in court actions. These protections shall be provided to the board, board members, staff, technical advisors, committee members, and independent contractors hired to perform or acting as a state tramway inspector on behalf of the board only with regard to actions brought because of acts or omissions committed by such persons in the course of official board duties.

25-5-719. Independent contractors - no general immunity. The provisions of section 25-5-718 shall be construed as a specific exception to the general exclusion of independent contractors hired to perform or acting as a state tramway inspector on behalf of the board from the protections of governmental immunity provided in article 10 of title 24, C.R.S.

25-5-720. Confidentiality of reports and other materials. (1) Reports of investigations conducted by an area operator or by a private contractor on an area operator's behalf and filed with the board or the board's staff shall be presumed to be privileged information exempt from public inspection under section 24-72-204 (3) (a) (IV), C.R.S., except as may be ordered by a court of competent jurisdiction.

(2) Except as otherwise provided in subsection (1) of this section, all information in the possession of the board's staff and all final reports to the board shall be open to public inspection in accordance with part 2 of article 72 of title 24, C.R.S.

25-5-721. Repeal of part. (1) This part 7 is repealed, effective July 1, 2001.

(2) Prior to such repeal, the passenger tramway safety board shall be reviewed as provided for in section 24-34-104, C.R.S.