

2007  
SUNSET  
REVIEW

Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform

Passenger Tramway Safety Board



October 15, 2007

# STATE OF COLORADO



Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive Director

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October 15, 2007

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA 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 2008 legislative committee of reference. The report is submitted pursuant to section 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 the regulatory program provided under Part 7 of Article 5 of Title 25, C.R.S., serves to protect the public health, safety or welfare. The report also discusses the effectiveness of the Division of Registrations and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn  
Executive Director



## 2007 Sunset Review Passenger Tramway Safety Board

Department of Regulatory Agencies

Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive Director

### Executive Summary

#### Quick Facts

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

**Who is Regulated?** In fiscal year 05-06, there were a total of 374 licensed passenger tramways in Colorado.

**How is it Regulated?** The Passenger Tramway Safety Board (Board) regulates passenger tramways by ordering the routine and periodic inspection of passenger tramways, ordering that deficiencies be corrected and taking disciplinary action against operators that fail to make necessary repairs in a timely manner.

**What Does it Cost?** The fiscal year 05-06 expenditure to oversee this program was \$502,087 and there were 2.1 full-time equivalent employees associated with this program.

In 2007, license costs were:

Detachable Grip	\$1,540
Fixed Grip	\$1,090
Funiculars	\$1,085
Surface Lifts	\$ 735
Rope Tows	\$ 545
Conveyors	\$ 550
Reversible Aerial Tramway	\$1,080

**What Disciplinary Activity is There?** Between fiscal years 01-02 and 05-06, the Board's enforcement activities consisted of:

Inspections Conducted	3,621
Deficiencies Identified	8,891
Letters of Admonition	3
Probation/Practice Limitations	2
Remedial Orders	1
Stipulations	12

**Where Do I Get the Full Report?** The full sunset review can be found on the internet at:  
<http://www.dora.state.co.us/opr/oprpublications.htm>

#### Key Recommendations

**Continue regulation and continue the Passenger Tramway Safety Board for 11 years, until July 1, 2019.**

The absence of regulating passenger tramways could potentially harm the public. As a result, the State of Colorado requires all passenger tramways to be licensed, except those specifically exempted by law. Prior to obtaining a license, a passenger tramway must have an inspection completed by a contract inspection engineer and any deficiencies identified must be corrected. The Board is responsible for licensing passenger tramways, imposing discipline on area operators, approving variances (temporary and permanent) and responding to area-related complaints. In order to continue to adequately protect the public from harm, the General Assembly should continue the Board as a mechanism for providing regulatory oversight.

### **Major Contacts Made During This Review**

Colorado Ski Country USA  
Division of Registrations  
National Ski Areas Association (NSAA)  
Parametrix Consulting

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

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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## **Background**

### *The Sunset Process*

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

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

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

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

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

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

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

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

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

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

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

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Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences.

The regulatory functions of the Colorado Passenger Tramway Safety Board (Board) in accordance with Part 7 of Article 5 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2008, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board and the currently prescribed regulation should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations (Division). During this review, the Division must demonstrate that the Board and regulation serve to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 23.

### *Methodology*

As part of this review, DORA staff attended Board meetings, interviewed Division staff, reviewed Board records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed members of the Board, reviewed Colorado statutes and Board rules, and reviewed the laws of other states.



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## Profile of the Industry

Passenger tramways are an important element to the success of the tourism industry in Colorado. Passenger tramways operate largely at ski areas, and provide the important function of transporting skiers, mountain bikers, sightseers and hikers from the base of a mountain to the top. In fact, 88 percent of passenger tramways in Colorado are located within ski areas. There are a variety of passenger tramways in Colorado, including:

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

Detachable grip passenger tramways detach from the haul rope to go through the terminals.<sup>1</sup> The detachable grip allows carriers to move slowly through the terminals, making it easier to get on and off, and travel rapidly in the line, giving skiers and snowboarders a fast lift ride.<sup>2</sup>

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

Funicular passenger tramways are devices in which a passenger car runs on steel or wooden tracks and is attached to, and propelled by, a steel cable.<sup>3</sup>

Surface passenger tramways are any lifts on which a skier’s or snowboarder’s skis or board remains in contact with the snow. Surface lift types include:<sup>4</sup>

- Rope tows;
- Handle tows;
- J-bars;
- T-bars; and
- Poma lifts.

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<sup>1</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 16, 2007, from <http://www.skilifts.org/glossary.htm>

<sup>2</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 16, 2007, from <http://www.skilifts.org/glossary.htm>

<sup>3</sup> § 25-5-702(4)(c), C.R.S.

<sup>4</sup> Skilifts.org. *Cable Tramway Terms*. Retrieved May 16, 2007, from <http://www.skilifts.org/glossary.htm>

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Rope tows are a type of transportation that pulls a skier riding on skis as the skier manually grasps the rope.<sup>5</sup>

Conveyors are passenger tramways that transport skiers uphill on top of a flexible, moving element such as a belt or a series of rollers.<sup>6</sup> Conveyors located at ski areas are similar to the conveyors used at airports to transport people from one location to another.

The final type of passenger tramway used in Colorado is the reversible aerial tramway. Reversible aerial tramways are devices that transport passengers in cable-supported carriers and are not in contact with the ground or snow surface.<sup>7</sup>

Colorado boasts a substantial tourism industry that has a significant impact on the state's economy. To that end, the ski industry, including passenger tramways, are a major factor in Colorado's economy. Specifically, the domestic overnight travel expenditures in Colorado totaled approximately \$8.2 billion in 2005, making tourism one of the state's largest industries.<sup>8</sup>

Although the state of Colorado does not possess the greatest number of ski areas in the United States, it does boast the largest number of skier visits. During the 2006 ski season, more than 12.5 million skiers visited Colorado ski areas.<sup>9</sup> In fact, as illustrated in Table 1, Colorado leads the nation in share of total ski trips nationwide.

**Table 1**  
**Ranking of Total Ski Trips Nationwide**

State	Share (%)	Rank
Colorado	18.5	1
California	14.9	2
Vermont	8.4	3
Utah	6.9	4
Nevada	4.9	5

Source: Colorado Data Book  
<http://www.state.co.us/oed/business-development/colorado-data-book.cfm>

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

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<sup>5</sup> § 25-5-702(4)(f), C.R.S.

<sup>6</sup> § 25-5-702(4)(k), C.R.S.

<sup>7</sup> § 25-5-702(4)(j), C.R.S.

<sup>8</sup> Colorado Data Book. *Recreation & Tourism*. Retrieved May 7, 2007, from <http://www.state.co.us/oed/business-development/colorado-data-book.cfm>

<sup>9</sup> Colorado Ski Country USA. *Skier Visits 1994-95 to 2005-06*. Retrieved May 7, 2007, from <http://www.media-coloradoski.com/CSCFacts/SkierVisits/>

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## *History of Regulation*

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

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

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

In 1967, House Bill 1118 required the Board to adopt lift design and safety standards as formulated in the American National Standards Institute's (ANSI) Safety Requirements for Aerial Tramways and Lifts, Surface Lifts, Tows, and Conveyors.<sup>10</sup>

The Board continued to evolve over time, both in its regulatory oversight and its composition. In 1976, a major accident involving a ski resort gondola resulted in legislation that made major changes to tramway regulation. Specifically, House Bill 1122 included a number of changes, including:<sup>11</sup>

- The Board was given authority to employ a full-time supervisory engineer; and
- New passenger tramways were required to be certified by a qualified design and/or registered with the Board prior to rendering services.

In subsequent years, the composition of the Board has changed in an effort to provide an adequate level of public protection, as well as balance the industry representation. As a result, the most recent sunset review, which was completed in 2000, recommended a change to the Board's composition. The 2000 sunset review recommended that one of the industry-related members be a licensed professional engineer not employed by a ski area or related industry.<sup>12</sup> The recommendation was subsequently implemented.

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<sup>10</sup> Colorado Passenger Tramway Safety Board. *Board History*. Retrieved May 8, 2007, from <http://www.dora.state.co.us/Tramway/board/history.htm>

<sup>11</sup> Colorado Passenger Tramway Safety Board. *Board History*. Retrieved May 8, 2007, from <http://www.dora.state.co.us/Tramway/board/history.htm>

<sup>12</sup> Colorado Passenger Tramway Safety Board. *Board History*. Retrieved May 8, 2007, from <http://www.dora.state.co.us/Tramway/board/history.htm>

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## *Legal Framework*

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

The Board,

was established to prevent mechanical hazards in the operation of passenger tramways and to assure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of passenger tramways.<sup>13</sup>

Passenger tramways are defined as devices used to transport passengers uphill on skis or in cars on tracks, or suspended in the air by the use of steel cables, chains, or belts, or by ropes, and usually supported by trestles or towers with one or more spans.<sup>14</sup>

The Board's composition, as outlined in statute, includes six appointive members and one member designated by the United States forest service.<sup>15</sup> The appointive members must be appointed by the Governor from persons representing the following interests:<sup>16</sup>

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

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

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<sup>13</sup> § 25-5-701, C.R.S.

<sup>14</sup> § 25-5-702(4), C.R.S.

<sup>15</sup> § 25-5-703(1), C.R.S.

<sup>16</sup> § 25-5-703(1), C.R.S.

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The role of the Board is to promulgate rules and regulations necessary to carry out the provisions of the Act.<sup>17</sup> In adopting rules, the Board is authorized to use or adopt the standards contained in the “American National Standard for Passenger Ropeways – Aerial Tramways and Aerial Lifts, Surface Lifts, Tows, and Conveyors – Safety Requirements,”<sup>18</sup> which is published by the American National Standards Institute (ANSI).

The Board also has the authority to:

establish standing or temporary technical committees composed of persons with expertise in tramway-related fields to review, as the Board deems necessary, the design, construction, maintenance, and operation of passenger tramways and to make recommendations to the Board concerning their findings.<sup>19</sup>

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

The composition of the committee is as follows:<sup>20</sup>

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

The committee has limitations on length of service with the exception of the United States Forest Service representative and the State’s Supervisory Engineer, which are permanent appointees to the committee.<sup>21</sup> The remaining appointments are eligible to serve on the committee for two years, and are not permitted to serve more than two consecutive terms.

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

<sup>18</sup> § 25-5-704(1)(a), C.R.S.

<sup>19</sup> § 25-5-704(1)(h), C.R.S.

<sup>20</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Policy #10.

<sup>21</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Policy #10.

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The Board is authorized, in section 25-5-706, C.R.S., to impose disciplinary action on passenger tramways licensed in Colorado. Disciplinary action imposed by the Board must be in compliance with the State Administrative Procedure Act.<sup>22</sup> The Board may deny, suspend, revoke or refuse to renew a passenger tramway license, as well as invoke summary suspension authority.<sup>23</sup>

The Board licenses all passenger tramways in Colorado, except those specifically exempted by law, which are passenger tramways located in private residences. Further, the Board does not have jurisdiction over the construction of a new private residence tramway or over any modifications to an existing private residence tramway when the tramway is not used by the general public.<sup>24</sup>

Area operators must obtain a new license for each passenger tramway prior to operation. The license is issued by the Board upon completion of the annual licensing inspection, which is performed by a contract inspector hired by the State of Colorado, as well as completion of the noted deficiencies in the inspector's report.<sup>25</sup> The Board will not issue a license until it has received a verified and notarized statement from the area operator that the deficiencies in the inspector's report have been remedied.<sup>26</sup>

Any Board member, as well as the State's Supervisory Engineer, has emergency shutdown authority if an unreasonable hazard exists concerning a passenger tramway. The emergency order must be in writing and signed by a member of the Board or the State's Supervisory Engineer.<sup>27</sup>

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<sup>22</sup> § 25-5-706(1), C.R.S.

<sup>23</sup> § 25-5-706(2)(a), C.R.S.

<sup>24</sup> § 25-5-709(3), C.R.S.

<sup>25</sup> § 25-5-709(2), C.R.S.

<sup>26</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 20.2.

<sup>27</sup> § 25-5-716, C.R.S.

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## *Program Description and Administration*

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

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

Additionally, employees within the Division staff the Board. Currently, the Division devotes a total of 2.10 Full-Time Equivalent (FTE) employees to provide professional support to the Board. The Division FTE employees utilized for professional support to the Board is as follows:

- Program Director - 0.10 FTE;
- Supervisory Tramway Engineer – 1.0 FTE; and
- Program Assistant – 1.0 FTE.

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

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

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

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

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<sup>28</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 1.2.3.

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

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

The Board also requires verbal notification within 24 hours for possible malfunctions of passenger tramways.<sup>29</sup> Area operators are then required to file a written incident report to the Board within five days of the incident. Reportable incidents include injuries occurring on or caused by a tramway, equipment failures (both mechanical and electrical), hazardous operating conditions, and fires involving passenger tramway equipment. Area operators who fail to report an incident within the allotted windows are subject to disciplinary action by the Board.

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

*Licensing*

Colorado has continued to expand the number of passenger tramways that have been issued a license by the Board. Table 2 illustrates the increase in passenger tramways for the past five fiscal years.

**Table 2  
Total Number of Licensed Passenger Tramways in Fiscal Years 01-02 through 05-06**

<b>Passenger Tramways</b>	<b>FY 01-02</b>	<b>FY 02-03</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>
Detachable grips	81	83	89	89	91
Fixed grips	134	135	149	150	151
Funiculars	3	3	3	3	4
Surface lifts	29	29	34	36	34
Rope tows	27	28	32	34	32
Conveyors	30	38	47	53	59
Reversible aerial tramways	3	3	3	3	3
<b>Total</b>	<b>307</b>	<b>319</b>	<b>357</b>	<b>368</b>	<b>374</b>

<sup>29</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.



There were a total of 89 new installations, relocations, major modifications, and minor modifications in fiscal year 05-06. Table 3 illustrates the new installations, relocations, major modifications and minor modifications during fiscal years 01-02 through 05-06.

**Table 3  
New Tramway Installations and Modifications**

Lifts	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
New	7	13	12	21	18
Relocated	0	2	1	0	1
Major	19	6	6	14	18
Minor	38	54	47	45	52
Total	64	75	66	80	89

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

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

**New Tramways**

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

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

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<sup>30</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 21.1.1.  
<sup>31</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.

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## **Previously Licensed Tramways**

Prior to operation, area operators are required to obtain licenses for each passenger tramway; the area operator must renew each license annually. However, an area operator must complete several steps prior to the issuance of a renewal license. Initially, the area must pay the applicable fee to the Division. Table 4 on page 15 outlines the current fees required depending on the type of passenger tramway. Next, the passenger tramway must receive an inspection by a contract inspection engineer who issues an inspection report outlining deficiencies related to the passenger tramway. Upon completion of the aforementioned inspection, the area operator must inform the Board, in writing, that all of the deficiencies outlined in the inspector's report have been completed. The area operator's designated contact, or designated agent, must sign and have his or her signature notarized.

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

- Major modifications;
- Minor modifications; and
- Minor alterations.

## **Major Modifications**

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

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

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

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<sup>32</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 21.1.2.

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

### **Minor Modifications**

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

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

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

### **Minor Alteration**

A minor alteration is:

any other addition or deletion to a passenger tramway which does not meet the criteria of a major or a minor modification or one for one replacement, and which does not materially affect the passenger tramway's integrity, operation or control.<sup>34</sup>

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

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<sup>33</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 21.1.3.

<sup>34</sup> Colorado Passenger Tramway Safety Board Rules and Regulations Booklet. Rule 21.1.4.

**Table 4**  
**Passenger Tramway Safety Board License Fees**

<b>Passenger Tramway Type</b>	<b>Annual Fee</b>
Detachable grips	\$1,540
Fixed grips	\$1,090
Funiculars	\$1,085
Surface lifts	\$735
Rope Tows	\$545
Conveyors	\$550
Reversible aerial tramways	\$1,080

The Board estimates the licensing fees in fiscal year 05-06 to be approximately 61 percent, or \$324,644, of its revenue. The Board also estimates during the same time period that inspections of passenger tramways will generate 39 percent, or \$207,560 of revenue.

### *Inspections*

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

Upon completion of the ALI, the contract inspection engineer provides an inspection report to the area operator, or designated agent, and he or she is responsible for correcting all of the deficiencies noted in the inspection report. The designated agent signs a notarized response to the Board stating that all of the deficiencies have been corrected, as well as the corrective action taken. Upon receiving the written response from the designated agent, the Board, if satisfied that all of the deficiencies have been addressed appropriately, may issue the license to operate.

<sup>35</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.

<sup>36</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.

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The second inspection passenger tramways receive during a year is the annual unannounced inspection (AUI). The AUI is conducted during the passenger tramway's operating season. An AUI inspection focuses on the operation and maintenance of a passenger tramway. Similar to the ALI inspection, a contract inspection engineer performs the inspection and notes all deficiencies in an inspection report. The designated agent is provided a copy of the report. The designated agent must respond to the deficiencies outlined in the report within 28 days from the date of the inspection. The response, as stated in the aforementioned ALI section, requires the designated agent to notarize a letter stating that all of the deficiencies have been corrected, as well as the action taken to correct each deficiency. The failure to respond and correct the deficiencies on any AUI within 28 days is a rule violation and subjects the area to possible disciplinary action by the Board.<sup>37</sup>

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

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

Table 5 outlines the total number of inspections completed by contract inspection engineers in fiscal years 01-02 through 05-06. The number of inspections is consistent with the increase in the number of licensed passenger tramways in each of the last five fiscal years. For example, in fiscal year 04-05 there were 738 inspections and 368 licensed passenger tramways. In fiscal year 05-06 there were 748 inspections and 374 licensed passenger tramways. The data demonstrate that the number of inspections increases as the number of licensed passenger tramways increases.

**Table 5**  
**Total Passenger Tramway Inspections**

<b>Fiscal Year</b>	<b>Total Number of Inspections</b>
01-02	703
02-03	714
03-04	718
04-05	738
05-06	748

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<sup>37</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.

<sup>38</sup> Department of Regulatory Agencies, Division of Registrations. *Introduction to the Colorado Passenger Tramway Safety Board*, 2006.

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Table 6 illustrates the total number of deficiencies identified during inspections of passenger tramways in fiscal years 01-02 through 05-06. The total number of deficiencies identified in passenger tramway inspections during the last five fiscal years has increased.

**Table 6**  
**Total Number of Deficiencies Identified During Passenger Tramway Inspections**

<b>Fiscal Year</b>	<b>Number of Deficiencies Identified</b>
01-02	1,573
02-03	1,703
03-04	1,580
04-05	1,965
05-06	2,070

### *Complaints/Disciplinary Actions*

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

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

As with most regulatory programs, the Board also has the ability to enter into stipulations. In fact, the Board, during the past five fiscal years, has entered into 12 stipulations with area operators.

The Board utilizes the Expedited Settlement Process (ESP) when imposing disciplinary action against a passenger tramway area operator license. The Office of Expedited Settlement (OES) was established to administer the ESP. The mission of the OES, which was established within the Division in 2004, is to expedite the resolution of disciplinary actions and minimize the legal costs associated with such actions.<sup>39</sup>

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<sup>39</sup> Memorandum from Rosemary McCool, Division of Registrations Director to Program and Office Directors, January 6, 2006, p.1.

Additionally, Table 7 illustrates all of the disciplinary actions imposed by the Board during fiscal years 01-02 through 05-06. There were very few disciplinary actions imposed by the Board compared to the number of inspections. For example in fiscal year 05-06, there were 748 inspections and one disciplinary action taken by the Board. The numbers reflect that the Board imposes disciplinary action less than one percent of the time after an inspection occurs. This indicates that the inspections are effective in highlighting deficiencies thereby rendering tramways safe to the public.

**Table 7  
Final Agency Actions from FY 01-02 through FY 05-06**

<b>Type of Action</b>	<b>FY 01-02</b>	<b>FY 02-03</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>
Letters of Admonition	2	1	0	0	0
Probation/Practice Limitations	0	0	2	0	0
Remedial Orders	1	0	0	0	0
Stipulations	0	2	4	5	1
<b>Total Disciplinary Actions</b>	3	3	6	5	1
Dismissals	0	0	0	3	2

It is important to note that all of the stipulations imposed by the Board during fiscal years 01-02 through 05-06 involved fines being levied against area operators.

Table 8 outlines the total fines imposed by the Board during fiscal years 01-02 through 05-06. The most severe fine imposed by the Board occurred in fiscal year 05-06. The stipulation imposing this fine stated that the ski resort failed to correct various noted deficiencies from an inspection. The ski area submitted a sworn notarized statement that all of the deficiencies from an October inspection had been completed. In December 2005, a contract inspection engineer employed by the State of Colorado completed an unannounced inspection. The inspector identified two deficiencies, which are an indication that public safety was at risk, that the ski area had failed to correct from the October inspection contrary to the notarized statement submitted to the Board. As a result, the Board fined the ski resort \$1,500 through a stipulation.

**Table 8  
Fines Imposed by the Passenger Tramway Safety Board**

<b>Fiscal Year</b>	<b>Number of Fines Imposed</b>	<b>Total Value of Fines Imposed</b>
01-02	0	\$0
02-03	2	\$1,000
03-04	4	\$1,750
04-05	5	\$1,700
05-06	1	\$1,500

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## ***Analysis and Recommendations***

*Recommendation 1 – Continue regulation and continue the Passenger Tramway Safety Board for 11 years, until July 1, 2019.*

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

In the last five years, contract inspection engineers identified more than 8,000 deficiencies during inspections, and as the number of disciplinary actions indicates, the vast majority of these deficiencies were corrected in a timely manner. In order to ensure that passenger tramways are effectively regulated and to maximize public protection, regulatory oversight is necessary.

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

Since the last sunset review in 2000, the Board has demonstrated a commitment to ensuring that passenger tramways are effectively regulated. This is evidenced by the fact that the Board has increased its instances of discipline on area operators for a variety of violations, including when an area operator fails to submit his or her deficiency statement in a timely manner. In fact, the last sunset review of the Board highlighted a total of eight disciplinary actions (including fines) during fiscal years 95-96 through 99-00. By contrast, this sunset review identified 18 disciplinary actions (including fines) during fiscal years 01-02 through 05-06 imposed by the Board.

It is important to note that eight of the 18 disciplinary actions referenced in the current review were a result of area operators submitting their deficiency statements later than the Board-required 28-day timeframe, which could potentially represent a public safety risk. Therefore the General Assembly should continue the Board as the mechanism for providing regulatory oversight.



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In an effort to continue to improve the Board's regulatory performance, this report recommends three administrative changes in the regulation of passenger tramways in Colorado.

*Administrative Recommendation 1 - Establish a standard fine for area operators that fail to return deficiency statements to the Board on time.*

During the last five fiscal years, the Board has entered into 12 stipulations with area operators. The 12 stipulations comprised approximately 67 percent of total disciplinary actions taken by the Board.

Eight of the 12 stipulations were a result of area operators failure to return their deficiency statements to the Board in a timely manner. Current rules state that upon completion of an unannounced inspection by the Board, area operators have 28 days to address and complete all deficiencies identified during the inspection. Upon completing the deficiencies, the area operators must return a notarized statement indicating the completion of the deficiencies within 28 days.

Additionally, area operators who fail to submit the deficiency statements indicating that all of the deficiencies were completed are subject to disciplinary action by the Board. The Board has chosen to utilize stipulations against area operators who have failed to submit deficiency statements to the Board.

It is important to note that failure of an area operator to submit the deficiency statement to the Board within the required 28 days does not mean that the deficiencies were not completed. This is evidenced by the fact that during the April 2007 Board meeting, an area operator was summoned to address the Board to explain why he did not submit the deficiency statement on time. The area operator's response was that he was busy and forgot to submit the deficiency statement in a timely manner. According to the area operator, the deficiencies were corrected; however, he forgot to submit the deficiency statement to the Board.

The Board, when deciding the appropriate sanction to impose on the area operator, considers past issues with the area operator, including whether the area operator has failed to submit deficiency statements on time.

Rather than committing considerable resources in deciding the appropriate level of fine and probation within each stipulated agreement, the Director of the Division should establish a standard fine of \$1,000 for each day that the deficiency statement is overdue and assess area operators who fail to submit the deficiency statement accordingly.

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Imposing a standard fine of \$1,000 per day for a deficiency statement that is past due will decrease the majority of violations, as well as eliminate any arbitrary fines and probations. Instead, there will be a standard fine for submitting a deficiency statement late.

Streamlining the fines imposed for submitting a deficiency statement late eliminates the majority of discipline imposed by the Board.

*Administrative Recommendation 2 – Eliminate the requirement of area operators to submit a notarized statement that deficiencies identified during an inspection of a passenger tramway have been remedied.*

Currently, the Board requires area operators to submit a notarized statement verifying that deficiencies identified during an inspection of a passenger tramway have been completed prior to receiving a license to operate. The purpose of the notarized statement is to ensure that prior to licensing a passenger tramway, it meets the required safety standards outlined by the Board in the passenger tramway regulations.

The notary requirement potentially conflicts with section 24-4-104(13)(b), Colorado Revised Statutes (C.R.S.), which prohibits agencies from requiring a notarizations on licensing applications. Although the requirement outlined in section 24-4-104(13)(b), C.R.S., is specific to licensing applications, it could be argued that it was the intent of the General Assembly to remove the burdensome and unnecessary notarization requirement from the licensing process, including correcting deficiencies identified by inspections of passenger tramways.

The notarization of the statement provides independent verification that the person signing a document has provided identification. However, notarization of the deficiency statement does not ensure that the area operator corrected the deficiencies. Because a notary does not ensure that the deficiencies were completed, requiring a notary is an unnecessary element for area operators to adhere to.

Additionally, a notarized statement does not add to public protection, instead it only verifies that a person signing a document has provided identification. As a result, the notary requirement verifying that deficiencies during an inspection have been completed should be eliminated.

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*Administrative Recommendation 3 - Permit area operators to submit completed deficiency statements electronically.*

Currently, area operators are permitted to submit their deficiency statements via facsimile with a follow-up being sent by traditional mail. Area operators may submit their deficiency statements via facsimile within the 28-day requirement. If the Board receives the facsimile within the 28-day timeframe, the area operator is considered to have been on time. The area operator then must mail the completed deficiency statement via traditional mail. The purpose of requiring area operators to mail the deficiency statement via traditional mail is to have an original statement on file.

Permitting area operators to submit their deficiency statements electronically will further streamline the process for receiving deficiency statements. This will simplify the process for receiving the completed statements for Division staff, as well make it easier for area operators.

It is important to note that area operators who still want to submit their deficiency statements via the facsimile or traditional mail are permitted to do so.

Sending the deficiency statement electronically will enable area operators to submit the deficiency statement instantaneously from their computer, rather than relying on a facsimile machine or traditional mail.

Permitting area operators to submit their deficiency statements electronically simplifies the process for both area operators and the Division. Area operators will be able to submit their deficiency statements electronically, and have a record of when it was submitted to the Division. Streamlining this process eliminates unnecessary burdens in the regulated industry, while maintaining adequate oversight by the Division.

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## ***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;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.