§ 237. Capital improvements. 1. For the purposes of this section, "capital improvement" shall mean any addition to, replacement of or remodeling of the physical plant, structures and equipment now or hereafter owned or leased by a racing corporation that is used or is to be used by such corporation in connection with the conduct of horse race meetings, and shall include improvements to land but not land itself.

2. (a) Any non-franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting on races run thereat, may elect upon thirty days written notice to the commission to withhold from the pari-mutuel pool in addition to any other amounts required by this section, one percent of the total deposits in pools resulting from regular and multiple on-track bets; provided, however, that any such corporation withholding pursuant to this subdivision shall use at least fifty percent of such one percent exclusively for capital improvements as defined in subdivision one of this section subject to the rules and regulations of the commission. An amount, not to exceed fifty percent of such one percent, may be used for advertising and promotion expenses subject to the rules and regulations of the commission. For the purposes of this paragraph the term "advertising" shall be limited to paid advertising through radio, television, the print media, direct mail or billboards. Promotions shall mean activities that are intended to increase the attendance at, or visibility of, any such corporation and shall include premium giveaways, prizes, free admission, free parking, free programs, additional monies for purses or other activities of a promotional nature that stimulate on-track attendance. In no event shall this section be construed to permit the payment of salaries to employees of any such corporation who are engaged in advertising or promotional activities, provided, however, that monies credited to such capital improvement account on or before July first, nineteen hundred ninety-six, as certified by the commission, shall not be expended for any such advertising and promotion as defined herein. Such election shall terminate upon thirty days written notice to the commission.

(b) At least once annually, prior to approving any plan for the expenditure of such capital improvement funds pursuant to this section, the commission shall, together with the track operator and representatives of the horsemen's organization representing owners and

trainers using the facility and representatives of the jockeys organization representing licensed jockeys and apprentice jockeys regularly riding or exercising at such facility, inspect the entire facility, including the area commonly referred to as the backstretch, in order to determine whether the capital improvement plan submitted by the corporation for commission approval includes adequate provision for expenditures relating to the continued health, safety and well-being of patrons, jockeys, backstretch personnel and the horses in their care. After such inspection, if the commission shall determine that such proposed plan does not include adequate provision for repairs and improvements necessary to correct any conditions that it has determined to be unsafe or otherwise deleterious to the health and safety of patrons, jockeys, employees or horses, the commission shall require the track operator to modify its capital improvement plan to provide for the expenditure of funds for such repairs and improvements.

3. On or after July first, nineteen hundred ninety such amounts as may be withheld for the purposes of this section shall be deposited in a trust fund, kept and maintained by such corporation and administered by a trustee approved by the commission for the purpose of lending such sums and any interest thereon on an unsecured basis to such corporation exclusively for capital improvements as defined in subdivision one of this section. All such amounts borrowed by such corporation from such trust shall be forgiven and deemed satisfied according to a schedule of depreciation deductions for federal and New York state income tax purposes for such related capital improvements. It is further provided that at such time as such corporation shall surrender its pari-mutuel license or franchise or fail to apply for a pari-mutuel license for the succeeding year by December thirty-first of the preceding year that the commission may declare the trust fund at an end and all sums therein deposited plus all sums due or owing from such corporation to such trust shall be disposed of in accordance with provisions of law to be enacted for such purpose. Such trust shall be established and administered pursuant to the rules and regulations of the commission.