§ 319. 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 or association that is used or is to be used by such corporation or association in connection with the conduct of horse race meetings, and shall include improvements to land but not land itself.

2. (a) Notwithstanding the provisions of section three hundred eighteen of this article, a harness track, may elect upon thirty days written notice to the commission to withhold, in addition to any other amounts required by this section, one percent of the total deposits in pools resulting from regular and multiple bets, provided, however, that any harness track 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. Provided further, however, that if the harness track was owned prior to December thirty-first, nineteen hundred eighty-five, by a nonprofit county agricultural society and leased by a racing association such one percent shall be paid by the association to the society as additional rent. Such society shall use such one percent exclusively for capital improvements as defined in subdivision one of this section subject to the rules and regulations of the commission. The capital improvements shall be determined by a committee of the society composed of the executive director of the society, the chair of the board of directors of the racing association, or his or her designee, and the general manager of the racing association. 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, a harness track and shall include premium giveaways, prizes, free admission, free parking, free programs, additional monies for purses or other activities of a promotional nature which stimulate on track attendance. In no event shall this section be

construed to permit the payment of salaries to employees of such a harness track who are engaged in advertising or promotional activities.

(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, 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 association or corporation for commission approval includes adequate provision for expenditures relating to the continued health, safety and well-being of patrons, 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, 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 for a harness track other than a harness track authorized to operate in Westchester or Nassau county or a harness track owned by a non-profit county agricultural society and leased by a harness racing association 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 or association 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 or association exclusively for capital improvements as defined in subdivision one of this section. All such amounts borrowed by such corporation or association 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 or association shall surrender its pari-mutuel license 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 or association to such trust shall be disposed of in accordance with provisions of law to be enacted for such purpose; except that the commission shall direct that such sums therein deposited and all sums due and owing from such corporation or association be transferred to the credit of a successor in interest to such corporation or association upon the licensing of such successor in interest by the commission. Such trust shall be established and administered pursuant to the rules and regulations of the commission.