

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***NEW YORK STATE RACING AND WAGERING
BOARD***

CAPITAL IMPROVEMENT FUNDS

REPORT 2002-S-44

DIVISION OF STATE SERVICES

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Alan G. Hevesi
COMPTROLLER

Report 2002-S-44

Mr. Michael J. Hoblock, Jr.
Chairman
New York State Racing and Wagering Board
1 Watervliet Avenue Extension, Suite 2
Albany, NY 12206

Dear Mr. Hoblock:

The following is our audit report addressing the New York State Racing and Wagering Board's oversight of capital improvement funds at eight racetracks: the State's seven harness racetracks and the Finger Lakes Race Track for thoroughbred racing. Our report does not address the capital improvement funds used by the New York Racing Association at the Aqueduct Racetrack, Belmont Park and Saratoga Race Course.

This audit was performed pursuant to the State Comptroller's authority, as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. Major contributors to this audit report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

September 13, 2005

EXECUTIVE SUMMARY

NEW YORK STATE RACING AND WAGERING BOARD CAPITAL IMPROVEMENT FUNDS

SCOPE OF AUDIT

The New York State Racing and Wagering Board (RWB) oversees certain legalized gambling activities. Included among RWB's responsibilities is oversight of the State's six regional off-track betting corporations (OTBs) and eleven horse racing tracks. The three largest tracks (Aqueduct Racetrack, Belmont Park and Saratoga Race Course) are operated by a not-for-profit organization (the New York Racing Association) under a franchise with the State. The other eight tracks are privately owned and operated, and include Batavia Downs, Buffalo Raceway, Finger Lakes Race Track, Monticello Raceway, Saratoga Raceway, Syracuse Mile, Vernon Downs, and Yonkers Raceway.

Under State legislation enacted in 1983, a portion of certain types of wagers made on races held at the eight privately-owned racetracks is set aside by the tracks and the OTBs for capital improvements at the tracks. These dedicated funds are deposited into special capital improvement fund (CIF) accounts at each racetrack. The tracks' use of these funds must be approved by RWB, and the eight tracks are required by law to submit a capital plan annually to RWB indicating how they intend to use the funds. RWB is required by law to conduct annual inspections at each track to determine whether their capital plans adequately meet their capital improvement needs. Our audit addressed the following questions about RWB's oversight of capital improvement funds at the eight racetracks for the period January 1, 2000 through October 31, 2003:

- Does RWB oversight provide adequate assurance that capital improvements at the eight racetracks are appropriately planned and monitored?
- Does RWB oversight provide adequate assurance that deposits into CIF accounts and capital disbursements from CIF accounts are appropriate?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that RWB has established a good framework for capital planning at the eight racetracks, and actively monitors CIF account activity. However, RWB's oversight of the capital plans and CIF accounts would be strengthened if certain improvements were made in RWB's administrative practices. In particular, the accuracy of automated CIF withholding calculations needs to be adequately verified. We also found that the amount of funding available for capital improvements at the eight racetracks has declined significantly, due to certain statewide wagering trends, and could be further eroded if the tracks are allowed to use CIF accounts in connection with their planned installation of video lottery terminals. We recommend that RWB institute a long-term strategic planning process to address possible shortfalls in the racetracks' capital improvement funding.

Prior to 1983, the physical plant and capital structure of some of the racetracks had deteriorated. The legislation enacted in 1983 was intended to provide a source of dedicated funding for capital improvements at the tracks. However, the amount of funding made available for such improvements has declined significantly, because less money is being wagered on the particular types of bets that are the source of this funding. At the same time, more money is being wagered on other types of bets, especially at the OTBs. While RWB officials have been aware for some time that capital improvement funding was declining, they have not developed any formal plans of action in response to the decline. We recommend that RWB develop such plans, which could propose legislative revisions in the funding mechanism for capital improvements. (See pp. 13-19)

We found that capital plans were submitted to RWB by most of the racetracks and annual inspections were performed by RWB at all of the racetracks. However, certain improvements are needed in RWB's administration of the capital planning process. For example, the capital plans are generally brief one-page documents that do not contain enough information for an informed review, and the racetracks' use of CIF funds on unplanned capital projects needs to be more closely monitored by RWB. We further note that, under a special arrangement with RWB, Yonkers Raceway has not submitted a capital plan since 1995 and is using its CIF funds to reimburse capital costs that were incurred in 1995. We recommend that RWB require an annual plan from Yonkers Raceway and monitor the racetrack's current capital improvement needs, as required by law. (See pp. 21-32)

The amounts to be deposited into the CIF accounts at the eight racetracks are calculated through automated processes overseen by various contractors. We tested the accuracy of selected deposits and found that the deposited amounts agreed with the amounts calculated through the automated processes. However, we also found that the accuracy of these calculations is not verified on a regular basis. As a result, RWB has less assurance the calculations are accurate, and

the amounts specified by law are deposited into CIF accounts. We recommend that RWB establish a process for verifying the accuracy of CIF withholding calculations. (See pp. 33-38)

Competitive bidding is often used to provide assurance that goods and services are acquired at a fair and reasonable price. RWB does not require the racetracks to solicit competitive bids for capital projects funded by CIF accounts, and the racetracks themselves do not always solicit bids for such projects. However, since RWB must approve the plan for the expenditure of CIF funds, RWB could as a condition of such approval, require that capital improvements above a threshold amount be competitively bid. Therefore, we recommend that competitive bidding be required for projects that receive CIF funds above a certain dollar amount. (See pp. 39-41)

Seven of the eight racetracks have been authorized to install video lottery terminals at their facilities, and are planning to install such terminals. The racetracks may seek approval to use CIF funds in connection with these installations. We recommend that RWB develop guidelines governing the use of CIF funds in connection with the installation of video lottery terminals, and if such use is to be allowed, we recommend RWB analyze its likely effect on the availability of funding for the racetracks' more basic capital improvement needs. (See pp. 42-45)

COMMENTS OF RWB OFFICIALS

Racing and Wagering Board officials stated that several of our recommendations are going to be or have already been implemented. They also note that RWB takes a different view of the purpose of the CIF, and the role that it is supposed to play. RWB officials believe that the privately-owned racetracks voluntarily choose to have a CIF. In addition, officials do not believe that they can require the racetracks to procure capital improvements in a competitive manner. Regarding the approval of submitted capital plans, RWB officials advised us that they are unsure they have the authority to approve the plans. We believe that the RWB actions to implement some of our recommendations is a step in the right direction. We urge RWB officials to revisit the other recommendations in our report.

CONTENTS

Introduction

Background	9
Audit Scope, Objectives and Methodology	11
Response of RWB Officials to Audit	12

Funds Available For Capital Improvements

Source of Capital Improvement Funds	13
Trends in Betting Revenue	15
Recommendations	18

Capital Planning Process

Approval of Capital Plans	21
Content of Capital Plans	22
Annual Inspections of Racetracks	25
Unplanned Capital Expenditures	27
Yonkers Raceway	29
Recommendations	30

Deposits Into CIF Accounts

Accuracy of CIF Withholding Calculations	33
Accuracy and Timeliness of Deposits	35
Recommendations	37

Disbursements From CIF Accounts

Competitive Bidding for CIF Projects	39
Use of CIF Funds for Capital Projects Related to Video Lottery Terminals	42
Recommendations	44

Appendix A

Major Contributors to This Report	47
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Appendix B

Comments of Racing and Wagering Board Officials	49
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INTRODUCTION

Background

Prior to 1973, New York State had several commissions that were responsible for regulating and overseeing legalized gambling. Through State legislation that became effective in 1973, these commissions were consolidated into the New York State Racing and Wagering Board (RWB). RWB is responsible for ensuring that the State's legalized casinos and legalized pari-mutuel wagering and charitable gambling activities operate with integrity and in full compliance with State laws and regulations. RWB has no responsibility for the games of chance that are administered by the New York State Division of the Lottery.

RWB is a State agency within the Executive Department. RWB is headed by a three-member Board. The three Board members are appointed by the Governor with the consent of the New York State Senate, and one Board member is designated by the Governor to serve as Chairman. RWB also has a body of administrative staff consisting of approximately 120 full-time and 165 per diem employees. RWB was appropriated about \$19.5 million for the 2003-2004 fiscal year.

RWB oversees the operations of three casinos (the Oneida Nation's Turning Stone Casino, the St. Regis Mohawk Tribe's Akwesasne Casino, and the Seneca Nation's Seneca Niagara Casino), six regional off-track betting corporations (OTBs), and eleven racetracks. Thoroughbred racing is conducted at four of the racetracks, and harness racing is conducted at the other seven racetracks. The three largest thoroughbred racetracks (Aqueduct Racetrack, Belmont Park and Saratoga Race Course) are operated by a specially created not-for-profit organization (the New York Racing Association or NYRA) under a renewable franchise with the State. The other eight racetracks are privately owned and operated. Harness racing is conducted at seven of these tracks (Batavia Downs, Buffalo Raceway, Monticello Raceway, Saratoga Raceway, Syracuse Mile, Vernon Downs, and Yonkers Raceway), and thoroughbred racing is conducted at the other track (Finger Lakes Race Track). Subsequent to our fieldwork, Batavia Downs (May

2004) and Vernon Downs (July 2004) tracks suspended racing and were closed.

The Racing, Pari-Mutuel Wagering and Breeding Law (Law) provides for capital improvement funding at all eleven racetracks. The three racetracks operated by NYRA are eligible for loans from the New York State Thoroughbred Racing Capital Investment Fund, which is financed by a portion of the revenue generated by races at the three tracks. For the other eight racetracks, a portion of certain types of wagers made on races held at these tracks is set aside for capital improvements. These funds, which are to be set aside by the racetracks and the OTBs, are deposited into special capital improvement fund (CIF) accounts. A separate CIF account is maintained by each of the eight racetracks.

*
See
Below

These capital improvement funding mechanisms were added to the Law in 1983. The mechanisms were created to dedicate funding for capital improvements that were needed because of deteriorating racetrack facilities. The 1983 legislation noted that “the physical plant and capital structures of some of the race tracks in the state have become depreciated and inadequate for the proper conduct of horse race meetings;...as a result, the number of admissions to horse race meetings in the state and the sum deposited in pari-mutuel pools therein have been limited and the state has lost substantial revenues....The legislature therefore finds and declares that in order to remedy such situation and facilitate the improvement and modernization of plant, structures and equipment at such tracks, this legislation is required.”

The funds in the CIF accounts are used to reimburse the eight racetracks for capital improvement expenditures and certain other kinds of expenditures. All requests for reimbursement must be approved by RWB. The eight racetracks are required by the Law to submit a capital plan annually to RWB indicating how they intend to use their CIF funds. RWB is required by the Law to conduct annual inspections at each racetrack to determine whether the projects in their capital plans adequately provide for the health, safety and well-being of the patrons, backstretch personnel and horses at the tracks.

* Recently enacted legislation replaces the New York State Thoroughbred Capital Investment Fund with a regulating board established by the Governor.

Audit Scope, Objectives and Methodology

We audited RWB's oversight of capital improvement funds at the eight privately-owned racetracks for the period January 1, 2000 through October 31, 2003. The objectives of our performance audit were to determine whether (1) RWB's oversight provides adequate assurance that capital improvements at the eight racetracks are appropriately planned and monitored, and (2) RWB's oversight provides adequate assurance that deposits into CIF accounts and capital disbursements from CIF accounts are appropriate.

To accomplish our objectives, we met with RWB officials and reviewed RWB annual reports and other records, including minutes of Board meetings. We also contacted racetrack officials and visited the racetracks to observe the capital improvements that had been made and to evaluate racetrack conditions. We reviewed the CIF capital plans submitted by the racetracks for calendar years 2001 through 2003. Yonkers Raceway and Syracuse Mile did not submit capital plans for 2001 and 2002. For 2001, Batavia Downs was not open for live racing. We audited selected CIF reimbursement requests to evaluate whether the requests were appropriate, reasonable and adequately documented, and we reviewed selected deposits to CIF accounts at each racetrack to determine whether the correct amounts had been deposited and the deposits were timely. We also reviewed financial reports prepared by the racetracks and the regional OTBs, and contacted representatives of horse racing oversight agencies in other states. For purposes of trending and analysis we obtained certain statistics dating back to 1983, which was when the capital improvement funding mechanism was implemented.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations that are within our audit scope. Further, these standards require that we understand the internal control structure and compliance with those laws, rules and regulations that are relevant to our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe

our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Response of RWB Officials to Audit

A draft copy of this report was provided to RWB officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix B. RWB officials did not specifically address most of the audit's recommendations, but gave general statements regarding the recommendations in each section. RWB officials indicate that several of our recommendations are going to be or already have been implemented. They also indicate that other recommendations are impractical because of the limited number of RWB staff and the limited amount of CIF money involved. They also disagreed that they have the statutory ability to propose alternative CIF financing methods, to approve racetrack capital plans, or to require the racetracks competitively bid capital projects. Our rejoinders are presented throughout the report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Racing and Wagering Board shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

FUNDS AVAILABLE FOR CAPITAL IMPROVEMENTS

The legislation enacted in 1983 was intended to provide a source of dedicated funding for capital improvements at the eight privately-owned racetracks. However, the amount of funding made available for such improvements has declined significantly, because less money is being wagered on the particular types of bets that are the source of this funding. At the same time, more money is being wagered on other types of bets, especially at the OTBs.

While RWB officials have been aware for some time that capital improvement funding was declining, they have not developed any formal plans of action in response to the decline. We recommend that RWB develop such plans, which could include proposing legislative revisions for the funding mechanism for capital improvements. In the absence of such plans to address the declining revenue, capital improvement needs at the eight racetracks may not be fully met.

Source of Capital Improvement Funds

The revenue that is generated through legalized pari-mutuel wagering is to be distributed in accordance with provisions contained in the Law. After winning bettors receive their share, a certain portion of the revenue is to be transmitted to the State as pari-mutuel taxes, certain portions are to be deposited into various horse breeding and development funds, certain portions are to be set aside for capital improvement purposes, and the remaining amounts are generally retained by the racetracks and OTBs.

In the case of the eight privately-owned racetracks, a portion of certain types of wagers made on races held at these tracks is set aside for capital improvements. Specifically, each racetrack is required to set aside, and deposit into its CIF account, one percent of the total deposits from regular and multiple bets. A regular bet is a single bet on one horse to win, place, or show. A multiple bet is a single bet on two horses, either the winners

of two consecutive races (daily double) or the first and second place horses of a single race (exacta).

No portion of the other types of wagers that are made at these racetracks are deposited into a CIF account. For example, no portion of exotic bets, which are bets on three to five horses, and super-exotic bets, which are bets on six or more horses, are deposited into a CIF account. In addition, no portion of any bets that are placed for races held at other racetracks, and simulcast from those tracks, are deposited into a CIF account.

Similarly, the OTBs are to set aside one percent of their total deposits from regular and multiple bets placed on races held at the eight privately-owned racetracks. The OTBs are required to forward one-half of the withheld amounts for deposit into the appropriate CIF accounts at the eight racetracks, and are allowed to use the other half for their own corporate purposes.

The following table shows the ending balance in each racetrack's CIF account for 2001 and 2002:

Racetrack	Ending Balance as of	
	12-31-01	12-31-02
Finger Lakes	\$794,741	\$538,558
Batavia Downs	413,859	456,380
Buffalo	82,041	100,592
Monticello	151,448	215,071
Saratoga	89,343	88,351
Syracuse Mile	3,056	10,694
Vernon Downs	45,267	27,534
Yonkers	295,841	492,840
Total	\$1,875,596	\$1,930,020

The funds deposited in the eight CIF accounts may be used by the racetracks, but only in the ways that are authorized by the Law. For example, the funds forwarded by the OTBs must be used exclusively for capital improvement purposes. However, the funds deposited by the racetracks may be used either for capital improvement purposes or for advertising and promotional activities. In fact, except at Buffalo Raceway, up to 50 percent of the CIF funds deposited by the racetracks may be used for advertising and promotional activities. Buffalo Raceway is specifically prohibited by the Law from spending any of its CIF funds on advertising and promotional activities.

Trends in Betting Revenue

The eight racetracks' capital improvement funds are derived from regular and multiple bets on live races held at those tracks. These bets may be placed at the racetracks themselves or at OTBs. To determine whether this source of revenue for capital improvement funds is increasing or decreasing, we reviewed certain financial reports prepared by the eight racetracks and six regional OTBs for 1998 through 2002. We also analyzed the annual reports published by RWB for 1983 (the year the capital improvement funding mechanism was implemented) through 2002.

We found that the source of revenue for the racetracks' capital improvement funds decreased significantly between 1998 and 2002. As is shown by the following two tables, during this five-year period, the revenue from the regular and multiple bets placed at the tracks decreased by about 45 percent and the revenue from the regular and multiple bets placed at OTBs decreased by about 41 percent:

Racetrack Betting Revenue Regular and Multiple Bets on Live Races (dollar amounts in millions)						
<i>Racetrack*</i>	1998	1999	2000	2001	2002	% Increase or (Decline)
Finger Lakes	\$22.0	\$18.6	\$18.6	\$12.6	\$10.0	(54.5%)
Buffalo	6.9	5.9	4.5	3.6	2.1	(69.6%)
Monticello	9.2	7.0	6.5	5.8	5.6	(39.1%)
Saratoga	5.8	5.0	4.5	4.2	4.1	(29.3%)
Syracuse Mile	.6	.6	.6	.6	.5	(16.7%)
Vernon Downs	5.2	4.7	3.0	2.7	2.9	(44.2%)
Yonkers	31.6	28.8	26.3	20.0	19.1	(39.6%)
Total	\$81.3	\$70.6	\$64.0	\$49.5	\$44.3	(45.5%)
* Batavia Downs is not included because live racing at this racetrack had been suspended and was not resumed until July 2002						

Off Track Betting Revenue Regular and Multiple Bets (dollar amounts in millions)						
<i>Racetrack*</i>	1998	1999	2000	2001	2002	% Increase or (Decline)
Finger Lakes	\$103.7	\$95.9	\$77.1	\$65.6	\$55.7	(46.3%)
Buffalo	17.8	14.8	8.9	6.6	3.0	(83.2%)
Monticello	30.2	27.1	30.2	27.6	28.6	(5.3%)
Saratoga	8.6	7.7	8.6	8.9	9.3	8.1%
Syracuse Mile	.3	.7	.8	.6	.5	66.7%
Vernon Downs	7.6	6.2	5.0	4.6	4.7	(38.2%)
Yonkers	94.2	82.4	66.7	54.1	52.4	(44.4%)
Total	\$262.4	\$234.8	\$197.3	\$168.0	\$154.2	(41.2%)
* Batavia Downs is not included because live racing at this racetrack had been suspended and was not resumed until July 2002.						

As a result of these decreases in the source of revenue for the racetracks' capital improvement funds, the amounts that could be deposited into CIF accounts declined from about \$2.1 million in 1998 to about \$1.2 million in 2002, as is summarized by the following table:

Source of Deposits into CIF Accounts	1998	2002
Racetracks (One Percent of Betting Revenue)	\$.8 million	\$.4 million
OTBs (One-Half of One Percent of Betting Revenue)	\$1.3 million	\$.8 million
Total	\$2.1 million	\$1.2 million

In addition, according to RWB's 2002 annual report, the decline in on-track wagering is also partly due to an increase in the competition for the gaming dollar. Therefore, deposits into CIF accounts have declined because both on-track betting and OTB betting have declined for the eight racetracks. However, when we analyzed the reports prepared by the OTBs, we found that OTB betting on out-of-State races has increased significantly, as follows:

Off-Track Betting Revenue All Types of Bets In-State and Out-of-State (dollar amounts in millions)						
Category	1998	1999	2000	2001	2002	% Increase or (Decline)
Harness Tracks:						
In-State	\$231.7	\$200.7	\$177.4	\$159.4	\$161.8	(30.2%)
Out-of-State	94.9	173.9	215.2	241.3	254.6	168.3%
Thoroughbred:						
NYRA	725.4	738.6	706.6	689.6	707.1	(2.5%)
Finger Lakes	130.9	131.8	113.4	96.6	81.6	(37.7%)
Out-of-State	673.1	697.5	762.5	823.2	837.6	24.4%
Total	\$1,856.0	\$1,942.5	\$1,975.1	\$2,010.1	\$2,042.7	10.1%

Thus, while OTB betting on races at the State's seven harness tracks declined by 30.2 percent during this five-year period, OTB betting on races at out-of-State harness tracks increased by 168.3 percent. Similarly, while OTB betting on races at the Finger Lakes Race Track declined by 37.7 percent, OTB betting on races at out-of-State thoroughbred tracks increased by 24.4 percent. These out-of-State races are simulcast at the OTBs, and in-State racetracks, but no portion of the betting revenue from these races are withheld for their CIF accounts.

We also determined that exotic bets (bets on three to five horses) and super-exotic bets (bets on six or more horses) have come to account for a significant portion of both on-track and OTB betting revenue. For example, during 2001 and 2002, exotic and super exotic bets accounted for \$162.3 million of the \$508.4 million (31.9 percent) in on-track betting revenue that was generated by the eight privately-owned racetracks, and \$172.5 million of the \$498.1 million (34.6 percent) in OTB betting revenue that related to races held at these eight tracks. However, no portion of exotic and super-exotic bets is placed in CIF accounts.

As we have shown, the amount of funding that is placed in CIF accounts has declined significantly. If action is not taken to counter this erosion of capital improvement funding, capital improvement needs at the eight racetracks may not be able to be fully met. We also discuss this issue in the Capital Planning Process section of this report.

The funding mechanism for capital improvements was established in 1983. At that time, the revenue generated by the

mechanism may have been adequate to meet the racetracks' capital needs. However, as is shown by the analyses in our report, this revenue has declined significantly. As the State agency responsible for overseeing the racetracks' capital planning process, RWB should monitor the adequacy of the available capital funding and take action to address any possible shortfalls in this funding. However, we found that RWB has not taken action to address possible shortfalls in the racetracks' capital improvement funding. While RWB officials have been aware for some time that CIF funding was declining, they did not prepare any detailed analyses of the decline, such as we performed, and they have not developed any formal plans of action in response to the decline. We recommend that RWB develop such plans and establish an ongoing process for monitoring the adequacy of the racetracks' available CIF funding.

Recommendations

1. Develop a long-term strategic plan for meeting the racetracks' capital improvement needs. The plan should compare the racetracks' projected capital needs over the next five to ten years to the projected funds available to meet these needs during that period. If the projected funding is significantly less than the amount that is needed, develop an action plan for closing the funding gap.
2. Establish an ongoing process for (a) monitoring the adequacy of the racetracks' available CIF funding and (b) updating the long-term strategic plan for meeting the racetracks' capital improvement needs.

(In response to matters in recommendation number 1 and recommendation number 2 RWB officials state that it is up to the racetracks to maintain the facilities. They also state that RWB has no legislative authority to change the terms upon which the statute allows a track to voluntarily create a CIF, and it is inappropriate for the RWB to develop funding plans for private business in the event of a capital shortfall.)

Recommendations (Cont'd)

Auditor's Comment: The legislation establishing Capital Improvement Funds clearly intended to provide these privately-owned businesses with a dedicated source of capital improvement funding and established RWB as the oversight agency. We therefore conclude it is within RWB's purview to plan and evaluate ways to meet future capital improvement needs.

CAPITAL PLANNING PROCESS

The eight privately-owned racetracks are required by the Law to submit annual capital plans to RWB, and RWB is required to inspect the racetracks' facilities to determine whether their capital improvement needs are adequately addressed by their capital plans. We found that capital plans were submitted by most of the racetracks and annual inspections were performed at all of the racetracks. However, certain improvements are needed in RWB's administration of the capital planning process if there is to be adequate assurance the racetracks' capital improvement needs are being properly met.

For example, the capital plans submitted by the racetracks are generally brief one-page documents that do not contain enough information for an informed review. If the plans were more detailed and more specific, RWB would be better able to assess whether they met the racetracks' needs. We also found that the racetracks' use of CIF funds on unplanned capital projects needs to be more closely monitored by RWB, and RWB's conclusions from its annual inspections need to be stated and taken into account in the annual capital planning process. We further note that, under a special arrangement with RWB, Yonkers Raceway has not submitted a capital plan since 1995 and is using its CIF funds to reimburse grandstand demolition costs that were incurred in 1995. We recommend that RWB require an annual plan from Yonkers Raceway and monitor the racetrack's current capital improvement needs, as required by the Law.

Approval of Capital Plans

Generally, the capital plans from the eight privately-owned racetracks are submitted in the Fall and consist of a list of capital projects that are planned for the upcoming calendar year. The plans may also indicate the amount of CIF funds budgeted for advertising and promotion. RWB is required by Law to approve the capital plan. The Law indicates that RWB has the authority to approve, disapprove and require modifications in the plans.

Specifically, Article III, Section 319 (2)(b) of the Law provides that: “At least once annually, prior to approving any plan for the expenditure of such capital improvement funds pursuant to this section, the board shall, together with the track operator and representatives of the horsemen’s organization representing owners and trainers utilizing the facility, inspect the entire facility.... After such inspection, if the board 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 ***board shall require the track operator to modify its capital improvement plan*** to provide for the expenditure of funds for such repairs and improvements” (italics and bolding added for emphasis).

We found that RWB does not approve or disapprove the capital plans, even though we conclude it has the responsibility to do so. We reviewed the Board minutes for the period January 1, 2001 through June 30, 2003, and found no indication that the Board approved or disapproved any of the annual capital plans submitted by the racetracks. RWB officials stated that they approve or disapprove projects indirectly through the CIF reimbursement request process. For example, they indicated that if a racetrack submitted a reimbursement request for a project that, in their opinion, was not an appropriate CIF project, the request would be denied. However, in the absence of a formal approval process, there is less assurance all capital plans will receive a thorough review by RWB and needed corrections will be made to the capital plans.

Content of Capital Plans

A capital plan is a management tool that can be used to ensure that capital improvement work is done in an efficient and effective manner. It should contain detailed descriptions of the planned projects, including the existing conditions that will be alleviated by the project, the estimated cost of the project, and a timeline for when the project will be started and completed. A capital plan should cover a three to five-year time frame and be updated each year. This long-range perspective helps ensure that high priority projects receive the necessary funding, and improves project planning and timing.

We reviewed the capital plans submitted by the racetracks for calendar years 2001 through 2003. We restricted our review to the plans that were submitted by five of the eight racetracks. We did not review the plans for Yonkers Raceway, the Syracuse Mile and Batavia Downs, for the following reasons:

- As is discussed later in this report, RWB has not required a capital plan from Yonkers Raceway since 1995.
- RWB does not require the Syracuse Mile to submit capital plans, because the racetrack is open for only five days each year during the annual New York State Fair. The racetrack is located on property maintained by the State, and the equipment needed for operations (e.g., monitors, cameras and the tote board) is rented each year. RWB allows the racetrack to submit invoices for the rentals and to charge such costs to the racetrack's CIF account.
- Live racing at Batavia Downs had been suspended for several years and was not resumed until July 2002. In 2002, the racetrack submitted a memorandum to RWB indicating its plans for future capital projects. In 2003, the racetrack submitted a capital plan. (In May 2004, subsequent to the completion of our fieldwork, Batavia Downs cancelled the 2004 harness racing season due to financial reasons.)

When we reviewed the capital plans for the remaining five racetracks, we found that they often lacked sufficient detail, as follows:

- **Projects Not Clearly Described** - The capital plans were generally brief one-page documents. Most of the project descriptions were very brief, and did not clearly describe the nature of the project or the existing conditions that were to be alleviated by the project. For example, the 2001 capital plan for Monticello Raceway listed one project as "Vehicles for Backstretch \$30,000," but there was no additional explanation indicating what kind of vehicles were to be purchased and why the vehicles were needed. In the absence of such details, RWB cannot fully assess the appropriateness and adequacy of the capital plans.

- **Projects Not Specified** - In two of the capital plans, a significant amount was allocated for “miscellaneous” unspecified capital improvements. For example, the 2001 capital plan for Finger Lakes Race Track included a line for “Miscellaneous Improvements” totaling \$132,385, or 16 percent of the racetrack’s total budget for that year. There was no additional explanation indicating what kind of work was to be done.
- **Projects Not Prioritized** - The capital plans for four of the five racetracks did not indicate why the projects were necessary and did not prioritize the projects. Only Vernon Downs indicated why its projects were necessary, and prioritized its projects for 2003 (its projects were not prioritized for 2001 and 2002). As is discussed later in this report, many of the planned projects are not completed each year, but in the absence of prioritization and detailed project descriptions, RWB cannot determine whether high-priority projects are being delayed. (In July 2004, after our fieldwork, Vernon Downs had to close because RWB refused licenses to the owners.)
- **Lack of Project Timelines** - Only Vernon Downs provided information on when the projects would be started and completed, as its capital plans for 2001 and 2002 included an estimate of the approximate months when work was expected to begin and end. In the absence of such timelines, RWB cannot assess a racetrack’s progress in completing its planned projects.
- **Required Participation of Horsemen’s and Jockey’s Organizations Not Indicated** - The Law requires that representatives from the local horsemen’s and jockey’s organizations participate in RWB’s annual inspections of the racetracks. These representatives may also request that certain capital projects be undertaken. However, the capital plans generally did not indicate which projects were initiated in response to requests from the horsemen’s or jockey’s organizations. To show that their input was considered, the plans should indicate which projects were initiated in response to their requests.

We note that the Law does not specifically describe the kind of information that should be included in the capital plans, and does not require any minimum level of capital spending for any

type of racetrack facility. In addition, RWB has not issued any guidelines to the racetracks regarding the contents of the capital plans. We recommend RWB issue such guidelines, and the guidelines specifically require that certain detailed information be included in the capital plans (such as detailed project descriptions, priority rankings, project timelines, and whether projects were initiated in response to requests from the horsemen's or jockey's organizations).

We further recommend that RWB require multi-year capital plans, rather than the one-year plans that are now required. Such plans would be updated annually, but would cover a period of more than one year. Since capital projects often take more than one year to complete, a multi-year, long-term perspective would provide a clearer indication of capital improvement needs and goals. We note that NYRA is required to submit five-year capital plans, which are updated annually, for its three racetracks.

Annual Inspections of Racetracks

After the capital plans are received from the racetracks, RWB performs an inspection of each racetrack. According to the Law, the primary purpose of the inspections is to determine whether the racetracks' capital improvement needs are adequately addressed by their capital plans. In identifying these needs, RWB is assisted by the local horsemen's organizations (which represent owners and trainers) and the local jockeys' organizations (for thoroughbred racetracks only). These organizations are asked whether they endorse the plans or believe additional projects are needed, and representatives from these organizations accompany RWB personnel during the actual inspections. The participation of these organizations in the capital planning process is explicitly required by the Law.

The results of each inspection are described in an inspection report that is prepared by RWB. We reviewed the inspection reports for 2000, 2001 and 2002. We found that all of the required inspections for this period were performed, and representatives of the local horsemen's and jockey's organizations participated in the inspections. However, we were unable to determine whether the inspections effectively fulfilled the purpose stated in the Law, because certain critical conclusions were not included in the inspections reports. In addition, because of unclear descriptions in some of the

inspection reports, we were unable to determine whether complete inspections had been performed, as required by the Law.

RWB inspects the racetracks to determine whether their capital improvement needs are adequately addressed by their capital plans. However, none of the inspection reports that we reviewed contained a conclusion about the adequacy of the racetrack's capital plan. Even when needed improvements and repairs were identified during the course of the inspection, there was no statement indicating that these needs would or would not be addressed by the racetrack's capital plan. Most of the inspection reports did not even contain a conclusion about the overall condition (e.g., good, fair or poor) of the racetrack's facilities. In the absence of a conclusion about the condition of a racetrack's facilities or the adequacy of its capital plan, there is less assurance the capital plan is in fact meeting the racetrack's capital improvement needs.

During the annual inspections, RWB is required by the Law to "inspect the entire facility." Such inspections are extensive and need to include the grandstand and clubhouse, track and infield, backstretch and paddock facilities, parking areas and roadways, track equipment, and other miscellaneous facilities. We attempted to determine whether the inspections performed by RWB were complete, but we were unable to make this determination, because the inspection reports did not always account for all of the facilities and areas at the racetrack.

For example, the 2001 inspection report for Saratoga Raceway indicated that several areas were inspected, including the connecting roadways, the barn area, the paddock, the track racing service, the upper grandstand, the groom's dormitory, the driver's locker room, the new sports bar and deli area, the test barn, the receiving barn, the kitchen area, and other areas. In comparison, the 2002 inspection report for the same racetrack listed only four areas: the connecting roadway, the barn areas, the paddock and the test barn. We could not determine whether the other areas were not inspected in 2002 or simply were not listed in that particular inspection report. To provide assurance that inspections are complete, all racetrack facilities should be accounted for in the inspection report. If any facilities are not inspected in a given year, they should be clearly identified in the report for that year. We note that, if the inspection reports followed a standard format and this format accounted for all the areas/facilities at the tracks, the completeness of the

inspections could be readily determined. Currently, a standard format is not used for the inspection reports.

(RWB officials replied to our draft report, that their staff constantly monitors the condition of each track and the annual inspections concentrate on problem areas. However, they also indicated that their processes are being modified to include a checklist to document areas of the facility that have been inspected and to provide a rating system regarding overall condition of the facility.)

Auditor's Comments: We are pleased to see that plans are underway to better document and manage the inspection process.

Unplanned Capital Expenditures

The racetracks' capital plans contain the projects they expect to work on during the upcoming year. Expenditures on these projects may be reimbursed by funds from the racetracks' CIF accounts. Requests for reimbursements are sent to RWB. Such requests are to be accompanied by copies of invoices and cancelled checks. No funds can be withdrawn from the accounts without RWB's approval.

To determine whether the capital projects reimbursed by RWB were consistent with the projects on the capital plans, we compared the CIF reimbursements for 2001 and 2002 to the capital plans that were submitted for those two years. As was previously explained, only five of the eight racetracks submitted capital plans for those two years. Accordingly, our comparison addressed the reimbursements that were made to these five racetracks.

For this two-year period, the five racetracks were reimbursed a total of \$1,942,288 for 255 capital projects. We determined that 95 of these 255 projects (37 percent) were listed on a capital plan (66 projects were on the current year's capital plan and 29 projects were on a prior year's capital plan), and \$1,509,157 of the \$1,942,288 in reimbursements (78 percent) related to these 95 planned projects. However, 160 of the 255 projects (63 percent) were not listed on any capital plan, and \$433,131 of the \$1,942,288 in reimbursements (22 percent) related to these unplanned projects. We therefore conclude that the capital

projects reimbursed by RWB often were not included on a capital plan.

In our review of the records relating to the reimbursement requests submitted by the racetracks, we found no instances in which a reimbursement request for an unplanned project was denied by RWB because planned projects were outstanding, even though a number of planned projects were outstanding. We also found that RWB did not require the tracks to submit a written justification explaining why unplanned projects should be approved. Due to the fact that the planned projects result from an inspection of the entire facility by representatives of the RWB and the owners and trainers utilizing the facility, the substitution of unplanned projects should be explained in writing. RWB officials stated that they approve reimbursement requests for unplanned projects as long as the expenditures are reimbursable under the Law. They stated that it is not their intent to “second guess” racetrack officials on their capital improvements.

We do not believe RWB is required by the Law to “second guess” racetrack officials on their capital improvements. Rather, RWB is required to oversee a structured capital planning process that includes the development of a capital plan by the racetracks. If the racetracks are allowed to depart frequently from their capital plans, without providing any justification for the departures, we believe RWB is not adequately maintaining the structure that is needed to control the use of capital improvement funds. Accordingly, we recommend that RWB require written justification for unplanned capital reimbursement requests. We recognize that legitimate unplanned needs may arise during the year, such as sudden repairs that must be made without delay, and such needs can easily be justified by the racetracks.

Similarly, follow-up action should be taken by RWB when planned projects are not initiated during the year. Such uninitiated projects are identified by RWB, as each year RWB staff compare the projects planned to the reimbursement requests approved for each racetrack. A record of the comparison is provided to the RWB officials who conduct the annual track inspections. However, there was no indication that RWB followed up on the planned projects that had not been initiated to determine their status. It is possible that, in some instances, the racetracks used their own funds to pay for these projects. It is also possible that some projects are delayed until

the following year. To maintain the integrity of the planning process, RWB should follow up on such projects and obtain an explanation for their delay.

Yonkers Raceway

As was previously noted, RWB has not required a capital plan from Yonkers Raceway since 1995. In that year, Yonkers Raceway demolished its grandstand at a cost of \$4 million. In 1996, Raceway officials sent a letter to RWB requesting that the demolition costs be reimbursed from their CIF account. Since the account balance was not large enough to cover these costs, they asked if future accumulations in the account could be used to reimburse the costs. They indicated that they would keep up with any necessary repairs. RWB granted this request, and since that time, Yonkers Raceway has not submitted a capital plan. Periodically, the racetrack sends a letter to RWB requesting CIF reimbursement for a portion of the demolition costs. These requests have been approved, and the funds have been withdrawn by the racetrack.

At the time of our audit, the grandstand demolition costs were nearly fully reimbursed. Yonkers officials indicated that they planned to ask RWB if they could continue with this arrangement in the future. If such a request is made and granted, Yonkers Raceway would continue to use CIF funds to reimburse capital costs that were incurred in past years, and would continue to submit no annual capital plan to RWB.

We question the appropriateness of this arrangement because the racetrack should submit a capital plan annually to RWB. Moreover, in the absence of such a plan, there is less assurance the capital improvement needs of Yonkers Raceway will be adequately met on an ongoing basis. When we visited the racetrack, we found that, generally, the facilities did not appear to be in poor condition or in obvious need of repair. However, a number of matters did need attention. For example, at one of the barns, we were advised that the levers that open the skylight windows do not open. There were windows in this barn that would provide ventilation for the horses; however, if the skylight windows functioned properly, additional ventilation would be provided. We also observed that the fence that surrounded the outside perimeter of the track was in a state of disrepair and, in our opinion, constituted a safety hazard.

(RWB officials state that, while they did not require a capital plan from Yonkers, they complied with the Law because they did an annual inspection of the racetrack and treated Yonkers' grandstand demolition as a plan for the expenditure of CIF funds, even though it would be accounted for over a number of years.)

We asked Yonkers Raceway officials if they had their own capital plan for the track, but they stated that they had no formal plan. Thus, we could not determine whether the racetrack planned to address the matters that we observed.

We recommend that RWB require Yonkers Raceway to submit a capital plan annually, as is required by the Law, and use the annual inspection process to determine whether all necessary projects are included on the plan. If Yonkers' current capital improvement needs are adequately met, any remaining CIF funds could be used to reimburse the racetrack for capital costs incurred in prior years. But if Yonkers' current needs are not met, we believe it is not appropriate for current CIF funds to be used for projects from prior years.

Recommendations

3. Formally approve or reject the racetracks' annual capital plans, and require modifications in rejected plans that would enable the plans to be approved.

(RWB officials replied to our draft report, that on numerous occasions racetracks were required to, in effect, modify capital improvement plans as a result of RWB denying or deferring requests for reimbursement from the CIF accounts. They consider this an effective approach and more meaningful than simply denying a proposed budget. RWB officials also disagree with our opinion that the Law requires RWB to provide specific approval/disapproval of capital plans.)

Auditor's Comments: As our report points out, in the absence of a formal approval process there is less assurance that all capital plans will receive a thorough review by RWB and that needed corrections will be made to capital plans. We believe the Law is clear in its requirement that RWB provide approval of capital plans.

Recommendations (Cont'd)

4. Issue guidelines requiring the capital plans to be more detailed and include, at a minimum, a detailed description of each project, priority rankings for each a project, and estimated start and completion dates for each project, and an indication of whether projects were initiated in response to requests from the horsemen's or jockey's organizations.

5. Require that capital plans cover a period of more than one year, and be updated annually.

(In response to matters in recommendation number 4 and recommendation number 5 RWB officials replied to our draft report, that they have already begun to request that the tracks file a formal multi-year capital plan.)

6. Ensure that all inspection reports include the following conclusions and information: (a) a rating on the overall condition of the racetrack, (b) a conclusion indicating whether the racetrack's proposed capital plan adequately addresses the racetrack's capital improvement needs, and (c) a listing of all the areas/facilities at the racetrack, with an indication of whether each area/facility was inspected that year. To facilitate the inclusion of these items in all inspection reports, establish a standard format for the inspection reports.

(RWB officials replied that they have modified the annual inspection process to include a checklist to be used to document what areas of the facility have been inspected and have developed a rating system regarding the overall condition of the facility.)

7. Require a written explanation from the racetracks when they request CIF reimbursement for unplanned capital projects.

(RWB officials replied that they strongly disagree that they have not maintained the reporting structure required by Law. However, they agree that the recommendation provides for a useful managerial tool, and last year they implemented a new process requiring tracks to provide written documentation for requests for any expenditure not included in the capital improvement budget.)

Recommendations (Cont'd)

Auditor's Comments: We revised the report based on RWB's response regarding the reporting structure and the Law.

8. As part of the annual capital planning process, follow up on any planned projects for which no reimbursement requests have been received, and obtain an explanation for the delay.

(RWB officials did not respond to recommendation number 8.)

9. Require Yonkers Raceway to submit a capital plan annually, and ensure that the racetrack's current capital needs are adequately met before any current CIF funds are used to reimburse the racetrack for capital costs incurred in prior years.

(RWB officials replied to our draft report that the grandstand demolition cost has been fully met and Yonkers has been required to submit an annual plan in the same form as the other tracks.)

DEPOSITS INTO CIF ACCOUNTS

Certain portions of the betting revenue at the racetracks and OTBs are to be deposited into the CIF accounts at the eight racetracks. The amounts that are to be set aside for deposit are calculated through automated processes overseen by various contractors. We found that the accuracy of these calculations is not verified on a regular basis, and as a result, RWB has less assurance the calculations are accurate. We recommend RWB establish a process for verifying the accuracy of CIF withholding calculations.

We also tested the accuracy of selected deposits into CIF accounts. We found that the deposited amounts agreed with the amounts that had been calculated through the automated processes. We also determined that some of the racetracks are slow to transfer CIF funds into CIF accounts. We recommend RWB monitor the timeliness of the racetracks' CIF deposits.

Accuracy of CIF Withholding Calculations

A portion of certain types of wagers made on races held at the eight racetracks is to be deposited into the racetracks' CIF accounts. The exact amounts that are to be deposited are calculated by electronic tote systems leased from private contractors. The tote systems also calculate the odds on each horse race, the payouts to the bettors, and the other payments that are to be made from the betting pools (e.g., the State's pari-mutuel tax, simulcast fees, and payments to the breeding and development funds). Three different tote systems are used by the eight racetracks.

If RWB is to have reasonable assurance the amounts to be deposited into the CIF accounts are accurately calculated by the tote systems, the methods used by the tote systems in performing the calculations must be independently tested and verified on a regular basis. We found that the tote systems are independently tested and verified, but the tests are not performed on a regular basis and are not intended to verify the accuracy of CIF calculations. As a result, RWB has less assurance the CIF calculations are accurate.

For example, the tote systems are tested by the Department of Taxation and Finance when they are first installed at a racetrack or OTB. If they are significantly modified after installation the racetrack or OTB informs the Department that a test is needed, and the Department informs RWB of the test results. However, this testing is not performed on a regular basis and is intended primarily to verify the accuracy of the calculations of the pari-mutuel tax. The accuracy of the calculations for the CIF deposits and the other payments is not verified.

Similarly, the tote system of a vendor used by some of the racetracks was independently audited in 2002 and 2003 (these audits were special SAS 70 audits that are designed to evaluate the system's controls in providing services to primary entities, such as the racetracks or OTBs). However, this vendor is also used in a number of different states, and the audits that were conducted in 2002 and 2003 were intended only to evaluate the adequacy of the system's general controls. The specific controls in place at each location in each state were not evaluated to determine whether the specific calculations performed at each location were accurate. Since the regulations regarding takeouts (what the track can keep), breakage and payouts vary from state to state, separate tests would need to be performed at each particular installation, and no such tests were performed in 2002 and 2003 when this vendor was audited.

An official at one of the tote systems, which is also used in different states, told us that they rely on the oversight boards in the various states to verify the accuracy of the specific tote systems installed in their states. However, RWB does not perform such tests and does not require the racetracks and OTBs to have such tests performed. In October 2002, RWB informed the racetracks and OTBs that it was considering establishing uniform tote standards, and might require each racetrack and OTB to obtain an annual audit of its tote system. However, no such action was taken. In addition, in late 2003, at the conclusion of our audit field work, RWB requested the racetracks and OTBs to provide a description of any audit testing that had been done on their tote systems, such as testing performed in conjunction with their annual financial audits. However, there was no indication that this would be an annual or otherwise regular requirement.

RWB's request for documentation of tote system testing is a step in the right direction. However, such documentation should be required regularly, and RWB should work with the racetracks and OTBs to develop a uniform system of testing and verification.

Accuracy and Timeliness of Deposits

A portion of the bets placed at each racetrack is to be deposited into that racetrack's CIF account. The OTBs also send the racetracks funds that are to be deposited into the CIF accounts. In addition, according to the Law, any interest earned on the funds in a CIF account is to be used for capital improvements.

To determine whether the correct amounts were deposited into the CIF accounts, we reviewed selected deposits into each of the eight CIF accounts. The amounts that are to be deposited into these accounts are calculated by the various tote systems and are shown on daily reports produced by the systems. We randomly selected 134 of the 2,408 race days at all of the racetracks from January 1, 2001 through June 30, 2003 for review. We used the daily tote reports to determine the reported handle amounts for regular and multiple wagers, applied the percentage due to the CIF account, and traced the resulting amounts to the CIF bank accounts. We found that the amounts deposited into the CIF accounts agreed with the amounts shown on the daily tote reports. However, as was noted in the previous section of this audit report, the accuracy of the tote systems' CIF withholding calculations is not adequately verified. As a result, there is no assurance that the amounts shown on the daily tote reports are in fact correct.

The racetracks initially deposit their betting revenue in their operating account, and later transfer CIF funds to their CIF account. To determine whether CIF funds were transferred in a timely manner, we reviewed the eight racetracks' bank statements and racing schedules for 2001 and 2002. We found that some of the racetracks did not transfer their CIF funds in a timely manner. For example, the following table shows the lag between the first day of racing and the first deposit to the CIF account for 2001 and 2002.

Racetrack	2001			2002		
	Opening Day	First Deposit	Days Elapsed	Opening Day	First Deposit	Days Elapsed
Finger Lakes	04/13/01	05/24/01	41	04/13/02	07/01/02	79
Batavia Downs *	-	-	-	07/29/02	12/13/02	137
Buffalo	01/26/01	02/06/01	11	01/25/02	02/01/02	7
Monticello	01/03/01	01/04/01	1	01/01/02	01/03/02	2
Saratoga	01/06/01	01/31/01	25	01/12/02	01/14/02	2
Syracuse Mile	08/10/01	12/14/01	126	08/03/02	10/18/02	76
Vernon Downs	05/04/01	06/08/01	35	05/03/02	06/14/02	42
Yonkers	01/02/01	01/02/01	0	01/03/02	01/03/02	0
Note: * Batavia Downs was not open for live racing in 2001						

While Yonkers and Monticello were timely with their initial CIF deposits in both years, and Saratoga was timely in 2002, the other racetracks were not timely. Finger Lakes Race Track, which has the largest CIF account, took nearly six weeks in 2001 and more than 11 weeks in 2002 to make its first deposit. We identified similar lags in the deposit of funds received on the last day of racing for the season.

As a result of these delays in transferring CIF funds to CIF accounts, less interest was earned on the funds in the CIF accounts, and consequently, less funding was available for capital improvements. In addition, CIF funds were inappropriately commingled with other racetrack funds for weeks at a time.

RWB has established forms for reporting summarized CIF account activity at the end of the year, but it has no guidelines for the timeliness of CIF deposits. We recommend that such guidelines be developed. We further recommend that RWB periodically review the racetracks' bank statements to determine whether CIF deposits are timely. These bank statements are already obtained by RWB to ensure that sufficient funds are available to cover CIF reimbursement requests.

Recommendations

10. Work with the racetracks and OTBs to develop a uniform system of testing and verification for their tote systems, require that such tests be performed regularly on each tote system, and require that documentation of the testing be submitted to RWB.

(Responding to our draft report, RWB officials point out that their staff contact individual track auditors annually to confirm that the tote systems have been tested. They also comment that the Office of the State Comptroller routinely audits NYRA and that those audits must consider the effect of the tote system. Officials point out that one such recent audit report detailed weaknesses in the tote system and acknowledged corrective action had been taken by the contractor operating the system. Board officials concluded that we could not have arrived at such statements without an assessment of the tote system. They reference a 1994 audit where we found NYRA's autotote operations had adequate system controls. While RWB officials also contend that there are sufficient and various controls in place to reasonably assure the accuracy of tote system information, they are nonetheless taking positive steps to develop uniform national tote standards and requiring an audit of each track's tote system as a condition for licensure in 2005.)

Auditor's Comments: RWB officials did not provide any evidence during or after the audit that they contact individual track auditors annually to confirm that tote systems have been tested. Our recent audit of NYRA did not detect the weaknesses in the tote system. Rather, we were made aware of the known weaknesses and adjusted our audit accordingly. We question the relevancy of the other audit cited by the RWB as it was done about 10 years ago. We reiterate that our audit pertains to non-NYRA tracks.

11. Develop guidelines that require the racetracks to make timely deposits to their CIF accounts.

Recommendations (Cont'd)

12. Periodically review the racetracks' bank statements to determine whether their CIF deposits are timely.

(In regard to recommendation number 11 and recommendation number 12, RWB officials indicate that beginning in 2005, staff is directing racetracks to make CIF deposits by the end of the month following receipt. This will be periodically tested by staff.)

DISBURSEMENTS FROM CIF ACCOUNTS

The racetracks may use CIF funds for capital improvements and advertising/promotional activities. We examined RWB's oversight of CIF disbursements for capital improvements. We found RWB does not require the racetracks to solicit competitive bids for capital projects that are supported by CIF funds, and the racetracks themselves do not always solicit bids for such projects. We recommend that competitive bidding be required for CIF projects above a certain dollar amount.

In addition, seven of the eight racetracks have been authorized to install video lottery terminals at their facilities, and are planning to install such terminals. The racetracks may seek approval to use CIF funds in connection with these installations. We recommend that RWB develop guidelines governing the use of CIF funds in connection with the installation of video lottery terminals, and if such use is to be allowed, we recommend RWB analyze its likely effect on the availability of funding for the racetracks' more basic capital improvement needs.

Competitive Bidding for CIF Projects

The funds in CIF accounts may be used to reimburse certain kinds of racetrack expenditures. All requests for reimbursement must be approved by RWB, and the requests must be accompanied by certain documentation. The reimbursement requests are reviewed by RWB staff, and their review is documented on a standard RWB form.

According to State purchasing guidelines, competitive bids should be solicited for purchases of \$15,000 or more. These guidelines are intended to help ensure that goods and services are acquired at a fair and reasonable price. These guidelines do not apply to the eight privately-owned racetracks, and RWB has not developed any guidelines on competitive bidding for CIF expenditures. However, the form documenting RWB's review of capital project reimbursement requests has a space to indicate whether or not the racetrack solicited bids for the goods or services purchased. We therefore conclude that the use of competitive bidding is considered relevant by RWB in its assessment of the racetracks' reimbursement requests.

To determine whether the use of competitive bidding was documented by the racetracks in their reimbursement requests for capital projects, we reviewed all 51 capital project reimbursement requests that were approved by RWB during the 30 months ended June 30, 2003. Since RWB has no guidelines indicating when competitive bids should be solicited, we applied the State's criteria and determined whether competitive bids were obtained for purchases of \$15,000 or more. During the 30-month period that we reviewed, reimbursement was requested by the racetracks for a total of 40 such purchases, and the use of competitive bidding was documented in only 17 of these 40 purchases. The use of competitive bidding was not documented for the other 23 purchases of \$15,000 or more.

Since it was possible that competitive bids had actually been solicited in some of these 23 instances, but documentation of the bids had not been submitted to RWB, we judgmentally selected 15 of the 23 capital project purchases for follow-up. We selected at least one purchase from each racetrack, except for the Syracuse Mile, and we visited the seven racetracks to determine whether they had any documentation indicating that competitive bids had been sought for these 15 purchases.

The officials at the seven racetracks generally agreed that competitive bidding is a good business practice. Three of the racetracks (Finger Lakes Race Track, Batavia Downs and Vernon Downs) even have written procedures for competitive bidding. However, the use of competitive bidding was documented for only 7 of the 15 purchases; no documentation could be provided for the other eight purchases. Four of these eight purchases were made by a racetrack that requires competitive bidding, but according to racetrack officials, they do not retain bid documentation after the contract is awarded. We therefore conclude that, while competitive bids are solicited by the racetracks in some of the instances in which it is appropriate to do so, it appeared that competitive bids are frequently not solicited.

The Law does not require that competitive bids be solicited for capital projects funded by CIF accounts. However, the Law does require that competitive bids be solicited for capital projects at the three racetracks operated by NYRA, if the projects are funded by loans from capital improvement funds. We believe it would be prudent for the eight racetracks to be held to the same competitive bidding requirement as NYRA.

We therefore recommend that RWB require the eight racetracks to submit documentation of competitive bidding for CIF reimbursement requests in excess of a certain dollar amount.

RWB officials stated that they cannot require the racetracks to solicit competitive bids, because the tracks are privately owned and operated. However, since the RWB must approve the plan for the expenditure of CIF funds, the RWB could, as a condition of such approval, require that capital improvements above certain threshold amounts be competitively bid. The purpose of such a condition being that the RWB has a responsibility to insure that such funds are used in an efficient and cost effective manner. Since only a limited amount of CIF funding is available to the racetracks, competitive bidding would enhance the possibility of achieving the lowest possible costs and thereby fulfill that purpose. If a racetrack did not want to seek competitive bids for a particular capital project, it could use its own funds for that project.

In a significant number of cases, the racetracks submit for approval expenditures for capital improvements which were not on their capital improvement plan and request that the RWB ratify the expenditure of CIF funds. In such cases, the RWB could approve reimbursement for only part of such costs where competitive bidding was used - on the basis that the failure to use competitive bidding is not cost effective.

We also note that improvements are needed in RWB's review of CIF reimbursement requests. In our review of the reimbursement requests that were approved during the 30 months ended June 30, 2003, we found that, in some instances, the forms documenting the review were not fully completed and, in other instances, the reviewer's conclusions were not consistent with the documentation submitted by the racetrack. For example, in some instances, the reviewer indicated that competitive bids had been solicited by the racetrack, but there was no documentation supporting this conclusion. We recommend that RWB managers more closely oversee the review of reimbursement requests, and in particular, ensure that review forms are properly completed and the reviewers' conclusions are consistent with the documentation submitted by the racetracks.

Use of CIF Funds for Capital Projects Related to Video Lottery Terminals

According to the Law, CIF funds should be used for capital improvements on horse racing facilities. Two sections of the Law specifically describe the allowed uses of the funds: Section 228-a (for thoroughbred tracks) and Section 319 (for harness tracks). In both of these sections, a capital improvement is defined as "... any addition to, replacement of or remodeling of the physical plant, structures and equipment now or here-after owned or leased by a racing corporation or association ***which 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" (italics and bolding were added for emphasis).

However, we found that seven of the eight privately-owned racetracks are planning to install video lottery terminals (VLTs), and these racetracks may seek CIF funds to reimburse costs incurred as a result of these installations.

In May 2003, the seven racetracks (all except the Syracuse Mile racetrack, which operates at the State Fairgrounds) were authorized by State legislation to install VLTs, pending local approval. All seven racetracks obtained local approval and are planning to install VLTs in their existing clubhouse and/or in new buildings constructed especially for VLTs.

For example, Yonkers Raceway intends to install about 2,000 VLTs in its existing clubhouse and about 6,000 VLTs in a new building that will be constructed solely to accommodate the new machines. Yonkers officials indicated that the VLTs will benefit racing, because some of the VLT revenue will be used to increase the size of purses. Consequently, they plan to seek reimbursement from their CIF account for costs incurred in renovating the clubhouse and constructing the new building for the VLTs. Yonkers Raceway did not submit a capital plan for 2003, so the estimated costs of the projects have not been disclosed.

Similarly, Monticello Raceway intends to install about 1,800 VLTs, all in the existing clubhouse. The VLTs will be installed on the first floor. However, to accommodate the machines, the simulcast lounge, betting windows, and some of the food

services will be moved from the first floor of the clubhouse to the third floor. The current paddock will be converted so that it can house some of the 1,800 VLTs, and this conversion will require the racetrack to build a new paddock. Unlike Yonkers officials, Monticello officials stated that they would not seek CIF reimbursement for VLT installation costs. However, Monticello's CIF capital plan for 2003 budgets \$100,000 for the new simulcast parlor and \$200,000 for the new paddock, indicating that CIF reimbursement will be sought for these costs. While these two projects do not directly involve the installation of VLTs, they are being undertaken because VLTs are being installed in the areas currently occupied by the simulcast parlor and paddock. Thus, it appears that Monticello officials are distinguishing between costs directly incurred because of VLT installation and costs indirectly incurred because of VLT installation. (In July 2004, after the completion of our fieldwork, Mighty M Gaming at Monticello opened with about 1,800 VLTs.)

Officials at the other five racetracks told us that they intend to install VLTs, but will not seek CIF reimbursement for installation costs. We reviewed their 2003 capital plans and did not find any projects that appeared to be related, directly or indirectly, to the installation of VLTs. However, as was previously noted in this report, the plans are not detailed enough to fully assess the nature of the proposed projects, and it is possible that VLT-related projects are included on the plans.

To ensure that all the racetracks have the same understanding of allowable cost reimbursement practices for VLT-related projects, we recommend that guidelines be developed by RWB. These guidelines should indicate whether CIF reimbursement will be allowed for any costs that are incurred, directly or indirectly, as a result of a racetrack's installation of VLTs. If certain types of costs are to be reimbursed, examples of these allowable costs should be provided. The guidelines should also include procedures on how a VLT facility should be inspected.

Recommendations

13. Include as part of the capital plan approval process, a requirement that the racetracks use competitive bidding for projects where CIF reimbursement is requested in excess of a certain dollar amount. For projects not in the capital plan RWB should approve reimbursement for those costs where competitive bids were used.

(Responding to our draft report, RWB officials restate that there is no legal requirement for the tracks to use competitive bidding. They comment that they are unaware of any state agency that has authority to direct a privately held for-profit corporation to bid for goods and services and they question the legality of doing so without a specific statutory mandate. They also indicate that we should not use NYRA as an example without using the same contract threshold for competitive bidding. In effect, they disagree with the recommendation.)

Auditor's Comments: We are aware of the current procedures used by RWB regarding competitive bidding. However, we view the use of competitive bidding as a business practice that could result in better value for the limited capital improvement funds available. As noted in the report, three of the seven tracks have written procedures for competitive bidding which would indicate that even privately owned businesses have recognized this procurement method. Since RWB must approve the plan of expenditure of CIF funds, RWB could, as a condition of approval, require that capital improvements above certain threshold amounts be competitively bid.

14. More closely supervise the review of CIF reimbursement requests, and in particular, ensure that review forms are properly completed and the reviewers' conclusions are consistent with the documentation submitted by the racetracks.

(RWB officials did not respond to this recommendation.)

Recommendations (Cont'd)

15. Develop guidelines indicating whether CIF reimbursement will be allowed for any costs that are incurred, directly or indirectly, as a result of a racetrack's installation of VLTs. If certain types of costs are to be reimbursed, examples of these allowable costs should be provided. The guidelines should also include procedures on how a VLT facility should be inspected.

(In response to our draft audit report, RWB officials commented that the RWB has informally conveyed to several tracks that requests for reimbursement for expenses from the CIF account solely and directly related to VLT operations will not be granted. Since any track expenditure could be indirectly related to VLTs, indirect expenses will be considered on a case-by-case basis.)

MAJOR CONTRIBUTORS TO THIS REPORT

Carmen Maldonado

Gerald Tysiak

Roger C. Mazula

Kenneth Ring

Jennifer Paperman

Bruce Brimmer

Dana Newhouse



STATE OF NEW YORK
RACING AND WAGERING BOARD

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January 25, 2005

Ms. Carmen Maldonado
Office of the State Comptroller
Division State Services
123 William Street – 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

It is with pleasure that I respond to the draft audit report on the New York Racing and Wagering Board's (Board) oversight of Capital Improvement Funds (CIF) at the seven harness racetracks in the state and Finger Lakes Raceway. Even though we feel, and you concur in your report, that the Board has established a good framework and actively monitors the CIF account activity, we believe there is always room for improvement. Therefore, several of your suggestions are going to be or have already been implemented.

You will note that due to the limited staff available at the Board, which is a relatively small State agency, some of the recommendations are not being pursued. This combined with the fact that this program handles a limited amount of money makes implementing some of the suggestions not practical.

You will also note that the Board takes a different view of the purpose of CIF and the role this agency is supposed to play. We note that the tracks voluntarily choose to have a CIF and are not required to do so. It is the agency's belief that it is the responsibility of the privately owned racetracks to raise money and maintain its facilities. Conversely, it is the role of the State legislature to propose and implement laws to assist taxpayers and business as it sees fit based on constituent needs. Certainly a decline in harness handle will have a negative impact on a track's CIF, but the primary responsibility to devise a long-term plan for the funding and maintenance of privately owned tracks rests with the owners.

With that said, below please find a response to each of the issues raised in your report.

Source of Capital Improvement Funds

The Board has, as a result of your audit, already begun to request that the tracks file a formal multi-year capital plan. In past years the tracks were, for the most part, already providing a listing of projects they were planning to address over several years but were not indicating an estimated completion date for such projects. The tracks have now been asked to fill out a universal form that will address this and other suggestions in a more formal way.

1 Watervliet Avenue Extension, Suite 2, Albany, NY 12206-1668
Telephone (518) 453-8460 FAX: (518) 453-8490
<http://www.racing.state.ny.us>

However the Board feels that the suggestion that the Board develop an action plan for funding of capital projects that exceed the amount available from the current CIF money is not an appropriate function of this agency. The racetracks are privately owned businesses that should be responsible to raise funds and maintain their privately owned property. Such obligations are true for any privately owned business and are normal business risk encountered by entrepreneurs daily. While the Board recognizes the decline in harness handle, there is no legislative authority to change the terms upon which the statute allows a track to voluntarily create a CIF. Responsibility for maintaining the track ultimately rests with the private owners. The Board believes that the statutory role of this agency does not include developing funding plans for private business.

CIF Planning Process

Approval of Capital Plans

Each year the Board solicits a capital improvement plan from every track that maintains a Capital Improvement Fund pursuant to Sections 228-a and 319 of the Racing, Pari-Mutuel Wagering and Breeding Law. The primary purpose of the plan is to ascertain whether it contains adequate provisions for expenditures relating to the continued health, safety and well being of patrons, backstretch personnel and the horses in their care. In order to make the proper determination as to adequacy, the plan is circulated to each track's respective horsemen's organization with a request for their comments. The plan is also circulated among various employees at the Board, including those who regularly work at the track. Finally, as required by statute, each year the Board, respective track and horsemen's representatives gather to inspect each facility. During this inspection, open and frank conversation ensues regarding the condition of the facility. Issues brought to light are often dealt with on the spot. Outstanding issues are often noted and Board personnel may monitor the issues following the inspection. After the inspection, a report of the same along with the plan, the horsemen's comments and other relevant data is formally submitted to the Board.

Although the above process satisfies the legal requirements of the relevant statutes, the Board goes one step further. The statute only requires a once-a-year inspection before funds can be approved for expenditures. However, under the system devised by the Board, tracks submit a plan periodically for expenditure in the form of a request for reimbursement from the Capital Improvement Fund for specific items. Each time a track submits a request for expenditure the request is again circulated among Board personnel, including those who frequent the tracks. These personnel, who are the Board's "eyes and ears" at the tracks, are invaluable in providing first hand knowledge of the condition of the facility as well as horsemen issues. Board personnel also inspect each item requested for expenditure. These inspections provide valuable feedback on the condition of the facility. Board members often inquire of the various department heads about issues at the track. Finally, each request is formally presented to the Board for approval. Only after the Board grants approval is the track notified that they may withdraw the CIF monies.

The Board has on numerous occasions required various racetracks to, in effect modify its capital improvement plan through denying or deferring requests for reimbursement from the CIF accounts. This has proven to an effective and practical approach that we feel is more meaningful than simply denying a proposed budget.

Furthermore, Sections 319(2)(b) and 228-a(2)(b) state " At least once annually, prior to approving any plan for the expenditure of such capital improvement funds....". Two key requirements provided here need to be clarified. First, the Board does not approve all plans for expenditures in approving each request for

reimbursement from the CIF account. Second the only items to be considered by the Board are items where capital improvement funds are requested. Therefore only those capital improvements utilizing CIF money

collected under Sections 319 and 228-a are to be considered by the Board, not the entire capital expenditures of the racetrack. While staff agrees that the entire facility should be considered as it relates to the projects to be funded with CIF money, it would be well beyond the Board's authority to attempt to approve an entire capital improvement plan of a private company.

Therefore, as stated previously, we disagree with the opinion that racing law section 319(2)(b) requires specific approval or disapproval of the capital plans. The statutory provision requires formal Board action only in the event of inadequate measures to correct health, safety and welfare issues. As noted, the Board constantly monitors this requirement and has effectively met the requirements of this statute.

Content of Capital Plans

While the general recommendations provided for in this section are useful, there seems to be a basic misunderstanding of information the Board relies upon when considering a request for reimbursement from the Capital Improvement Fund of a racetrack. The current needs of the physical plant of each racetrack facility are well known by the Board. Such information is conveyed through almost daily conversation with horsemen, track management and employees at all levels as well as Board staff assigned to each track.

In addition, during the annual inspection, details of projects planned for the near future are discussed and priorities are made by the Board if warranted at this time. Therefore, each of the details that are listed as lacking for this section is misleading. Specifically, significant projects are clearly described, projects are prioritized when health and safety issues warrant, and in each case horsemen's organizations participate and are afforded the opportunity for input.

The Board has developed a more detailed and formal method to document each of the issues listed in this section to avoid any future misunderstandings in these areas.

Annual Inspections of Racetracks

During the annual inspection of each track the Board requests input from the horsemen, track personnel and Board staff assigned to each specific track. During this inspection the Board inquires about specific areas of concern, which are then physically reviewed. Items that require attention are then prioritized and are fully described in the report of the inspection. These items are then tracked throughout the following year and referred to each time a request for reimbursement is submitted to ensure they are each properly addressed. The items are once again revisited to ensure they were properly addressed during the subsequent year's annual inspection.

Each facility is fully inspected and the Board's on site staff at each facility constantly monitors the condition of each track. Annual inspections are done in a way that concentrates on "problem" areas in a way that ensures that areas of concern are thoroughly reviewed.

The Board believes the above process has proven to be an effective method designed to meet the objectives of the statute. However, this process is being modified this year to include a checklist to be used to document what areas of the facility have been inspected; and a rating system will be implemented regarding the overall condition of the facility.

Unplanned Capital Expenditures

The law clearly provides that "...the Board 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 health and safety of patrons, employees or horses..." Before any approval for withdrawal from the CIF account is approved, the Board not only reviews the item but also the condition of the entire facility. The Board has repeatedly demonstrated this by periodically denying or deferring several CIF requests when such issues warranted.

We strongly disagree that the Board has not been adequately maintaining the reporting structure that is required by the Law regarding this area.

However, the suggested recommendation does provide for a useful managerial tool. Therefore, the process regarding request for reimbursement for "unplanned" capital expenditures was implemented last year as a result of this audit. Tracks are now required to provide written documentation for request for reimbursement for any expenditure not included in the capital improvement budget.

Yonkers Raceway

The law requires that an inspection occur annually and prior to authorization of expenditure. While Yonker's Raceway may not have submitted a budget each year the Board has performed inspections of the facility.

The plan Yonker's submitted for reimbursement for demolition of its grandstand was treated as the plan for expenditure of CIF funds as required under Section 319(b). Since the Board is required by statute to approve the plan to use CIF funds only, and these cost accounted for all the available CIF funds for the years in question, this requirement was effectively met.

Additionally, the annual inspections have not brought to light any issues from the horsemen or others who would have requested the funds be used for another purpose. In addition, in an effort to ensure the safety and welfare of individuals at the track, Yonkers was required to keep an adequate level of cash in the CIF in the event any emergency issues surfaced.

Now that the grandstand demolition cost has been fully reimbursed, Yonkers has been required to submit an annual capital improvement plan in the same form as the other tracks.

Deposits into CIF Accounts

Accuracy of CIF Withholding Calculations

Once again, while the recommendation made in this section is appropriate, fundamental concepts noted must be clarified. First, it is wrong to state that the Board has "no" assurance the CIF calculations are accurate. As listed in your report, the Department of Taxation and Finance tests the tote systems upon implementation

* Note

* State Comptroller's Note: We revised our report to reflect that the Board has "less assurance".

and whenever there are material modifications. Further, it is acknowledged that with the exception of one track each facility is audited and some tote vendors also have had their systems audited. This combined with the

annual review staff performs of the CIF accounts provides the Board reasonable assurance that the calculations provided are accurate.

A full review of Generally Accepted Auditing Standards (GAAS) relative to financial statement reporting reveals that no mention of audit testing performed on tote operations is required to be included in the audit report of those statements. Confirmation that the tote system of each track has been tested is secured by Board staff contacting individual track auditors as they have done for years. The comment that this was not done is erroneous.

Substantially all track and OTB revenue is derived through the totalisator system. It is incumbent on the independent auditor and OSC to consider this when auditing these organizations. Specifically, with respect to the independent auditor, an understanding of internal controls must be obtained in order to assess the risk of misstatement. This includes considering the effect of the service organization on the user organization's internal control. An SAS-70 report may be considered or, if one does not exist, they must perform additional substantive tests. This is compulsory in order to issue an unqualified opinion.

The report states that OSC reviewed several audited statements for the tracks and OTB's but "found no specific reference that the independent auditors examined the tote system controls and/or tested the tote systems". Staff points out that most reports did not mention audit procedures for any asset, liability, equity, revenue or expense item, because the mention of specific procedures is not required by auditing standards. Instead, the typical unqualified opinion does contain a "scope" paragraph, which describes the nature of the audit.

*
Note

OSC routinely audits OTBs and also NYRA¹. The Board reviews these reports. Again, as with the independent auditor, OSC must consider the effect of the tote system. In fact, this can be illustrated by the fact that OSC recently identified some weakness with NYRA's tote system (See audit 2002-S-31) because of the Breeder's Cup scandal. OSC also acknowledged "corrective action has been taken by the contractor that operates the automated wagering system". It seems contradictory that OSC could make such findings and statements without a careful assessment of the tote system. Further, it is noted that OSC has, in the past, directly audited the tote system. OSC audit 94-S-16 found "NYRA's Autotote² operations found that adequate systems and controls are in place to ensure the accurate recording and reporting of on-track handle and the corresponding pari-mutuel tax, payouts to bettors and NYRA's commission".

The Board has also relied on the testing performed by the Department of Taxation and Finance (Tax) because of their role in auditing the pari-mutuel tax. Tax has been designated as the agency that ensures the tote system functions properly. Our understanding is that the tracks notify Tax of proposed software changes. Tax then conducts tests of the system to ensure it functions properly and, when satisfied, issues a letter to the Board stating the same. The Board, on occasion, will observe the tests. Tax will also consider the tote system on an inquiry basis. In 2002 Board staff referred a complaint about tote system functionality to Tax. Tax examined the complaint and found that "it appears that the Autotote System provides adequate controls in the ticket cashing process and ticket tracking systems".

Staff will continue the process of obtaining further assurance of the reliability of the tote system that was initiated prior to this review.

¹ Although NYRA and the OTB's are not within the scope of the CIF, staff makes the comparison because they use the same tote companies as Finger Lakes and the harness tracks. In many cases they actually network through the same system.

² Autotote is also the vendor for Monticello Raceway, Yonkers Raceway and Saratoga Harness.

* State Comptroller's Note: We have deleted the related statements from our audit report.

With that said, the Board is working with other racing jurisdictions in developing uniform national tote standards. The Board is requiring a detailed audit of each track's tote system as a condition of licensure for 2005. This condition requires each track have such audit completed by October 31, 2005.

Accuracy and Timeliness of Deposits

Since the law does not provide for "timeliness" of deposits of CIF it is unclear as to what would be considered timely. Beginning in 2005, staff is directing the racetracks that deposits into the CIF account are to make by the end of the month following receipt thereof. This will be periodically tested by staff.

Disbursements From CIF Accounts

Competitive Bidding for CIF Projects

Sections 319 and 228-a do not require that racetracks use a competitive bidding process. We are unaware of any state agency that has the authority to direct a privately held for-profit corporation to bid for goods and services. Moreover, we question the legality of doing so without specific statutory mandate.

Staff believes the comparison the report makes to the Thoroughbred Racing Capital Improvement Fund and the New York Racing Association (NYRA) is fundamentally flawed. The Fund is a public-benefit corporation that loans state money that would otherwise be turned over to the general fund of the state of New York. The Fund loans the money to a non-profit racing association that turns its profits over to the state of New York. The non-profit racing association operates the tracks under a franchise agreement with the state and is subject to explicit statutory requirements for competitive bidding (See Racing Law Section 213(5)). The state's interest in the matter is obvious. Staff further notes that the mandatory competitive bidding by the non-profit racing association is in direct contrast to the lack of such requirements in Sections 228-a and 319.

We also note that while OSC staff illustrated the bidding requirements required by NYRA it did not use the same monetary threshold when reviewing projects at other racetracks. NYRA is required to use competitive bidding only on contracts in excess of \$250,000. Virtually none of the racetracks have submitted requests for capital projects in excess of \$250,000. In fact, many items requested for reimbursement do not even reach the State purchasing guidelines of \$15,000. Furthermore five of the eight tracks' Capital Improvement Funds earned less than \$100,000 in 2002.

Notwithstanding the above, staff does periodically check for reasonableness of prices paid for capital projects before approval for reimbursement from the capital improvement fund is granted. For instance, the amounts paid for vehicles are compared to the "Kelley Blue Book". Staff may also periodically inquire for information relative to bids for capital projects from those tracks that implement such a system. However, since this is not a requirement, supporting documentation is not always requested. The procedures are documented and have been provided to OSC staff.

Use of CIF Funds for Capital Projects Related to Video Lottery Terminals

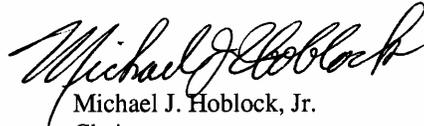
Typically the Board will issue directives or promulgate rules only after a matter is formally presented or the Law directs it to do so. With respect to CIF money and VLT's, no track has formally asked the Board for an

interpretation or applied for reimbursement. However, the Board has informally conveyed to several tracks that requests for reimbursement for expenses from the CIF account solely and directly related to VLT operations

will not be granted. Since arguably almost any expenditure spent at a facility with VLT's could be considered indirectly related to VLT's, indirect expenditures will be considered on a case-by-case basis.

I would like to thank you and your staff for a professional and productive audit of the Board's oversight of capital improvement funds at the seven harness racetracks and Finger Lakes Racetrack.

Very Truly Yours



Michael J. Hoblock, Jr.
Chairman

Cc: Robert Barnes
Cheryl Buley