

5 percent of the pilotage fees. These fees are estimated to exceed expenditures by \$15,490 in 1951-52, and this amount will be transferred to the General Fund.

We recommend approval of the amount requested.

HORSE RACING BOARD

ITEM 230 of the Budget Bill

Budget page 709
Budget line No. 8

For Support of Horse Racing Board From the Fair and Exposition Fund

Amount requested.....	\$209,999
Estimated to be expended in 1950-51 Fiscal Year.....	129,371
Increase (62.3 percent).....	\$80,628

Summary of Increase

	Total increase	INCREASE DUE TO		Budget page	Line No.
		Work load or salary adjustments	New services		
Salaries and wages.....	\$77,432	\$4,185	\$73,247	709	69
Operating expense.....	3,470	—30	3,500	710	20
Equipment.....	—274	—274	—	710	27
Total increase.....	\$80,628	\$3,881	\$76,747		

RECOMMENDATIONS

Amount budgeted.....	\$209,999
Legislative Auditor's recommendation.....	133,252
Reduction.....	\$76,747

ANALYSIS

The budget request for the California Horse Racing Board for 1951-52 is an increase of \$80,628, or 62.3 percent over estimated expenditures for 1950-51. Of this amount \$3,881 represents normal increase due to salary increments and an estimated increase in the number of racing days. We recommend approval of this part of the request for increase. The balance, or \$76,747, represents the cost of proposed new services, particularly the payment of stewards and veterinarians heretofore employed by and paid by the racing associations. We recommend the disapproval of this amount consisting of the following items:

Item	Amount	Budget page	Line No.
1 Senior file clerk.....	\$2,772	709	57
Steward, major track, part time.....	34,100	709	58
Steward, fair track, part time.....	6,000	709	60
Veterinarian, major track, part time.....	25,575	709	63
Veterinarian, fair track, part time.....	4,800	709	65
Travel expense, staff.....	3,500	710	12
Total recommended reduction.....	\$76,747		

The salaries of the stewards and veterinarians provided are at rates varying from \$60 to \$100 per day for each day of racing at the various classes of tracks involved, i.e., 341 days at major tracks and 80 days at fair tracks.

The senior file clerk is provided chiefly to do record keeping for the veterinarians, and the increase in travel is provided in part to pay the travel expenses of this new employee.

This requested increase does not show as an increase in the requested number of positions in the budget. However, it provides funds for the employment and payment of stewards and veterinarians on a daily fee basis for a total of \$70,475 in increased salaries.

The present rules of the Horse Racing Board provide for the number of officials who are to be in attendance at all race meetings. This rule provides that there shall be three or more stewards. The rules further provide that one of the stewards is to be named by the Horse Racing Board, although he remains an employee of the racing association and his responsibility is no different than the responsibility of all of the stewards for all details of operation of the racing meets. The rules provide that the Horse Racing Board will hold the stewards responsible for the conduct of all race meetings in every detail.

It is the contention of the Horse Racing Board that the amendment to the State Constitution enacted by the approval of Proposition No. 9 adopted on November 7, 1950, makes it mandatory for the Horse Racing Board to employ and to compensate positions which are designated by the board.

Proposition No. 9 amended Sections 4 and 6 of Article XXIV of the State Constitution relating to civil service. The pertinent portion of the amendment provided for the exclusion from the state civil service of stewards and veterinarians of the California Horse Racing Board who are not employed on a full-time basis. The approval of this provision, in the opinion of the Horse Racing Board, makes it mandatory for the board to provide for and pay compensation to stewards and veterinarians as named in the proposition.

In anticipation of this budget request, we have submitted this question to the Legislative Counsel for opinion, and we are advised by the Legislative Counsel that the adoption of Proposition No. 9 had no such effect as is contended by the Horse Racing Board. The pertinent parts of the opinion of the Legislative Counsel are as follows:

“For the purpose of considering this problem we shall assume that the statutory powers of the California Horse Racing Board are sufficiently broad to enable it to employ stewards and veterinarians whose duties would be to supervise racing and perform duties for the benefit of the licensees under the Horse Racing Law. However, we find no specific provision in the law to that effect and it may be noted that the provisions of Section 19510 of the Business and Professions Code provides for the licensing of stewards and veterinarians. While we are here not called upon to answer the question, it seems not completely unreasonable to conclude that the inclusion of stewards and veterinarians along with the other classes of track employees required to be licensed by Section 19510 implies that the law contemplates that they shall be employees of the track rather than the board.

“In our opinion the only effect of the amendment to Section 4 of Article XXIV of the Constitution by Proposition No. 9 is to provide that, insofar as the California Horse Racing Board is authorized by law to employ stewards and veterinarians, and does employ such personnel on a part-time basis, it may do so without regard to the Civil Service Law and without going through the personnel procedures prescribed by that law. The amendment has no other legal effect. This section of the Constitution merely enumerates a series of classes of state officers and employees

who may serve the State outside the merit system established by Article XXIV of the Constitution and the State Civil Service Act. The section is not in itself the source of legal authority for the employment of any of the enumerated classes and we do not find therein any provision in any way implying that there is a duty upon the State or any of its officers to appoint or employ such personnel.”

Not only does the passage of the proposition not have the legal effect of requiring that these positions now be paid by the State of California, but also there is no basis for the assumption that the voters, in approving the amendment, intended that that would be the effect. Nowhere in the analysis of the proposition prepared by the Legislative Counsel and submitted to the voters in the official statements of the Secretary of State, does there appear the statement that the intent or purpose of the proposition was to require the creation of new positions or the assumption of the cost of new positions by the State. Furthermore, no such statement of the effect of the proposition appeared in the printed statements of the advocates of the proposition.

Other statements in support of the payment for these positions, formerly paid by the tracks, are based upon comments made by the Legislative Auditor in our analysis of the budget last year and statements and recommendations of the Assembly Ways and Means Committee in its report to the Legislature. The pertinent part of the report of the Assembly Ways and Means Committee is as follows:

“It is also recommended by your subcommittee that a study be made by the Department of Finance to determine the total cost of the support of the California Horse Racing Board on the basis of a policy which places the total cost of all regularly established functions of the Board on a basis of full State support. At present the various race tracks are gratuitously furnishing clerical service, long distance telephone calls and other services, thereby putting the State under an obligation to the tracks.”

We have recognized for some time the problem which is created by the reliance of the Horse Racing Board upon certain services supplied by the racing associations. As a particular case in point, we observed on one visit to the tracks an instance where an employee of the tracks was assisting at a counter where actual licenses were being issued. There was no question of the integrity of this person and the good faith in which the assistance was given. However, this was the type of assistance which we believe the Horse Racing Board should not accept from employees of the tracks. Both the intent and the statement of the recommendation adopted by the Assembly Ways and Means Committee was that the services in question dealt with the *regularly established functions* of the California Horse Racing Board. These are the primary and direct responsibilities of the board for licensing, regulation, and supervision of racing associations and the supervision of the pari-mutuel system. If the view of the Horse Racing Board as to its responsibility for the payment of these track officials is accepted, it will go a long way toward changing the function of the Horse Racing Board from one of licensing and supervision to one of operation of the tracks. We believe that a clear distinction can and should be made between responsibilities for licensing and regulation and functions of operation. The acceptance of the view of the Horse

Racing Board for the payment this year of the salary of one of the three stewards and the fees of veterinarians at the track could logically lead to the request in future years for the payment of all fees of all officials required at the tracks. The officials which are now required by the Horse Racing Board to be in attendance at all race meetings are as follows:

3 or more stewards	Handicapper
Chief placing judge	Timer
First assistant placing judge	Paddock judge
Second assistant placing judge	Veterinarian, attached to the paddock
Patrol judges	
Clerk of the scales	Racing secretary
Starter	Clerk of the course

The establishment of these positions, or any substantial number of them, as state positions would place the Horse Racing Board in the position of operating as well as regulating horse race meets, which we believe is neither required nor intended by the Horse Racing Act. Furthermore, these positions are fully responsible to the Horse Racing Board for their conduct and the conduct of the racing meets, as is provided by rules of the Horse Racing Board.

We also point out that the inclusion of these positions in the budget was not the result of a Department of Finance study of the cost of regularly established functions of the board, as recommended by the Ways and Means Committee. No such study has been made, nor do we believe that it was intended by the Department of Finance that the inclusion of these positions would accomplish the objective of placing all such regularly established functions on state support.

Although we have not recommended deletion, it should be directed to the attention of the Legislature that another new type of function and responsibility has been accepted by the Horse Racing Board during the year. During the year two positions of track investigator have been converted to a new class of photographer-identifier in order that the board may photograph horses and keep records of registrations of breeders. These have been operating particularly in the fair circuit. This also is the acceptance of an operating function which we believe to be not entirely necessary for enforcement of the horse racing laws and licensing and supervision of the tracks. The Horse Racing Law provides in Section 19562 that the board shall by rule provide for the registration of all "California bred" horses. Records of registration are maintained by various breeders' associations, and the rules of the Horse Racing Board presently provide for the acceptance of these registrations. Section 1801 of the Administrative Code provides that the American Stud Book maintained by the Jockey Club of New York shall be recognized as the sole agency for the registration of thoroughbreds, and no horse shall start in any race at any meeting unless duly registered by name with the registry office of the Jockey Club. Section 2017 provides that the breeder or owner of a "California bred" horse shall register with the California Breeders Association, officially approved by the board as the agency for such registrations.

In our opinion, the intent of the law is that the Horse Racing Board shall provide that there be registration rather than that it accept responsibility for the verification of registrations. We have not recommended the disapproval of these two positions because they have not increased the total number of positions of the board; however, we bring this to the attention of the Legislature in order that this function and the responsibility to perform it could be appraised when there is request on the part of the Horse Racing Board for additional positions of investigator or photographer-identifier.

While the expenses of the Horse Racing Board have been steadily increasing year by year, revenues from the pari-mutuel have been decreasing since the Fiscal Year 1947-48. It will be noted from the table which is given below that the cost per racing day will increase from \$340 for 1950-51 to \$499, for the next fiscal year. This is an increase of 46.8 percent, while revenues are anticipated to decrease by 2.4 percent. Because of the nature of pari-mutuel wagering, there is no direct relationship between revenue and the necessary costs and responsibilities of the board. However, the diminishing revenue from the pari-mutuel system does not appear to justify the assumption of new functions or new costs which are not expressly required by law.

**California Horse Racing Board
Statement of Revenues and Costs**

<i>Year</i>	<i>Number of employees</i>	<i>Days of racing</i>	<i>Horse Racing Board costs</i>	<i>Revenues</i>	<i>Cost per racing day</i>
1939-40	5	263	\$26,135	\$2,832,231	\$99.37
1940-41	6	284	31,039	3,799,115	109.29
1941-42	6	165	28,117	1,515,435	170.41
1942-43	4	117	25,193	1,077,685	215.32
1943-44	4	129	25,179	2,372,392	195.19
1944-45	6	110	22,627	8,261,363	205.70
1945-46	7	340	40,403	22,779,401	118.33
1946-47	11	306	50,606	18,862,519	165.38
1947-48	15	363	91,281	19,996,487	251.46
1948-49	15	367	98,011	17,292,499	267.06
1949-50	15	438	110,847	14,836,382	253.08
1950-51 (Est.)	17	381	129,371	16,241,565	339.56
1951-52 (Est.)	17	421	209,999	15,847,288	498.81

DEPARTMENT OF PUBLIC HEALTH

ITEM 231 of the Budget Bill

Budget page 716
Budget line No. 28

For Support of the Department of Public Health From the General Fund

Amount requested	\$3,924,799
Estimated to be expended in 1950-51 Fiscal Year	3,712,329
Increase (5.7 percent)	\$212,470