§ 183. Election. 1. Election of the education department optional retirement program. (a) Each eligible employee initially appointed on or after July first, nineteen hundred sixty-eight, shall, within thirty days of his entry into service, elect (i) to join either the New York state teachers' retirement system or the New York state employees' retirement system in accordance with the provisions of law applicable thereto or (ii) to elect the education department optional retirement program established pursuant to this part V of this article. Each eligible employee employed by the department prior to July first, nineteen hundred sixty-eight shall make such election on or before December fourth, nineteen hundred sixty-eight. Any such election shall be effective as of the date of entry into service with the department, except that with respect to those eligible employees possessing contracts which may legally be continued under this part and who initially entered into service with the department prior to the effective date of this part, the deferred election shall be effective as of the effective date of this part.

(b) In the event an eligible employee fails to make an election as provided in paragraph (a) of this subdivision, he shall be deemed to have elected membership in the New York state teachers' retirement system. Such membership shall be effective as of the date of entry into service with the department.

(c) The amount, if any, required to be contributed by any employee in accordance with an election, a deferred election or a failure to elect pursuant to paragraph (a) or paragraph (b) of this subdivision shall be collected by payroll deductions in such manner as may be provided by the state comptroller for those persons electing the education department optional retirement program, or in the case of membership in either the New York state employees' retirement system or the New York state teachers' retirement system, by such retirement system. Nothing herein contained shall be construed to authorize or require payment by the state of contributions on account of services rendered prior to the effective date of this part by eligible employees who at the time of their employment with the department chose to continue, on a voluntary basis, coverage similar to that conferred by this part, but shall be construed to authorize continuation of such contracts after the effective date of this part, subject to rules and regulations to be

established by the commissioner.

2. Ineligibility for retirement system membership. Any employee who elects the education department optional retirement program shall be ineligible for membership in either the New York state employees' retirement system or the New York state teachers' retirement system so long as he shall remain employed in the department and shall continue in the education department optional retirement program.

3. (a) Any eligible employee who is a member of either the New York state employees' retirement system or the New York state teachers' retirement system at the time he elects the optional retirement program established pursuant to this part shall be deemed to be a person who discontinues service on the effective date of such election, for the purpose of determining his eligibility for rights and benefits in either such system; provided, however, that if he does not withdraw his accumulated contributions (i) his continued service with the education department while under the optional retirement program shall be deemed to be member service in either the New York state employees' retirement system or the New York state teachers' retirement system for the purpose of determining his eligibility for any vested retirement allowance, retirement allowance or ordinary death benefit under either such system dependent upon a specified period of total service or upon attainment of a specified age while in service or upon death while in service and (ii) the amount of any such benefit to which he or his estate or person designated by him may become entitled under either such system shall be computed only on the basis of service otherwise creditable to him therein and his compensation during such service.

(b) Electing employees and their beneficiaries shall not be entitled to any right or benefit under either the New York state employees' retirement system or the New York state teachers' retirement system other than a vested retirement allowance, retirement allowance or ordinary death benefit to the extent expressly provided for in this section.

4. (a) Subdivision two of this section shall not apply to any eligible employee who has elected the education department optional retirement

program and after June thirtieth, two thousand two, renders service which is creditable in the New York state teachers' retirement system, other than service for which a contribution is made to the education department optional retirement program.

(b) Subdivision three of this section shall not apply to any member of the New York state teachers' retirement system who, after joining such system, elects the education department optional retirement program.

(c) Anything in subdivision three of this section notwithstanding, any eligible employee who is a member of the New York state teachers' retirement system and had elected the education department optional retirement program prior to July first, two thousand two, may obtain credit for service, other than service for which a contribution is made to the education department optional retirement program, which is creditable in such system, was rendered after such member had elected the education department optional retirement program, and was rendered between December first, nineteen hundred ninety-one and June thirtieth, two thousand two, provided (i) such member has rendered at least five years of service credited with the New York state teachers' retirement system at the time such service is credited, and (ii) in the case of such member subject to the provisions of article fourteen or fifteen of the retirement and social security law, the member contributes three percent of the wages earned for such service together with interest at the rate of five percent per annum compounded annually from the date of such service until payment is made.

(d) Anything in this subdivision four notwithstanding, service as an eligible employee for which a contribution is made to the education department optional retirement program shall neither entitle any eligible employee to join or rejoin the New York state teachers' retirement system nor be creditable in such system.