§ 384. Optional retirement of certain police officers and firefighters. a. Any member of the police and fire retirement system who is an officer or member of any organized fire department or organized police force or police department of any county, city, town, village, fire district, police district or participating employer may elect to contribute to the police and fire retirement system on the basis of retirement upon his or her completion of twenty-five years of service as an officer or member of any such force or department on an allowance of:

1. One-fiftieth of his final average salary for each year of total service as such officer or member, and

2. One-seventieth of his final average salary for each year of total service for which he otherwise shall be entitled to credit, but not exceeding in the aggregate one-half of his final average salary.

b. Any officer or member of such an organized fire department or organized police force or department may elect to contribute to the police and fire retirement system pursuant to this section within one year after he or she becomes such an officer or member, or on or before January first, nineteen hundred seventy, or within one year after his or her employer assumed, or assumes in whole or in part, the additional cost to the police and fire retirement system resulting from an election pursuant to this section.

bb. On and after April first, nineteen hundred sixty-seven only firefighters, police officers or officers of such a fire department or police force may elect to contribute to the police and fire retirement system on the basis of retirement pursuant to this section and, as to members so electing, in addition to service in war after world war I, as defined in section three hundred two of this article, only credit for service:

1. As such a firefighter, police officer or officer, or

2. As a member or officer of the state police, or

3. In the regional state park police service, shall be included in computing years of police or fire service for retirement pursuant to this section.

c. Elections made pursuant to this section shall be in writing and shall be duly acknowledged and filed with the comptroller. Any member who files such an election pursuant to this section may withdraw it after it has been filed for at least one year. Such withdrawal shall be by written notice duly acknowledged and filed with the comptroller. After such withdrawal such member shall contribute to the police and fire retirement system as otherwise provided in this article. Any member who has contributed the entire additional cost to the police and fire retirement system resulting from an election pursuant to this section, may withdraw such entire additional amount in the event that he or she so withdraws such election.

d. Contributions for additional costs of elections to contribute pursuant to this section shall be payable as follows:

1. Except as otherwise provided in this subdivision, a member electing to contribute to the police and fire retirement system pursuant to this section shall pay the entire additional cost to the police and fire retirement system resulting from such election by means of a rate of contribution. Such rate shall be computed to provide, upon his or her completion of twenty-five years of service as an officer or member of any such department or force, the portion of the retirement allowance for which he or she is required to provide pursuant to this section. Such rate of contribution shall be determined in a manner similar to that provided in section three hundred twenty-three of this article and subject to the provisions of paragraph four of this subdivision, the contributions based thereon shall be paid while such member is an officer or member of any such department or force.

2. The member's employer, however, by appropriate action, may (a) in its initial action under this section, elect to assume all of the additional cost on account of service as an officer or member of any

such department or force rendered prior to the effective date of such election and (b) in any subsequent action, as hereafter provided in this paragraph, elect to assume all of the additional cost on account of service as an officer or member of any such other prior department or force rendered prior to the effective date of such subsequent election and, in addition may in its initial action under this section, elect to assume any multiple of twenty-five per centum of such additional cost on account of such service for such current employer rendered on and after the effective date of such initial election. Any subsequent election changing the percentage of additional cost assumed by an employer shall apply only to service rendered for such employer on and after the effective date of such subsequent election. The employer shall pay the additional cost so assumed by any such election by means of annual contributions which shall be determined by the actuary and paid by the employer in the same manner as the contributions required under section three hundred twenty-three of this article. An employer, which in its initial action elected to assume all of the additional cost on account of service only as an officer or member of its police or fire department rendered prior to the effective date of such election may, on or before April first, nineteen hundred sixty-nine, elect to assume all of the additional cost, including the cost of the necessary actuarial re-evaluation on account of service rendered prior to the effective date of the initial action hereunder, as an officer or member of any such organized fire department or organized police force or department of any county, city, town, village, fire district, police district, or participating employer other than such employer. Such rate shall be computed to provide the appropriate pension benefits under paragraph two of subdivision e of this section.

3. Where the employer elected or elects to assume fifty per centum of the additional cost on account of service rendered on and after the effective date of any such election, the member shall thereafter contribute at a rate computed by the actuary to provide, upon retirement after twenty-five years of service as an officer or member of any such department or force or upon the attainment of age sixty with less than twenty-five years of such service, an annuity of one-one hundredth of final average salary for each year of such service rendered on and after

the effective date of such election. If the employer assumed or assumes a percentage other than fifty per centum of the additional cost on account of service rendered on and after the effective date of any such election, the member's rate of contribution shall be modified so that it is computed to provide the portion of the retirement allowance for which he is required to provide.

Such member's rate of contribution pursuant to this subdivision d shall be appropriately reduced pursuant to section three hundred seventy-a of this article for such period of time as his employer contributes pursuant to such section toward pensions-providing-for-increased-take-home-pay provided, however, that such member may by written notice duly acknowledged and filed with the comptroller make an election to waive such reduction as provided by subdivision j of section three hundred twenty-one of this article. One year or more after the filing thereof, a member may withdraw any such election by written notice duly acknowledged and filed with the comptroller.

4. No such member shall be required to continue contributions after completing twenty-five years of such service.

5. For actuarial purposes relative to rates or amounts of contributions to the funds of the police and fire retirement system, service of a member making an election pursuant to this section shall, as to his or her service and status subsequent thereto, be deemed continuous and constant. If the continuity of such service be interrupted or such status be changed, however, appropriate changes as may be necessary for actuarial purposes shall be made in such rates and amounts.

e. Computation of retirement allowances pursuant to this section.

1. Computation of retirement allowance where member has elected to pay the entire additional cost:

A member who has elected to contribute pursuant to this section and

who has made the contributions required by this section shall be entitled to retire on or after his completion of twenty-five years of service as an officer or member of any such fire department, police force or police department, or upon the attainment of age sixty with less than twenty-five years of such service, by filing an application therefor in a manner similar to that provided in section three hundred seventy of this article. He thereupon shall receive, upon retirement, a retirement allowance which shall not exceed one-half of his final average salary. Such retirement allowance shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he may then be entitled, if any, and

(c) A pension of one-one hundredth of his final average salary for each year of service as an officer or member of any such fire department, police force or police department, and

(d) An additional pension of one-one hundred fortieth of his final average salary for each year of member service for which he otherwise shall be entitled to credit and which was earned by him since he last become a member, and

(e) If he has had one or more years of service as a member, an additional pension which shall be equal to one-fiftieth of his final average salary for each year of prior service as an officer or member of any such fire department, police force or police department, plus one-seventieth of his final average salary for each year of prior service to which he otherwise shall be entitled to credit.

(f) Upon completion of twenty-five years service, an additional pension, if required, of such amount as shall be necessary to increase the total amount of the benefits provided herein to one-half of his final average salary. The pension provided by this sub-paragraph shall be payable only if a member retires from service on or before the last day of the calendar month next succeeding the calendar month in which he attains age sixty-two. Provided, however, that in the case of any member who attained the age of sixty-two on or before July first, nineteen hundred sixty-six, to be eligible for additional pension credit under this sub-paragraph, his service shall be terminated and he shall retire

on or before December thirty-first, nineteen hundred sixty-seven. For the purpose only of determining the amount of the pension provided in this paragraph, the annuity shall be computed as it would be if it were not reduced by the actuarial equivalent of any outstanding loan, and if it were not increased by the actuarial equivalent of any additional contributions, and if it were not reduced by reason of the member's election to decrease his annuity contributions to the retirement system in order to apply the amount of such reduction in payment of his contributions for old-age and survivors insurance coverage.

2. Computation of retirement allowance where employer has elected to pay all or part of the additional cost:

A member who has elected to contribute pursuant to this section and who has made the contributions required by this section, and whose employer has by appropriate action elected to pay all or part of the additional cost of the benefits provided by this section, shall be entitled to retire on or after his completion of twenty-five years of service as an officer or member of any such fire department, police force or police department, or upon the attainment of age sixty with less than twenty-five years of such service, by filing an application therefor in a manner similar to that provided in section three hundred seventy of this article. He thereupon shall receive, upon retirement, a retirement allowance which shall not exceed one-half of his final average salary. Such retirement allowance shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension which the actuarial equivalent of the reserve-for-increased-take-home-pay to which he may then be entitled, if any, and

(c) A pension for each year of service as an officer or member of any such fire department, police force or police department, rendered on and after the effective date of the employer's election under this section, computed pursuant to the one of the following four formulae which is appropriate:

(1) If his employer elected to pay twenty-five per centum of the additional cost on account of such service rendered on and after the

effective date of such election, such pension shall be six-seven hundredths (6/700) of his final average salary for each year of such service after such date, or

(2) If his employer elected to pay fifty per centum of the additional cost on account of such service rendered on and after the effective date of such election, such pension shall be one-one hundredth (1/100) of his final average salary for each year of such service after such date, or

(3) If his employer elected to pay seventy-five per centum of the additional cost on account of such service rendered on and after the effective date of such election, such pension shall be eight-seven hundredths (8/700) of his final average salary for each year of such service after such date, or

(4) If his employer elected to pay one hundred per centum of the additional cost on account of such service rendered on and after the effective date of such election, such pension shall be nine-seven hundredths (9/700) of his final average salary for each year of such service after such date, and

(d) An additional pension for such service, exclusive of prior service, rendered before the effective date of the employer's initial election under this section, of one-fiftieth of his final average salary for each year of such service, minus a sum equal to the annuity provided out of the normal contributions, with accumulated interest thereon, made by the member during such period and minus a sum which is the actuarial equivalent of the reduction in his contributions pursuant to the provisions of section three hundred seventy-a of this article, if any, during such period, with regular interest thereon, and

(e) An additional pension of one-one hundred fortieth of his final average salary for each year of member service for which he otherwise shall be entitled to credit and which was earned by him since he last became a member, and

(f) If he has had one or more years of service as a member, an additional pension which shall be equal to one-fiftieth of his final average salary for each year of such service, which is credited as prior service, plus one-seventieth of his final average salary for each year of prior service for which he otherwise shall be entitled to credit.

(g) Upon completion of twenty-five years service, an additional pension, if required, of such amount as shall be necessary to increase

the total amount of the benefits provided herein to one-half of his final average salary. The pension provided by this sub-paragraph shall be payable only if a member retires from service on or before the last day of the calendar month next succeeding the calendar month in which he attains age sixty-two. Provided, however, that in the case of any member who attained the age of sixty-two before or within one month after his employer first elected to assume all or part of the additional cost of service as provided by paragraph two of subdivision d of this section, to be eligible for additional pension credit under this sub-paragraph, his service shall be terminated and he shall retire within three months after his employer so elects or on or before December thirty-first, nineteen hundred sixty-eight, whichever shall last occur.

For the purpose only of determining the amount of the pension provided in this paragraph, the annuity shall be computed as it would be if it were not reduced by the actuarial equivalent of any outstanding loan, and if it were not increased by the actuarial equivalent of any additional contributions, and if it were not reduced by reason of the member's election to decrease his annuity contributions to the retirement system in order to apply the amount of said reduction in payment of his contributions for old-age and survivors insurance coverage.

f. In the event a member shall continue in service after twenty-five years of total creditable service, as defined in subdivision bb of this section, there shall be added to his pension upon retirement a sum equal to one-sixtieth of his final average salary for each completed additional year of service after twenty-five years.

g. The increased pension provided for in subdivision f hereof shall be conditioned upon the participating employer electing in a manner similar to that provided in subdivision a of section three hundred thirty of this article to provide this added benefit and assuming the additional cost thereof on account of all of the officers and members of its organized fire department or organized police force or department who are contributing under the provisions of this section. Such increased pensions to the members in either department shall be paid from

additional contributions made by the appropriate participating employer on account of such members. The actuary of the retirement system shall compute the additional contributions for each employer who elects to provide the special benefits provided under subdivision f of this section. Such additional contributions shall be computed on the basis of contributions during the prospective service of such members which will cover the liability of the retirement system for such extra pensions. Upon approval of the comptroller, such additional contributions shall be certified by him to the fiscal officer of the participating employer. The amount thereof shall be included in the annual appropriation of the participating employer for its police and fire departments. Such amount shall be paid on the warrant of the fiscal officer of the participating employer to the pension accumulation fund of the retirement system.

h. Any officer or member of such organized fire department or organized police force or department, may, within one year after he becomes such officer or member or within one year after his employer assumes the additional cost therefor, whichever shall last occur, elect to receive the additional benefits provided for by subdivision f hereof. Any officer or member who elects to receive such benefits shall be separated from service on the first day of the calendar month next succeeding his attainment of age sixty-two and the completion of twenty-five years of service, provided, however, that in the case of any officer or member who attained the age of sixty-two before his employer assumed the additional cost therefor, or who attains the age of sixty-two within one month after his employer assumes the additional cost therefor, to be eligible for additional pension credit under subdivision f of this section, his service shall be terminated and he shall be retired within three months after his employer assumes the additional cost therefor or on or before December thirty-first, nineteen hundred sixty-eight, whichever shall last occur, and provided further that a member who is a chief or commanding officer of a police department or police force shall retire on the first day of the calendar month next succeeding his attainment of age sixty-five; a member who is a chief or commanding officer of a police department or police force, who attained age sixty-five before his employer elected to provide this added benefit and has rendered twenty-five years of total creditable

service, shall retire on or before December thirty-first, nineteen hundred sixty-eight, or within one year after his employer assumes the additional cost therefor, whichever shall last occur.

i. In lieu of the provisions of subdivisions f, g and h and in the event a member shall continue in service after twenty-five years of total creditable service, as defined in subdivision bb of this section, there shall be added to his pension upon retirement a sum equal to one-one hundred twentieth of his final average salary for each completed additional year of service after twenty-five years.

j. The increased pension provided for in subdivision i hereof shall be conditioned upon the participating employer electing in a manner similar to that provided in subdivision a of section three hundred thirty of this article to provide this added benefit and assuming the additional cost thereof on account of all of the officers and members of its organized fire department or organized police force or department who are contributing under the provisions of this section. Such increased pensions to the members in either department shall be paid from additional contributions made by the appropriate participating employer on account of such members. The actuary of the retirement system shall compute the additional contributions for each employer who elects to provide the special benefits provided under subdivision i of this section. Such additional contributions shall be computed on the basis of contributions during the prospective service of such members which will cover the liability of the retirement system for such extra pensions. Upon approval of the comptroller, such additional contributions shall be certified by him to the fiscal officer of the participating employer. The amount thereof shall be included in the annual appropriation of the participating employer for its police and fire departments. Such amount shall be paid on the warrant of the fiscal officer of the participating employer to the pension accumulation fund of the retirement system.

k. Any officer or member of such organized fire department or organized police force or department, may, within one year after he becomes such officer or member or within one year after his employer assumes the additional cost therefor, whichever shall last occur, elect

to receive the additional benefits provided for by subdivision i hereof. Any officer or member who elects to receive such benefits shall be separated from service on the first day of the calendar month next succeeding his attainment of age sixty-two and the completion of twenty-five years of service, provided, however, that in the case of any officer or member who attained the age of sixty-two before his employer assumed the additional cost therefor, or who attains the age of sixty-two within one month after his employer assumes the additional cost therefor, to be eligible for additional pension credit under subdivision i of this section, his service shall be terminated and he shall be retired within three months after his employer assumes the additional cost therefor, or on or before December thirty-first, nineteen hundred sixty-eight, whichever shall last occur, and provided further that a member who is a chief or commanding officer of a police department or police force shall retire on the first day of the calendar month next succeeding his attainment of age sixty-five; a member who is a chief or commanding officer of a police department or police force, who attained age sixty-five before his employer elected to provide this added benefit and has rendered twenty-five years of total creditable service, shall retire on or before December thirty-first, nineteen hundred sixty-eight, or within one year after his employer assumes the additional cost therefor, whichever shall last occur.

l. Upon retirement of any member pursuant to this section, any additional amounts credited to the member's annuity savings account pursuant to subdivision b of section three hundred thirty of this article shall be treated as excess contributions and shall be used to provide an annuity in addition to the annuity prescribed by this section. Any other amounts credited to the member's annuity savings account, except the amounts contributed or required to be contributed under this section and except such amounts as are required to produce the retirement allowance provided by subdivision e of this section, may at the option of the member at the time of retirement be withdrawn or used to provide an annuity in addition to the annuity prescribed by this section.

m. Service in the division of state police in the executive department

shall be considered allowable service in an organized fire department or an organized police force or police department for the purpose of this section, provided that the member pays or has paid the required contributions.

n. Notwithstanding any provision of subdivision bb or g of this section, service as a fire chief-airport, firefighter-airport, and fire captain-airport of the county of Monroe shall be included for the purpose of computing police or fire service for retirement pursuant to this section, provided the county of Monroe has elected to participate in the New York state and local police and fire retirement system on the behalf of its fire chief-airport, firefighters-airport, and fire captains-airport and elects to provide the benefit of this section.

* o. The benefits hereinabove provided shall be payable to a member, unless at the date of retirement, such member would otherwise be entitled to a greater benefit under other provisions of this article had he withdrawn from this section, in which event such greater benefits shall be payable.

* NB There are 2 sb o's

* o. Any member of the New York state and local police and fire retirement system who was a member of the New York city employees' retirement system while employed as a New York city police department trainee or a New York city transit officer trainee and whose membership therein was terminated by his attaining membership in the New York state and local police and fire retirement system, may purchase credit in the New York state and local police and fire retirement system for prior creditable service in the New York city employees' retirement system earned while employed as a police department trainee or transit officer trainee and shall have the period of such prior service credit counted as police service for the purpose of determining the amount of his pension and retirement allowance and period of service needed for retirement. In order to purchase credit pursuant to this subdivision, the member shall pay into the pension accumulation fund the contribution amount as determined by the comptroller, either in a lump sum or in installments, necessary to pay in full the cost of such previous service. If such payment be made in installments, the same shall be paid within a period no greater than the number of months of such member

service granted.

* NB There are 2 sb o's

p. Notwithstanding any provision of this section, service as an aircraft rescue firefighter employed by the Niagara frontier transportation authority shall be included for the purpose of computing police or fire service for retirement pursuant to this section, provided such authority has elected to participate in the New York state and local police and fire retirement system on the behalf of its aircraft rescue firefighters and elects to provide the benefit of this section.

q. The provisions of this section shall be controlling notwithstanding any provision of this article to the contrary.