§ 445-c. Optional twenty-year improved benefit retirement program for New York city correction members of the rank of captain or above. a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Retirement system" shall mean the New York city employees' retirement system.

2. "New York city correction officer of the rank of captain or above" shall mean a member of the uniformed force of the department of correction of the city of New York who holds the rank of correction captain; assistant deputy warden, also known as warden correction level I; deputy warden or deputy warden-in-command, also known as warden correction level II; warden or deputy chief, also known as warden correction level III; or chief of department, also known as warden correction in the correction service of such city.

3. "New York city correction member of the rank of captain or above" shall mean a member of the retirement system who is subject to the provisions of this article, who is a New York city correction officer of the rank of captain or above and who has elected to contribute to the retirement system on the basis of a minimum retirement period of twenty years of credited service pursuant to the optional retirement provisions of section 13-155 of the administrative code.

4. "Twenty-year improved benefit retirement program for captains and above" shall mean all the terms and conditions of this section.

5. "Starting date of the twenty-year improved benefit retirement program for captains and above" shall mean the effective date of this section, as such date is certified pursuant to section forty-one of the legislative law.

6. "Participant in the twenty-year improved benefit retirement program for captains and above" shall mean any New York city correction member of the rank of captain or above who, under the applicable provisions of

subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-year improved benefit retirement program for captains and above, as applicable to him or her.

7. "Administrative code" shall mean the administrative code of the city of New York.

8. "Accumulated deductions" shall mean accumulated deductions as defined in subdivision eleven of section 13-101 of the administrative code.

b. Election of twenty-year improved benefit retirement program for captains and above. 1. Subject to the provisions of paragraph five of this subdivision and of subparagraph (iii) of paragraph seven of subdivision d of section four hundred forty-five-a of this article, any person who is a New York city correction member of the rank of captain or above on the starting date of the twenty-year improved benefit retirement program for captains and above may elect to become a participant in the twenty-year improved benefit retirement program for captains and above by filing, within ninety days after such starting date, a duly executed application for such participation with the retirement system, provided he or she is such a correction member of the rank of captain or above on the date such application is filed.

2. Subject to the provisions of paragraph five of this subdivision and of subparagraph (iii) of paragraph seven of subdivision d of section four hundred forty-five-a of this article, any person who becomes a New York city correction member of the rank of captain or above after the starting date of the twenty-year improved benefit retirement program for captains and above may elect to become a participant in the twenty-year improved benefit retirement program for captains and above by filing, within ninety days after becoming such a correction member, a duly executed application for such participation with the retirement system, provided he or she is such a correction member of the rank of captain or above on the date such application is filed.

3. Any election to be a participant in the twenty-year improved benefit retirement program for captains and above shall be irrevocable.

4. Where any participant in the twenty-year improved benefit retirement program for captains and above shall cease to hold the position of New York city correction officer of the rank of captain or above, he or she shall cease to be such a participant and, during any period in which such person does not hold the position of New York city correction officer of the rank of captain or above, he or she shall not be a participant in the twenty-year improved benefit retirement program for captains and above and shall not be eligible for the benefits of subdivision c of this section.

5. Where any participant in the twenty-year improved benefit retirement program for captains and above terminates service as a New York city correction officer of the rank of captain or above and returns to such service as a New York city correction member of the rank of captain or above at a later date, he or she shall again become such a participant on that date.

c. Notwithstanding any other provision of law to the contrary, and subject to the provisions of paragraph nine of subdivision d of this section, where a participant in the twenty-year improved benefit retirement program for captains and above is otherwise qualified for a retirement allowance pursuant to section 13-155 of the administrative code, then:

1. that participant, while he or she remains a participant, shall not be subject to the provisions of subdivision a of section four hundred forty-five of this article; and

2. if that participant, while such a participant, retires for service, he or she shall not be subject to the provisions of section four hundred forty-four of this article; and

3. the maximum retirement benefit computed without optional modification payable to that participant upon his or her retirement for

service as such a participant shall equal that payable upon completion of thirty years of service; and

4. notwithstanding any other provision of this article to the contrary, that participant shall be entitled to the application of the same provisions with respect to credited service as now or hereinafter apply to a similarly situated correction officer under this article who is not a participant in such retirement program.

d. Additional member contributions. 1. In addition to the member contributions required pursuant to section 13-155 of the administrative code, each participant in the twenty-year improved benefit retirement program for captains and above shall contribute (subject to the applicable provisions of section 13-125.1 of the administrative code) an additional percentage of his or her compensation to the retirement system in accordance with the following schedule:

(i) each such participant who became a New York city correction member of the rank of captain or above prior to November first, nineteen hundred ninety-two shall contribute an additional five and fifty-nine one-hundredths percent of his or her compensation earned from all service as a New York city correction member of the rank of captain or above rendered on and after the starting date of the twenty-year improved benefit retirement program for captains and above;

(ii) each such participant who became or becomes a New York city correction member of the rank of captain or above for the first time on or after November first, nineteen hundred ninety-two shall contribute an additional seven and forty-six one-hundredths percent of his or her compensation earned from all service as a New York city correction member of the rank of captain or above rendered on and after the starting date of the twenty-year improved benefit retirement program for captains and above.

2. A participant in the twenty-year improved benefit retirement program for captains and above shall contribute additional member contributions only until he or she is eligible to retire with twenty years of credited service under such retirement program.

3. Commencing with the first full payroll period after each person become a participant in the twenty-year improved benefit retirement program for captains and above, additional member contributions at the applicable rate specified in paragraph one of this subdivision shall be deducted (subject to the applicable provisions of section 13-125.1 of the administrative code) from the compensation of such participant on each and every payroll of such participant for each and every payroll period.

4. In addition to the member contributions required pursuant to section 13-155 of the administrative code, and the additional member contributions required pursuant to paragraph one of this subdivision, each participant in the twenty-year improved benefit retirement program for captains and above who, prior to becoming such a participant, rendered service as a New York city correction member of the rank of captain or above on or after December nineteenth, nineteen hundred ninety and prior to the starting date of the twenty-year improved benefit retirement program for captains and above and/or service as a New York city correction member below the rank of captain on or after December nineteenth, nineteen hundred ninety and prior to becoming such a participant shall make retroactive additional member contributions to the retirement system based on such service in accordance with the following schedule:

(i) each such participant who became a New York city correction member of the rank of captain or above prior to November first, nineteen hundred ninety-two shall contribute an amount equal to five and fifty-nine one-hundredths percent of his or her compensation earned from:

(A) all service as a New York city correction member of the rank of captain or above rendered on and after December nineteenth, nineteen hundred ninety and prior to the starting date of the twenty-year improved benefit retirement program for captains and above; and

(B) all service as a New York city correction member below the rank of captain rendered on and after December nineteenth, nineteen hundred ninety and prior to becoming a participant in the twenty-year improved benefit retirement program for captains and above;

(ii) each such participant who became or becomes a New York city

correction member of the rank of captain or above for the first time on or after November first, nineteen hundred ninety-two shall contribute an amount equal to seven and forty-six one-hundredths percent of his or her compensation earned from:

(A) all service as a New York city correction member of the rank of captain or above rendered on and after November first, nineteen hundred ninety-two and prior to the starting date of the twenty-year improved benefit retirement program for captains and above; and

(B) all service as a New York city correction member below the rank of captain rendered on and after December nineteenth, nineteen hundred ninety and prior to becoming a participant in the twenty-year improved benefit retirement program for captains and above.

5. Each participant in the twenty-year improved benefit retirement program for captains and above who is required to make retroactive additional member contributions in accordance with the provisions of paragraph four of this subdivision shall be charged with a contribution deficiency consisting of the amounts of such retroactive additional member contributions determined in accordance with such paragraph four, together with interest thereon compounded annually, and

(i) such interest on each such amount shall accrue from the end of the payroll period for which such amount would have been deducted from compensation if he or she had been a participant at the beginning of that payroll period and such deduction had been required for such payroll period, until such amount is paid to the retirement system; and

(ii) the rate of interest to be applied to each such amount shall be equal to the rate or rates of interest required by law to be used during that same period to credit interest on the accumulated deductions of retirement system members.

6. Where a person who became or becomes a participant in the twenty-year improved benefit retirement program for captains and above has rendered less than fifteen years of credited service as of the date he or she became or becomes a New York city correction member of the rank of captain or above, the amount of the contribution deficiency charged to such a participant pursuant to paragraph five of this subdivision, consisting of retroactive additional member contributions

plus interest on such amounts, shall be reduced by an amount equal to the additional member contributions which such participant made pursuant to paragraph one of subdivision d of section four hundred forty-five-a of this article as a participant in the twenty-year improved benefit retirement program for correction officers below the rank of captain (together with any interest thereon) which are on deposit in the contingent reserve fund of the retirement system on the date such person became or becomes a participant in the twenty-year improved benefit retirement program for captains and above.

7. (i) Subject to the provisions of subparagraph (ii) of this paragraph, where any additional member contributions required by paragraph one of this subdivision are not paid by deductions from a participant's compensation pursuant to paragraph three of this subdivision:

(A) that participant shall be charged with a contribution deficiency consisting of such unpaid amounts, together with interest thereon, compounded annually; and

(B) such interest on each unpaid amount shall accrue from the end of the payroll period for which such amount would have been deducted from compensation if he or she had been a participant at the beginning of that payroll period, until such amount is paid to the retirement system; and

(C) the rate of interest to be applied to each such amount during the period for which interest accrues on that amount shall be equal to the rate or rates of interest required by law to be used during that same period to credit interest on the accumulated deductions of retirement system members.

(ii) Except as otherwise provided in subparagraph (iii) of this paragraph, no interest shall be due on any unpaid additional member contributions which are not attributable to the period prior to the first full payroll period referred to in paragraph three of this subdivision.

(iii) Should any person who, pursuant to paragraph eleven of this subdivision, has withdrawn any additional member contributions (and any interest paid thereon) again become a participant in the twenty-year improved benefit retirement program for captains and above pursuant to

paragraph five of subdivision b of this section, an appropriate amount shall be included in such participant's contribution deficiency (including interest thereon as calculated pursuant to subparagraph (i) of this paragraph) as if such additional contributions had never been made.

8. The board of trustees of the retirement system may, consistent with the provisions of this subdivision, promulgate regulations for the payment of such additional member contributions, and any interest thereon, by a participant in the twenty-year improved benefit retirement program for captains and above (including the deduction of such contributions, and any interest thereon, from his or her compensation).

9. Where a participant, who is otherwise eligible to have the benefits of subdivision c of this section applied to the calculation of his or her retirement allowance, did not, while he or she was a correction member of the rank of captain or above, pay the entire amount of a contribution deficiency chargeable to him or her pursuant to paragraphs five and/or seven of this subdivision, that participant, nevertheless, shall be entitled to the benefits of subdivision c of this section, provided, however, that the retirement allowance, as modified by the provisions of such subdivision c, shall be reduced by the actuarial equivalent of the amount of any contribution deficiency pursuant to such paragraphs five and/or seven which such participant did not pay while he or she was a correction member of the rank of captain or above.

10. Where a participant has not paid in full any contribution deficiency chargeable to him or her pursuant to paragraphs five and/or seven of this subdivision, and a benefit, other than a refund of a member's accumulated deductions, or a refund of additional member contributions pursuant to paragraph eleven of this subdivision, or a retirement allowance which has been reduced pursuant to the provisions of paragraph nine of this subdivision becomes payable by the retirement system to the participant or to his or her designated beneficiary or estate, the actuarial equivalent of any such unpaid amount shall be deducted from the benefit otherwise payable.

11. (i) All additional member contributions required by this subdivision (and any interest thereon) which are received by the retirement system shall be paid into its contingent reserve fund and shall be the property of the retirement system. Such additional member contributions (and any interest thereon) shall not for any purpose be deemed to be accumulated deductions of a member of the retirement system while he or she is a participant in the twenty-year improved benefit retirement program for captains and above or otherwise.

(ii) (A) Should a participant in the twenty-year improved benefit retirement program for captains and above who has rendered less than fifteen years of credited service cease to hold the position of New York city correction officer of the rank of captain or above for any reason whatsoever, his or her accumulated additional member contributions made pursuant to this subdivision (together with any interest thereon paid to the retirement system) may be withdrawn by him or her pursuant to procedures promulgated in regulations of the board of trustees of the retirement system, together with interest thereon at the rate of eight and one-quarter percent per annum, compounded annually.

(B) Upon the death of a participant in the twenty-year improved benefit retirement program for captains and above, there shall be paid to such person as he or she has nominated or shall nominate to receive his or her accumulated deductions by written designation duly executed and filed with the retirement system during the lifetime of such participant, or, to his or her estate if no such person is nominated, his or her accumulated additional member contributions made pursuant to this subdivision (including any interest thereon paid to the retirement system), together with interest thereon at the rate of eight and one-quarter percent per annum, compounded annually.

(iii) Except as otherwise provided in subparagraph (ii) of this paragraph, no member of the retirement system, while he or she is such a participant or otherwise, shall have a right to withdraw such additional member contributions or any interest thereon from the retirement system.

12. Notwithstanding any other provision of law to the contrary, a member of the retirement system shall not be permitted to borrow any portion of his or her additional member contributions (including any interest paid thereon) which are subject to this subdivision.

13. Notwithstanding any other provisions of law to the contrary, the provisions of section one hundred thirty-eight-b of this chapter shall not be applicable to the additional member contributions which are required by this subdivision.

14. Notwithstanding any other provision of law to the contrary, the additional member contributions which are required by this subdivision shall not be reduced under any program for increased-take-home-pay.

15. The provisions of subdivision b of section four hundred forty of this article shall apply to participants under this section.