§ 89-a. Optional retirement of sheriffs, under-sheriffs and regular deputy sheriffs. (a) Any member who is a sheriff or under-sheriff, or a regular deputy sheriff in any county who is engaged directly in criminal law enforcement activities, may elect to contribute to the retirement system on the basis of retirement after the completion of twenty-five years of total creditable service, provided the member has reached age flfty, or upon attainment of age sixty-five, on an allowance of one-fiftieth of his final average salary for each year of creditable service not in excess of twenty-five years, except as hereinafter otherwise provided. Such election shall be in writing and shall be duly executed and filed with the comptroller on or before July first, nineteen hundred sixty-nine. 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

(b) On and after the date this section takes effect, every sheriff, under-sheriff and regular deputy sheriff entering or re-entering service as such and within one year from the date of entry or re-entry, and regardless of age, may elect to contribute on the basis provided by this section. 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.

(c) As used in this section "creditable service" shall include (1) in the case of a sheriff or under-sheriff, any and all services performed as a sheriff and/or under-sheriff of a county and all criminal law enforcement services performed as a regular deputy sheriff of a county, provided, however, that criminal law enforcement service shall only be creditable when it aggregates fifty percentum or more of his service as a regular deputy sheriff and (2) in the case of a regular deputy sheriff, all criminal law enforcement services performed as a regular deputy sheriff of a county, provided, however, that criminal law enforcement service shall only be creditable when it aggregates fifty percentum or more of such service and any and all services performed as a sheriff and/or under-sheriff of a county.

(d) Credit for service as a member or officer of the state police or as a paid firefighter, police officer or officer of any organized fire department or police force or department of any county, city, village, town, fire district or police district, or as a criminal investigator in

the office of a district attorney, provided that service as such investigator shall have been rendered prior to January first, nineteen hundred sixty and that credit therefor shall not exceed five years, shall also be deemed to be creditable service and shall be included in computing years of total service for retirement pursuant to this section, provided such service was performed by the member while contributing to the retirement system pursuant to the provisions of this article or article eight of this chapter.

(e) A sheriff shall certify to the comptroller, periodically and at such intervals of time as may be required of him and in such fashion as may be prescribed, the identity of the regular deputy sheriffs in his employ who are engaged directly in criminal law enforcement activities.

(f) A member, who elects or is required to contribute in accordance with this section, shall contribute, in lieu of the proportion of compensation as provided in section twenty-one of this article, a proportion of his compensation similarly determined. Such latter proportion shall be computed to provide, at the time when he shall first become eligible for retirement under this section, an annuity equal to one-one hundredth of his final average salary for each year of creditable service and as a member rendered after this section becomes effective and prior to the attainment of the age when he shall first become eligible for retirement. Such member's rate of contribution pursuant to this section shall be appropriately reduced pursuant to section 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. No such member shall be required to make contributions after completing twenty-five years of such service.

(g) A member, excepting a sheriff, contributing on the basis of this section at the time of retirement, shall retire either (a) after the completion of twenty-five years of total creditable service, provided he has reached age fifty, or (b) upon the attainment of age sixty-five. Application therefor may be filed in a manner similar to that provided in section seventy of this article.

(1) Upon completion of twenty-five years of such service and upon retirement, each such member shall receive a pension which, together with an annuity which shall be the actuarial equivalent of his

accumulated contributions at the time of his retirement and an additional pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he may then be entitled shall be sufficient to provide him with a retirement allowance equal to one-half of his final average salary.

(2) Upon attainment of age sixty-five and upon retirement without completion of twenty-five years of such service, each such member shall receive a pension which together with an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement and an additional pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he may then be entitled, shall be sufficient to provide him with a retirement allowance equal to one-fiftieth of his final average salary for each year of creditable service in a sheriff's department. Every such member shall also be entitled to an additional pension equal to the pension for any creditable service rendered while not an employee of a sheriff's department as provided under paragraphs three and four of subdivision a of section seventy-five of this article. This latter pension shall not increase the total allowance to more than one-half of his final average salary.

For the purpose only of determining the amount of the pension provided in this subdivision, 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.

(h) The entire additional cost for the increased pension to members, as provided by this section, shall be paid by the members. The county by which the members are employed may, however, by appropriate action, elect to assume and pay all or part of the additional cost. The actuary of the retirement system shall compute the extra contribution required for each member who elects to receive the special benefits provided under this section. Such extra contribution shall be computed on the

basis of contributions during the prospective service of such member which will cover the liability of the retirement system for such extra pensions. Upon approval by the comptroller, such extra contributions shall be certified by him to the appropriate boards of supervisors, and such a board shall advise each member affected the amount of extra contribution attributable to him. Where a county has elected to assume and pay all or part of the additional cost, the amount of extra contributions in connection therewith shall be included in the annual appropriation of the county for the sheriff's department and such amount shall be paid on the warrant of the comptroller to the pension accumulation fund of the retirement system. The remaining extra contributions, if any, shall be paid, in appropriate amounts, by the member or members whose extra contribution was not included in the annual appropriation of the county for the sheriff's department, and payment is to be made to the retirement system in such manner as said system may prescribe.

(i) In computing the twenty-five years of total service of a member pursuant to this section full credit shall be given and full allowance shall be made for service of such member in time of war after world war I as defined in section two of this chapter, provided such member at the time of his entrance into the military service of the United States was then a resident of this state and in the service of a sheriffs department and (1) had been honorably discharged or released under honorable circumstances from such military service, or (2) has a qualifying condition, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable from such service, and such member returned to the service of a sheriffs department within the time limited by section two of this chapter.

(j) Any 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 (g) of this section, exclusive of any contributions made under the provisions of subdivision i and/or j of section twenty-one of this chapter, 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.

(k) The provisions of this section shall be controlling notwithstanding any provision in this article to the contrary.