§ 176-b. Volunteer members of fire district fire companies. 1. The volunteer members of a fire company shall be elected and appointed as provided in this section.

2. The board of fire commissioners shall appoint residents of the fire district as the volunteer members of any newly organized fire company. Thereafter, the fire company may elect other eligible persons, including fire district officers, as volunteer members. The election shall be pursuant to the by-laws, if any, of the fire company; otherwise, by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. The membership of any person so elected shall become effective when approved by resolution of the board of fire commissioners. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail.

3. Any person elected to membership as a volunteer member of a fire company shall be a resident of the fire district or of territory outside the fire district which is afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision six.

4. The membership of a volunteer member of a fire company shall terminate when he ceases to be a resident of the fire district or of any territory outside the fire district which is afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision five.

5. Any fire company may authorize the continued membership of any volunteer member where such member notifies the secretary of his or her fire company (a) that he or she plans to change his or her residence to

territory which is not in the fire district and is not protected by the fire department of the district, or any fire company thereof, pursuant to a contract for fire protection, and (b) that by reason of his or her residence in the vicinity or his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the fire district or in territory outside the fire district which is afforded fire protection pursuant to a contract for fire protection by the fire department of the fire district, or a fire company thereof. Such authorization shall be pursuant to the by-laws, if any, of the fire company of which he or she is a member, otherwise by a three-fourths vote of the members of such fire company present and voting at a regular or special meeting thereof. Such authorization shall not become effective unless approved by resolution of the board of fire commissioners. Such authorization shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of such authorization shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail. Any membership continued pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three of this section. In the case of a fire district which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

6. A person who cannot meet the residence requirements of subdivision three of this section may be elected to membership as a volunteer member of any fire company of the fire department if by reason of his or her residence in the vicinity or his or her usual occupation he or her will be available to render active service as a volunteer firefighter in the fire district or in territory which is afforded fire protection pursuant to a contract for fire protection by the fire department of the fire district, or a fire company thereof. Such election shall be pursuant to the by-laws, if any, of the fire company; otherwise by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. The membership of any person so elected

shall not become effective unless approved by resolution of the board of fire commissioners. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving within seventy days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail. The membership of any volunteer member elected pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three of this section. In the case of a fire district which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

7. (a) The membership of any volunteer firefighter shall not be continued pursuant to subdivision five of this section, and persons shall not be elected to membership pursuant to subdivision six of this section, if, by so doing, the percentage of such non-resident members in the fire company would exceed forty-five per centum of the actual membership of the fire company, provided however, that the provisions of this subdivision shall not apply to the memberships of the Shelter Island Heights fire district, the Cherry Grove fire district, the Fire Island Pines fire district, the Davis Park fire department, and the Cold Spring Harbor fire district in Suffolk county, the New Hampton fire district, the Mechanicstown fire district, the Pocatello fire district, the Washington Heights fire district and the Good Will fire district in Orange county, the Jericho fire district, the Westbury fire district and the Roslyn Rescue Hook and Ladder Company, No. 1 in Nassau county, the Orangeburg fire district in Rockland county, the South Lockport Fire Company and the Terry's Corners volunteer fire company in Niagara County, the Taunton fire district and the Onondaga Hill fire department in Onondaga county, the Town of Batavia fire department in Genesee County, the Schuyler Heights fire district, the Bogh Community fire district and the Slingerlands fire district I in Albany county, the town of Providence fire district in Saratoga county, the River Road fire district, No. 3 and the Armor Volunteer Fire Company in Erie county, the

Sir William Johnson Fire Company in Fulton county, the Fort Johnson Fire district in Montgomery county or the memberships of the Millwood fire district, the Purchase Fire District, the North Castle South Fire District, No. 1 in Westchester county, the Thornwood fire company, No. 1 in Westchester county and the Rockland Lake fire district in Rockland county.

(b) Upon application by a fire district or fire company to the state fire administrator, the requirements of paragraph (a) of this subdivision shall be waived, provided that no adjacent fire district objects within sixty days of notice, published in the state register. Any such objection shall be made in writing to the state fire administrator setting forth the reasons such waiver should not be granted. In cases where an objection is properly filed, the state fire administrator shall have the authority to grant a waiver upon consideration of (1) the difficulty of the fire company or district in retaining and recruiting adequate personnel; (2) any alternative means available to the fire company or district to address such difficulties; and (3) the impact of such waiver on adjacent fire districts.

8. The board of fire commissioners by resolution may restrict the membership of volunteer members in any or all of the fire companies of the fire department to residents of the fire district. Any volunteer member who then resides in territory outside the fire district shall cease to be a member of any fire company to which the restriction is applicable unless the resolution provides that his membership shall continue during the existence of any contract for fire protection to such territory by his company or during the period in which he may continue to meet the requirements of subdivision three, five or six.

9. Residents of outside territory which is protected pursuant to a contract for fire protection who have been elected to volunteer membership, and non-residents whose volunteer memberships have been continued or authorized pursuant to subdivision five or six of this section may be elected or appointed to any office in the fire company or fire department and, shall have all the powers, duties, immunities, and privileges of resident volunteer members, except a non-resident of this state whose membership has been continued pursuant to subdivision five

of this section, or a non-resident of this state who was elected to membership pursuant to subdivision six of this section, shall not be considered to be performing any firemanic duty, or to be engaged in any firemanic activity, as a member of the fire company while he or she is outside of this state unless and until he or she has first reported to the officer or firefighter in command of his or her fire department, or any company, squad or other unit thereof, engaged or to be engaged in rendering service outside this state, or has received orders or authorization from an officer of the fire department or fire company to participate in or attend authorized activities outside of this state in the same manner as resident members of the fire company.

10. A person shall not be eligible to volunteer membership in more than one fire company at one time.

11. The term "contract for fire protection" as used in this section means one under which a cash consideration is received by the fire district or by the fire department or a fire company thereof for the furnishing of fire protection to an area outside the fire district. Any such contract shall be deemed in full force and effect for the purposes of this section if negotiations are pending for the renewal thereof.

12. The provisions of this section shall not be deemed to authorize the election of any person as a member of a fire company, or the continuance of membership in a fire company as herein provided, if such election or continuance of membership shall be contrary to the by-laws, rules or regulations of the fire company or of the fire department of the fire district.

13. Any person:

(1) who was recognized prior to the first day of July, nineteen hundred fifty-four, as a volunteer member of any fire company of the fire district by the board of fire commissioners of the fire district or by the officers and members of his fire company, and

(2) who rendered active service with such fire company prior to such date, and

(3) who was, at the time of his or her election to membership, a

resident of the fire district or of territory outside the fire district which was afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection,
shall for all purposes in law be considered to have been duly elected and appointed to membership in such fire company as of the date of such appointment, if any, and, if none, then as of the date of such election; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the board of fire commissioners to appoint such member, as provided by the law in force at the time of such election, and the status of such person as a volunteer firefighter as of the date of such appointment or election is hereby legalized, validated, and confirmed. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was declared invalid by a court of competent jurisdiction prior to the first day of January, nineteen hundred fifty-five.

14. Any person:

(1) who was recognized on and after the first day of July, nineteen hundred fifty-four and prior to the first day of January, two thousand eleven, as a volunteer member of any fire company of the fire district by the board of fire commissioners of the fire district or by the officers and members of his fire company, and

(2) who rendered active service with such fire company between such dates, and

(3) who was, at the time of his election to membership, a resident of the fire district or of territory outside the fire district which was afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, or, who was a nonresident who was elected to membership or who was continued as a member, pursuant to the provisions of subdivision five or six of this section, shall for all purposes in law be considered to have been duly elected and approved, or continued, as a member in such fire company as of the date of such approval, if any, and, if none, then as of the date of such election or, in the case of a continuance, as of the date of the approval, if any, by the board of fire commissioners, and,

if none, as of the date of authorization of continuance by the fire company; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the board of fire commissioners to approve such member, or approve the continuance of membership of such member, as provided by the law in force at the time of such election or continuance, and the status of such person as a volunteer firefighter as of such date is hereby legalized, validated, and confirmed. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was disapproved by the board of fire commissioners or declared invalid by a court of competent jurisdiction prior to the first day of January, two thousand eleven.

15. (a) It shall be an unlawful discriminatory practice for any volunteer fire department or fire company, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firefighters in any fire department or fire company pursuant to this section, because of the race, creed, color, national origin, sex or marital status of any individual, to exclude or to expel from its volunteer membership such individual, or to discriminate against any of its members because of the race, creed, color, national origin, sex or marital status of such volunteer members.

(b) Any person claiming to be aggrieved by an unlawful discriminatory practice pursuant to this section may by himself or his attorney at law make, sign and file with the state division of human rights, a verified complaint which shall set forth the particulars of the alleged unlawful discriminatory practice and contain such other information as the division of human rights may require. The division shall thereupon cause to be made an investigation and disposition of the charges pursuant to the provisions of article fifteen of the executive law.

16. A person who has been convicted of arson in any degree shall not be eligible to be elected or appointed as a volunteer member of a fire company. The membership of any volunteer member of a fire company shall immediately terminate if he is convicted of arson in any degree while a member of a fire company.

17. Upon application by any person for membership in a fire company operating pursuant to this section, the fire chief shall cause the applicant's background to be checked pursuant to section eight hundred thirty-seven-o of the executive law for a criminal history involving a conviction for arson and conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law. Where such criminal history information includes conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law, a fire company shall determine whether or not such person shall be eligible to be elected or appointed as a volunteer member of such fire company. Such determination shall be made in accordance with the criteria established in sections seven hundred fifty-two and seven hundred fifty-three of the correction law.