

NEW YORK STATE – GENERAL MUNICIPAL LAW
ARTICLE 11-A
SERVICE AWARD PROGRAMS

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| Section | 214. Purpose. |
| | 215. Definitions. |
| | 216. Authorization to establish service award programs for volunteer firefighters of political subdivisions of the state and for volunteer firefighters other than of political subdivisions of the state. |
| | 216-a. Authorization to establish service award programs for special fire companies and departments. |
| | 216-b. Continuation of service award programs. |
| | 216-c. State administration of service award programs. |
| | 217. General requirements of a service award program. |
| | 217-a. Public information website. |
| | 218. Requirements and benefits under a defined contribution plan service award program. |
| | 219. Requirements and benefits under a defined benefit plan service award program. |
| | 219-a. Administration, reporting and disclosure. |

§ 214. Purpose.

1. It is hereby declared that this article is intended to effectuate the objects and purposes of section eighteen of article one of the constitution and that the relationship between the political subdivision liable for payments of service awards under this article and a volunteer firefighter entitled to such payments is that of employer and employee within the meaning of such provision of the constitution. In no event shall the receipt of a service award under the provisions of this article be deemed to constitute membership in any pension or retirement system of the state or of a civil division thereon within the purview of section seven of article five of the constitution.

2. It is hereby further declared that this article is also intended to provide service awards for volunteer firefighters of incorporated fire companies or departments which are not otherwise part of a political subdivision of this state and who do not fall within the purview of subdivision one of this section.

§ 215. Definitions. As used in this article:

1. "Active volunteer firefighter" means a person who has been approved by the authorities in control of a duly organized volunteer fire company or volunteer fire department as an active volunteer firefighter of such fire company or department and who is faithfully and actually performing service in the protection of life and property from fire or other emergency, accident or calamity in connection with which the services of such fire company or fire department are required.
2. "Defined benefit plan" means any service award program that provides to eligible volunteer firefighters, a benefit that is definitely determinable under the program without reference to the amount contributed to the program on the participant's behalf or to any income, expenses, gains or losses or forfeitures of other participants under the program.
3. "Defined contribution plan" means any service award program that provides to eligible volunteer firefighters a benefit as the result of definite and determinable contributions under the program, and without reference to any income, expense, gains or losses or forfeitures of other participants under the program.
4. "Entitlement age" means the age designated by the sponsor at which a program participant is entitled to begin receiving an unreduced service award. In no event shall the entitlement age under a program be earlier than age fifty-five nor later than the age at which the participant can receive an unreduced benefit under Title II of the Social Security Act (Public Law 74-271 U.S.C. 306 et seq.). No service award program may provide for the payment of benefits (except in the case of death or disability) before age fifty-five.
5. "Fiduciary" means any person who exercises discretionary authority or control with respect to the administration of the program or the management or disposition of program assets or who renders investment advice for a fee to the program.
- 5-a. "Fire service area" means a portion of a village that receives fire protection from a special fire department pursuant to a contract with the governing board of the village when the cost of the contract is charged to such area of the village.
6. "Nonforfeitable" means the unconditional and legally enforceable right to receive benefits attributable to service as an active volunteer firefighter under the program that will begin at the entitlement age specified in the program.
7. "Participant" means an active volunteer firefighter who is eligible for a benefit under a service award program.
- 7-a. "Political subdivision" means a county, city, town, town on behalf of a fire protection district, village, village on behalf of fire service area or fire district.
8. "Service award" means the benefit payable to a participant in a

service award program.

9. "Service award program" or "program" means a defined benefit plan or defined contribution plan established or maintained under this article to provide service awards for active volunteer firefighters, pursuant to the benefit options specified by the sponsoring organization.

9-a. "Special fire company or department" means a fire company or department for which a service award program cannot be established pursuant to subdivision one or two of section two hundred sixteen of this article which provides fire protection services to two or more political subdivisions under contracts with the governing boards thereof.

10. "Sponsor" or "sponsoring organization" means a political subdivision which has established or jointly established a service award program, a volunteer fire company or department, or any other entity responsible for fire protection.

11. "Year of firefighting service" means a twelve month period during which an active volunteer firefighter participates in the fire service and satisfies the minimum requirements of participation established by the sponsoring organization maintaining the program which shall be applied on a consistent and uniform basis, subject to the minimum standards established by the sponsoring organization.

12. "Elected or appointed position" means line officers, department or company officers and president, vice president, treasurer and secretary of a fire company or department.

13. "Administrator" or "plan administrator" means the state comptroller, or an administrative service agency or financial organization selected by the state comptroller to perform all or a portion of the functions required to administer service award programs.

14. "Administrative service agency" means an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the internal revenue code and governmental plans.

15. "Financial organization" means an organization duly authorized to do business in the state and which is (i) registered as an investment adviser under the Investment Advisers Act of 1940, as such provisions may be amended from time to time; (ii) licensed or chartered by the state insurance department; (iii) licensed or chartered by the state banking department; (iv) chartered by an agency of the federal government; or (v) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

§ 216. Authorization to establish service award programs for volunteer firefighters of political subdivisions of the state and for volunteer firefighters other than of political subdivisions of the state.

1. a. A service award program may be adopted only by resolution of the governing board of a political subdivision, receiving the affirmative vote of at least sixty percent of the governing board of the political subdivision having control of the fire departments and fire companies, and the approval of a mandatory referendum authorizing the adopting of the program by the eligible voters within such political subdivision.
 - b. The resolution authorizing the adoption of a service award program shall state:
 - (i) the name of each fire company having volunteer firefighters who are potential participants in the program;
 - (ii) whether the program will be administered by the political subdivision or the state;
 - (iii) the entitlement age under the program;
 - (iv) the estimated annual cost of program, including the estimated annual administration fee;
 - (v) the number of years of fire service required to obtain a nonforfeitable right to a service award;
 - (vi) the activities for which points shall be granted toward a year of fire service;
 - (vii) the amount of the contribution to the program to be made on behalf of each participant credited with a year of fire service;
 - (viii) the extent to which the program provides for contributions for fire service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program;
 - (ix) in the case of a service award program which provides for contributions for fire service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program, the timing and method of financing such contributions;
 - (x) the date as of which the program shall take effect; in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of fire service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January; and
 - (xi) the date on which the proposition authorizing the adoption of the program shall be submitted to referendum.
2. Upon the affirmative vote of at least sixty percent of the governing board of the political subdivision, which political subdivision has contracted with volunteer fire departments or fire companies located in a fire protection district of such political subdivision, there shall be held a mandatory referendum of the eligible voters residing within such fire protection districts to determine

whether such governing board shall establish a service award program for the volunteer firefighters of such volunteer fire departments or fire companies.

3. (a) The referendum described in subdivision one or two of this section shall state the type of service award program selected, whether a defined contribution program described in section two hundred eighteen or a defined benefit program described in section two hundred nineteen of this article.

(b) The referendum described in subdivision one or two of this section shall state the estimated annual cost of the service award program, including the estimated annual administration fee, the projected monthly award to be paid to eligible volunteer firefighters and the estimated annual cost per covered participant.

(c) The referendum described in subdivision one or two of this section shall state whether the service award program will be administered by the political subdivision or the state of New York.

(d) Payments under the service award program if adopted, shall not impair any rights of the volunteer firefighters under the volunteer firefighters' benefit law or any other law.

(e) Except as otherwise provided in this paragraph once a service award program has been established, it may be abolished or amended in the same manner as it was created in accordance with the provisions of this article by following the procedures set forth in subdivision one or two of this section. The point system adopted by the governing board of the sponsor of a service award program pursuant to subdivision (c) of section two hundred seventeen of this article may be amended by the affirmative vote of at least sixty percent of such governing board, without referendum, provided, that, consistent with the provisions of subdivision (c) of section two hundred seventeen, the only effect of the amendment is to decrease the number of points granted for the performance of an activity, increase the amount of an activity required to earn the points granted for the performance of the activity, or both. Any amendment to a service award program shall only take effect as of the first day of January next succeeding completion of the proceedings required for adoption of the amendment and shall only apply prospectively.

4. Within thirty days of voter approval of the referendum described in subdivisions one and two of this section, the governing board of the political subdivision shall notify the state comptroller of the adoption of the service award program, whether such service award program will be a defined contribution plan or a defined benefit plan, and whether the plan will be administered by the political subdivision or the state of New York.

5. Notwithstanding any inconsistent provision of law, no member of the governing board of a political subdivision of the state is prohibited by virtue of being a member of a volunteer fire company or department from

voting upon a resolution authorizing a referendum on the establishment of a service award program if more than forty percent of the governing board would otherwise be prohibited from voting upon such resolution. Any member of such governing board voting upon such a resolution who serves as a member of a volunteer fire company or department shall publicly disclose in writing to the governing board such status. Such written disclosure shall be part of and set forth in the official record of the proceedings of such governing board.

§ 216-a. Authorization to establish service award programs for special fire companies and departments.

1. The political subdivisions which contract to receive fire protection services from a special fire company or department may jointly establish a service award program for the volunteer firefighters of such special fire company or department, provided, however, that no such service award program shall be established unless each and every political subdivision which contracts to receive fire protection services from the special fire company or department joins in establishing the program.
2. A service award program for the volunteer firefighters of a special fire company or department shall be jointly established by the political subdivisions which contract to receive fire protection services from such fire company or department only if:
 - (a) the governing board of each and every such political subdivision approves an agreement to jointly sponsor the program by an affirmative vote of at least sixty percent of the governing board; and
 - (b) the eligible voters of each and every such political subdivision separately approve a proposition authorizing their political subdivision to jointly sponsor the program to be administered by the political subdivision or the state of New York.
3. An agreement between or among political subdivisions to jointly sponsor a service award program for a special fire company or department may contain any provision which could be included in an agreement entered into pursuant to article five-G of this chapter and shall contain provisions specifying the following:
 - (a) the manner in which the several political subdivisions shall exercise and perform the powers and duties that are conferred by other sections of this article on the governing board of a single political subdivision that individually establishes and sponsors a service award program;
 - (b) the effect of the addition of other political subdivisions as parties to the agreement;
 - (c) the effect of the withdrawal of political subdivisions from the agreement;
 - (d) the entitlement age under the program;
 - (e) the age and length of service requirements to participate in the service award program;
 - (f) the number of years of firefighting service required to obtain a nonforfeitable right to a service award;
 - (g) the activities for which points will be granted toward a year of firefighting service;
 - (h) the extent to which the program provides credit for years of firefighting service rendered during one or more of the five calendar years immediately preceding the establishment of the program;
 - (i) in the case of a defined contribution plan,

- (i) the amount of the contribution to be made on behalf of each participant credited with a year of firefighting service, and
- (ii) the amount of any additional disability or death benefit;
- (j) in the case of a defined benefit plan,
 - (i) the amount of the monthly payment to be made to each participant for each year of firefighting service credited to the participant, and
 - (ii) if the plan is to provide for payment of benefits prior to the tenth anniversary of the establishment of the plan, the date on which the plan is to provide for the payment of benefits;
- (k) the date as of which the service award program shall take effect which shall be either the first day of January next succeeding the date of the last voter approval required to establish the program or, if sufficient funds are or will be available to each political subdivision to fund the program, the first day of January next preceding such last voter approval; and
- (l) whether the service award program is to be administered by the political subdivision or the state of New York; and
- (m) any other provisions as may be necessary for the implementation, operation, administration and funding of the program.

4. A proposition authorizing a political subdivision to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to approve the agreement to jointly sponsor the program. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision. The referendum shall be conducted in the same manner as other referenda held by the political subdivision and the cost thereof shall be charged to the political subdivision.

5. A proposition authorizing a political subdivision to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department shall state:

- (a) whether the service award program to be established is a defined contribution plan or a defined benefit plan;
- (b) whether the service award program is to be administered by the political subdivision or the state of New York;
- (c) the estimated annual cost of the service award program, including the estimated annual administration fee, and the estimated annual cost per participant, for all the political subdivisions establishing the program and for the political subdivision submitting the proposition to referendum;
- (d) the extent to which the program provides credit for years of firefighting service rendered during one or more of the five calendar

years immediately preceding the establishment of the program;

(e) in the case of a defined contribution plan, the amount of any additional disability or death benefit; and

(f) in the case of a defined benefit plan,

(i) the projected monthly award to be paid to participants, and

(ii) if the plan is to provide for the payment of benefits prior to the tenth anniversary of the establishment of the plan, the date on which payment of benefits shall begin.

6. Upon the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the agreement to jointly sponsor the service award program shall take effect and the program shall take effect as set forth in the agreement.

7. Within thirty days after the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the governing boards of the political subdivisions which established the program shall notify the state comptroller of the adoption of the service award program and whether such service award program will be a defined contribution plan or a defined benefit plan, and whether the plan will be administered by the political subdivision or the state of New York.

8. Within sixty days after the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the governing boards of the political subdivisions which established the program shall jointly adopt a program document. The program document shall be consistent with the provisions of this article and the agreement to jointly sponsor the service award program, as amended, and shall set forth the obligations and rights of the sponsors, the special fire company or department, and the volunteer firefighters for whom the program is established, and establish standards and procedures for the administration of the program provided, however, that in the case of a state-administered program the procedures for administration shall be consistent with the rules and regulations governing the state program.

9. Except as otherwise provided in this subdivision, any provision of an agreement to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department may be amended upon the affirmative vote of at least sixty percent of the governing board of each political subdivision which is a party to the agreement without referendum. Amendments to the provisions of the agreement required by paragraphs (h), (i) and (j) of subdivision three of this section shall only be made upon the affirmative vote of at least sixty percent of the governing board of each such political subdivision, subject to a mandatory referendum of the eligible voters within each such political subdivision.

10. In the event that the governing board of a political subdivision

which is a party to an agreement to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department ceases to contract to receive fire protection services from the special fire company or department, the political subdivision shall cease to be a sponsor of the service award program and shall be deemed to have withdrawn from the agreement in accordance with the terms of the agreement without further action by the governing board or voters of any political subdivision.

11. A service award program for the volunteer firefighters of a special fire company or department shall remain in effect until terminated by the political subdivisions which are parties to the agreement to jointly sponsor the program. The service award program shall be terminated only if:

- (a) the governing board of each and every such political subdivision approves a resolution to terminate the program by an affirmative vote of at least sixty percent of the governing board; and
- (b) the eligible voters of each and every such political subdivision separately approve a proposition to terminate the program.

§ 216-b. Continuation of service award programs.

1. (a) In the event that a town establishes a service award program for the volunteer firefighters of a fire company located within a fire protection district and, subsequently, the fire protection district is dissolved and the entire area thereof is included in or added to a fire district established pursuant to article eleven of the town law, and the fire district neither has established a service award program nor includes the area of any other jurisdiction which has established a service award program, the service award program established by the town shall be continued as provided in this subdivision.

(b) Except as otherwise provided in this subdivision, as of the date of completion of the proceedings described in paragraph (a) of this subdivision or, in the case of a newly established fire district, as of the date of the first organization meeting of the board of fire commissioners, the town shall have no further responsibility for administering or funding the service award program and the fire district shall assume responsibility for those functions. As of that date, the fire district shall succeed the town as the sponsor of the service award program and the board of fire commissioners shall exercise and perform all of the powers and duties of the sponsor of the program under this article and under any agreements or contracts entered into by the town pursuant thereto in furtherance of its powers and duties as sponsor of the program, including but not limited to the program trust agreement and any contracts relating to the custody, control, investment, or disbursement of program assets. The fire district shall be responsible for funding any unfunded liability of the sponsor of the program existing as of the date the fire district succeeds the town as sponsor of the program.

(c) Upon the fire district's succeeding the town as sponsor of the service award program, the town shall retain responsibility for administering the assets of the program until discharged from such responsibility as provided in this subdivision. Except for those records required for the continued administration of program assets, the town shall turn over immediately to the fire district all records maintained by the town as sponsor of the program.

(d) Within sixty days after the date on which the fire district succeeds the town as sponsor of the service award program, the board of fire commissioners of the fire district shall develop a plan for the continued administration of program assets. Subject to the provisions of the program trust agreement and any contracts entered into by the town in furtherance of its powers and duties as sponsor of the program, such plan may provide for the custody, control, transfer, investment, or disbursement of program assets. Such plan, however, shall provide for the replacement of any individual serving in his or her official capacity as a town officer or employee as trustee or in any other

position involving the administration of program assets. In developing such plan, the board of fire commissioners may request from the town information concerning the town's administration of program assets, and the town shall provide promptly such information as the board may reasonably request. Upon completion of the plan, the board of fire commissioners shall submit to the supervisor of the town a copy of the plan and a list of actions required to be taken by the town for implementation of the plan, including but not limited to execution of documents and the transfer of assets. Immediately after receiving such plan and list, the supervisor shall cause the actions on the list to be taken. Upon completion of the actions on the list and submission to the board of fire commissioners of all town records relating to the administration of program assets, the town shall be discharged from any further responsibility for administering the assets of the program. In the event that the board of fire commissioners fails to submit to the supervisor such plan and list within sixty days after the date on which the fire district succeeds the town as sponsor of the program, the supervisor may submit to the board of fire commissioners all town records relating to the administration of program assets, and upon such submission the town shall be discharged from any further responsibility for administering the assets of the program, and the board of fire commissioners shall assume responsibility for administering the assets of the program.

(e) The participants in the service award program as of the date that the fire district succeeds the town as sponsor of the program shall retain all point totals, service credit, contributions, and benefits earned prior to that date, irrespective of whether or not a participant has acquired a nonforfeitable right to a percentage of a service award on or before such date; provided, however, that nothing in this subdivision shall be construed as modifying or eliminating any requirement that a participant obtain a nonforfeitable right to a percentage of a service award in accordance with the provisions of the program. Any other active volunteer firefighters of the fire district fire department shall be eligible to participate in the service award program. Such active volunteer firefighters shall earn credit for years of firefighting service commencing with the calendar year in which the fire district succeeds the town as sponsor of the program, based on activities performed on or after the date that the fire district succeeds the town as sponsor.

(f) Except as provided in this subdivision, the service award program shall continue to be governed by the provisions of this article.

2. (a) In the event that either a town establishes a service award program for the volunteer firefighters of a fire company located within a fire protection district or a village establishes a service award program for the volunteer firefighters of the village fire department or a fire district establishes a service award program for the volunteer

firefighters of the fire district fire department and, subsequently, the entire area of the fire protection district, village, or fire district is included in or added to a joint fire district established pursuant to article eleven-A of the town law and article twenty-two-A of the village law, and the joint fire district neither has established a service award program nor includes the area of any other jurisdiction which has established a service award program, the service award program established by the town, village, or fire district shall be continued as provided in this subdivision.

(b) Except as otherwise provided in this subdivision, as of the date of completion of the proceedings described in paragraph (a) of this subdivision or, in the case of a newly established joint fire district, as of the date of the first organization meeting of the board of fire commissioners of the joint fire district, the town, village, or fire district which established the service award program shall have no further responsibility for administering or funding the program and the joint fire district shall assume responsibility for those functions. As of that date, the joint fire district shall succeed the town, village, or fire district as the sponsor of the service award program, and the board of fire commissioners of the joint fire district shall exercise and perform all of the powers and duties of the sponsor of the program under this article and under any agreements entered into by the town, village, or fire district pursuant thereto in furtherance of its powers and duties as sponsor of the program, including but not limited to the program trust agreement and any contracts relating to the custody, control, investment, or disbursement of program assets. The joint fire district shall be responsible for funding any unfunded liability of the sponsor of the program existing as of the date that the joint fire district succeeds the town, village, or fire district as sponsor of the program.

(c) Upon the joint fire district's succeeding the town, village, or fire district which established the service award program as sponsor of the program, the town, village, or fire district shall retain responsibility for administering the assets of the program until discharged from such responsibility as provided in this subdivision. Except for those records required for the continued administration of program assets, the town, village, or fire district shall turn over immediately to the joint fire district all records it maintained as sponsor of the program.

(d) Within sixty days after the date on which the joint fire district succeeds the town, village, or fire district which established the service award program as sponsor of the program, the board of fire commissioners of the joint fire district shall develop a plan for the continued administration of program assets. Subject to the provisions of the program trust agreement and any contracts entered into by the town, village, or fire district in furtherance of its powers and duties as

sponsor of the program, such plan may provide for the custody, control, transfer, investment, or disbursement of program assets. Such plan, however, shall provide for the replacement of any individual serving in his or her official capacity as a town, village, or fire district officer or employee as trustee or in any other position involving the administration of program assets. In developing such plan, the board of fire commissioners may request from the town, village, or fire district information concerning the town, village, or fire district's administration of program assets, and the town, village, or fire district shall provide promptly such information as the board may reasonably request. Upon completion of the plan, the board of fire commissioners shall submit to the supervisor of the town, the mayor of the village, or the chairperson of the board of fire commissioners of the fire district a copy of the plan and a list of actions required to be taken by the town, village, or fire district for implementation of the plan, including but not limited to execution of documents and the transfer of assets. Immediately after receiving such plan and list, the supervisor, mayor, or chairperson of the board of fire commissioners shall cause the actions on the list to be taken. Upon completion of the actions on the list and submission to the board of fire commissioners of the joint fire district of all town, village, or fire district records relating to the administration of program assets, the town, village, or fire district shall be discharged from any further responsibility for administrating the assets of the program. In the event that the board of fire commissioners of the joint fire district fails to submit such plan and list within sixty days after the date on which the joint fire district succeeds the town, village, or fire district as sponsor of the program, the supervisor, mayor, or chairperson of the board of fire commissioners may submit to the board of fire commissioners of the joint fire district all town, village, or fire district records relating to the administration of program assets and upon such submission the town, village, or fire district shall be discharged from any further responsibility for administering the assets of the program, and the board of fire commissioners of the joint fire district shall assume responsibility for administering the assets of the program.

(e) The participants in the service award program as of the date that the joint fire district succeeds the town, village or fire district which established the service award program as sponsor of the program shall maintain all point totals, service credit, contributions, and benefits earned prior to that date, irrespective of whether or not a participant has acquired a nonforfeitable right to a percentage of a service award on or before such date; provided, however, that nothing in this subdivision shall be construed as modifying or eliminating any requirement that a participant obtain a nonforfeitable right to a percentage of a service award in accordance with the provisions of the program. Any other active volunteer firefighters of the joint fire

district fire department shall be eligible to participate in the service award program. Such active volunteer firefighters shall earn credit for years of firefighting service commencing with the calendar year in which such proceedings are completed, based on activities performed on or after the date of completion of such proceedings.

(f) Except as provided in this subdivision, the service award program shall continue to be governed by the provisions of this article.

§ 216-c. State administration of service award programs.

1. On or before the fifteenth day of November, two thousand eight and of each succeeding calendar year, the administrator shall determine the amount that each participating program sponsor is required to pay for the state-administered service award programs. The administrator shall submit to the fiscal officer of each political subdivision a statement of the amount so payable. Such amount shall consist of the amount deemed necessary to provide for payment in full of all estimated obligations of the current fiscal year of the fire service awards program and any additional obligations, plus interest on such amount, for fiscal years proceeding the current fiscal year. If, as a result of the amount determined to be paid for any fiscal year, a participating program sponsor over-paid its actual obligation for that year, the amount to be determined by the administrator for the next succeeding November fifteenth shall reflect the amount of the over payment, plus interest, as a reduction in the amount otherwise required to be paid by such participant political subdivision.

2. State-administered service award programs may be centrally administered by the state comptroller, or the comptroller may enter into one or more of the following contracts:

(a) a contract with an administrative service agency or financial organization to serve as program administrator and to perform all or any portion of the functions required to establish and administer such programs including, but not limited to, preparation of a plan document, record keeping, reporting, payment of service awards, and having custody of program moneys and assets;

(b) contracts with one or more financial organizations to invest program moneys; or

(c) a contract with an actuary for the performance of all actuarial calculations required by the program.

If the comptroller contracts for the performance of any function as provided in this subdivision, the comptroller shall be liable only for the exercise of due care in the selection of the administrative service agency, financial organization or actuary performing the function.

3. The state comptroller shall promulgate rules and regulations, as appropriate, for the service award programs. Such rules shall include, but not be limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsor, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the state-administered program, and any other matter relating to the service award programs.

4. (a) The state comptroller, or an administrative service agency or financial organization serving as program administrator, shall prepare and may amend a single plan document setting forth the obligations of

sponsors, the rights of the volunteer firefighters, and standards and procedures for the administration of all state-administered service award programs. The plan document and any amendments thereto shall be consistent with the provisions of this article, the rules and regulations promulgated by the comptroller and any amendments thereto. If the plan document or any amendment thereto is prepared by an administrative service agency or financial organization, it shall not take effect until approved by the comptroller.

(b) The program administrator shall cause a summary of the plan document to be provided to each participant within six months from the date that program participation commences. The program administrator shall also cause a summary of any material amendment of the plan document to be provided to each participant within six months of the date the amendment takes effect.

(c) The plan document and the summary of the plan document shall be made available for public inspection and copying.

5. All program assets shall be held in trust for the exclusive purpose of providing service awards to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. The trust shall be established and may be amended by the state comptroller. The comptroller may designate himself or herself, an administrative service agency, or a financial organization as trustee, and may substitute trustees. If the service award programs and the trust are not tax qualified within the meaning of sections 401 and 501 of the Internal Revenue Code of 1954 (68A Stat. 3.26 U.S.C. 401 and 501), the trust may provide that assets apportioned to an individual sponsor may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to ensure that participation in a service award program does not result in taxable income under any provision of the Internal Revenue Code of 1986, as amended.

6. There is hereby established in the custody of the state comptroller a special fund to be known as the volunteer firefighter service award fund. Such fund shall consist of any money of service award programs held by the comptroller. Moneys may be paid from such fund without an appropriation by law. All payments from such fund shall be made only in accordance with the provisions of this article, the rules and regulations promulgated thereto and the plan document.

7. The moneys held for the sponsor of each service award program shall be accounted for separately. The administrator shall cause a statement of contributions to be provided to sponsors at least once annually.

8. The administrator and every fiduciary of a service award program shall be required to act solely in the interest of the program's participants and beneficiaries. Notwithstanding the provisions of any general or special law restricting the power or duty of the state comptroller to invest moneys belonging to a fund which the comptroller

is authorized to invest, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aim.

9. (a) All contracts or agreements with an administrative service agency, financial organization or actuary shall be awarded only after receiving competitive proposals. In addition to other statutory requirements, the state comptroller shall cause to be published in the state register and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least sixty days prior to the date on which the contract or agreement will be awarded and shall request proposals within thirty days of publications.

(b) All contracts and agreements entered into with an administrative service agency, financial organization or actuary shall be in writing, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on termination of the contract or agreement. Such contracts and agreements shall be available for public inspection and copying.

§ 217. General requirements of a service award program.

No volunteer fire department, volunteer fire company, fire district, fire protection district, village, town or city, shall be required under this article to provide service award benefits for its active volunteer firefighters.

Any service awards provided to an active volunteer firefighter under this article shall be governed by the provisions of section two hundred eighteen in the case of defined contribution plans, section two hundred nineteen in the case of defined benefit plans and in either case by the provisions of sections two hundred fourteen, two hundred fifteen, two hundred sixteen and two hundred nineteen-a of this article. No service award program may be provided under this article unless the following requirements are met:

(a) An active volunteer firefighter must be eligible to participate in any service award program provided under this article if the active volunteer firefighter has reached the age of eighteen and has completed at least one year of firefighting service. The sponsor of the service award program may impose younger age or shorter length of service requirements for participation in the service award program.

(b) A participant shall have a nonforfeitable right to a percentage of a service award that is not less than the percentage determined under the following table:

| Years of Firefighting Service | Nonforfeitable Percentage |
|----------------------------------|------------------------------|
| Less than 5 | 0 |
| 5 or more | 100 |

Notwithstanding the preceding table, a participant shall have a one hundred percent nonforfeitable right to his service award upon his attainment of the entitlement age under the program. Each sponsor may establish a percentage table that provides for a faster rate of becoming nonforfeitable. Any amounts attributable to forfeiture of a participant's service award shall be used to reduce contributions for other service award program participants and shall not in any case be used to increase benefits for other participants. The preceding shall not preclude amendment of a service award program to provide for an increase in benefits.

(c) A year of firefighting service shall be credited under a service award program for each calendar year after establishment of the program in which an active volunteer firefighter accumulates at least fifty points. Points shall be granted in accordance with a system adopted by the program sponsor. Such system shall provide that points shall be granted for activities designated by the program sponsor, which activities shall be selected from the following:

(i) Training courses -- twenty-five points maximum.

- (A) Courses under twenty hours duration -- one point per hour, with a maximum of five points.
 - (B) Courses of twenty to forty-five hours duration -- one point per hour for each hour over initial twenty hours, with a maximum of ten points.
 - (C) Courses over forty-five hours to one hundred hours duration -- fifteen points per course.
 - (D) Courses over one hundred hours duration -- twenty-five points per course.
 - (ii) Drills -- twenty points maximum. One point per drill (minimum two hour drill).
 - (iii) Sleep-in or stand-by -- twenty points maximum.
 - (A) Sleep-in -- one point each full night.
 - (B) Stand-by -- one point each. A stand-by is defined as line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories.
 - (iv) Elected or appointed position (see definition) -- twenty-five points maximum.
 - (A) Completion of one year term in an elected or appointed position. If the term of office for a firefighter who has been elected or appointed to a position in a fire company or fire department commences during the month of May, the participant shall receive credit for the full year notwithstanding the fact that the participant has not completed one year in the elected or appointed position at the end of the calendar year in which he or she was elected or appointed.
 - (B) An active volunteer firefighter elected to serve as a delegate to a firefighters' convention shall also be eligible to receive one point per meeting.
 - (v) Attendance at meetings -- twenty points maximum. Attendance at any official meetings of the volunteer fire company -- one point per meeting.
 - (vi) Participation in department responses -- twenty-five points for responding on the minimum number of calls, as outlined below:
- | | |
|--|--|
| (A) Total number of calls volunteer fire company re- sponds to annually other than emergency rescue and first aid squad calls (am- bulance calls) | 0 500 1000 1500 to to to and 500 1000 1500 up |
|--|--|
- Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit
- | | | | |
|-----|------|----|------|
| 10% | 7.5% | 5% | 2.5% |
|-----|------|----|------|

| | | | | |
|---|----------------|-------------------|--------------------|-------------------|
| (B) Total number of calls emergency rescue and first aid squad (ambulance) | 0 to 500 | 500 to 1000 | 1000 to 1500 | 1500 and up |
| Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit | | 10% | 7.5% | 5% 2.5% |

(vii) Miscellaneous activities -- maximum fifteen points. Participation in inspections and other activities covered by the volunteer firefighters' benefit law and not otherwise listed -- one point per activity.

(viii) In the event that any active volunteer firefighter is either totally and temporarily disabled, or partially and permanently disabled, as certified by the workers' compensation board or other competent authority approved by the sponsor of the service award program, and the disability occurs during the course of service as a volunteer, while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, the firefighter shall receive five points for each full month of such disability.

(ix) Teaching fire prevention classes--five points maximum. An active volunteer firefighter who at the direction of his company, district or department, and for no remuneration, presents a public education class on fire prevention to a school, not-for-profit corporation, or civic organization organized and existing under the laws of this state or authorized to conduct activities in this state--one point per class.

The program sponsor may designate less than all the activities specified in this subdivision as activities for which points may be earned.

(d) An active volunteer firefighter's service award program may provide for the crediting of years of active firefighting service for periods prior to the establishment of such program to a maximum of five years of active firefighting service per participant but only to the extent authorized pursuant to section two hundred sixteen of this article.

(e) In order to provide credit for service prior to the establishment of the service award program, each sponsor shall review its prior membership rosters to determine the number of years credit for each participant who is entitled to credit. In making the analysis, the standards for active service set forth in subdivision (c) of this section and adopted by the sponsor shall be used. Approval for such prior service shall require certification by the president, secretary

and chief of the volunteer fire company. In the event an active volunteer firefighter requests credit for service in more than one volunteer fire company, each such company shall provide a certification for the appropriate number of years.

(f) In computing credit for those active volunteer firefighters who also serve as paid employees within a political subdivision of the state, credit shall not be given for activities performed during the individual's regularly assigned work periods.

(g) An active volunteer firefighter whose name does not appear on the approved certified list or who is denied credit for service prior to the establishment of the service award program shall have the right to appeal within thirty days of posting of the list or within thirty days of denial of past service credit. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of such political subdivision, which shall investigate the appeal. The decision of the authorities in control of each volunteer fire company shall be subject to appropriate judicial review.

(h) An active volunteer firefighter's service award program may designate that benefits thereunder may be paid in the form of a lump sum, a life annuity with or without survivor benefits, period certain annuities, or any other form provided under the program. All forms of benefit payments shall be actuarially equivalent to each other. The sponsor may limit the forms of benefit payment under a service award program or impose conditions concerning the availability of such benefits. Nothing in this subdivision shall require a sponsor of a service award program to purchase annuity contracts from an insurance company.

(i) A participant whose volunteer fire service is interrupted by full-time extended obligatory military service or by a single voluntary enlistment not to exceed four years in the armed forces of the United States shall be considered on military leave. During such period of military leave, the participant shall receive active volunteer service credit of fifty points for each full year, prorated for service of less than a year.

(j) All program assets shall be held in trust for the exclusive purpose of providing benefits to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. If the service award program and the related trust are not tax qualified within the meaning of sections 401 and 501 of the Internal Revenue Code of 1954 (68A Stat 3, 26 U.S.C. 401 and 501), the trust referred to in this subdivision may provide that the assets held thereunder may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to insure that the participation by an active volunteer firefighter in the service award program does not result in taxable income to such volunteer firefighter under any

provision of the Internal Revenue Code of 1986, as amended.

(k) Every fiduciary of a service award program will be required to act solely in the interest of the program's participants and beneficiaries. Subject only to the provisions of the program document, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained in the exercise of the degree of judgment and care, under the circumstances then prevailing, which persons of prudence and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(l) No service award provided under the program may be assigned or alienated except to provide for the legally obligated support of minor children or spouse.

(m) A participant who is convicted of the crime of arson in any degree as defined in the penal law shall not be eligible to receive benefits from a service award program and shall forfeit any and all rights he or she may have had to past or future benefits pursuant to a service award program.

(n) An active volunteer firefighters' service award program may provide for the crediting of years of active firefighting service for periods after an active volunteer firefighter has reached the entitlement age and is receiving a service award.

(o) In the case of a state-administered service award program, the state comptroller may promulgate rules and regulations prescribing procedures and forms for the compilation and maintenance of records of the points accumulated by each volunteer firefighter. Each fire company participating in the state-administered program shall compile and maintain such records in the manner prescribed.

§ 218. Requirements and benefits under a defined contribution plan service award program.

(a) An active volunteer firefighter's service award program that is a defined contribution plan shall be subject to minimum and maximum contribution requirements as set forth in subdivision (b) of this section. In determining whether such minimum and maximum contribution requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsor shall be considered as one program.

(b) The sponsor of a defined contribution plan shall contribute to the plan a fixed amount of money, as determined by the sponsor, on behalf of each participant who is credited with a year of service. The minimum and maximum contribution requirements for a defined contribution service award program shall be as follows. The minimum contribution shall be one hundred twenty dollars per year of service. The maximum contribution shall be seven hundred dollars per year of service. The maximum number of years of service for which a participant may receive a contribution shall be forty years. The sponsor shall appropriate annually an amount sufficient to pay the contributions.

(c) The benefit payable to a participant in a defined contribution plan shall be the resulting amount from a defined annual contribution made by the sponsor less necessary administrative costs and shall include interest and/or other earnings resulting from investment of the annual contribution. The governing board of the sponsor may retain an actuary to provide advice with respect to the investment of annual contributions or any other aspect of the program and the cost thereof shall constitute a necessary administrative cost of the program. Benefits shall be available when the participating volunteer firefighter reaches entitlement age or at the time permanent total disability is established.

(d) In the event that any active volunteer firefighter becomes disabled and in the event that the disability prevents the active volunteer firefighter from pursuing such volunteer's normal occupation and if the disability is total and of a permanent nature as certified by the workers' compensation board or other competent authority approved by the sponsor of the service award program, the volunteer firefighter is entitled to receive the benefits described in this section, regardless of age or length of service. Such benefits shall begin on the first day of the first month following the establishment of such disability.

At the option of the sponsor of the service award program, the sponsor may provide an additional disability benefit in the event that any active volunteer firefighter becomes disabled during the course of service as a volunteer while actively engaged in providing a line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law. The additional disability benefit shall be an amount equal to an amount stated in the referendum under

which the program was established or amended and payable to the disabled firefighter monthly for life. The plan sponsor shall provide the plan annually with the additional funds necessary to accommodate this additional disability benefit or the sponsor may purchase an annuity or make other provisions to effectuate the additional disability benefit.

(e) A volunteer firefighter's retirement income plan shall provide that, in the event of the death of an active volunteer firefighter who has a right to a nonforfeitable percentage of retirement income pursuant to subdivision (b) of this section, the designated beneficiaries of such active volunteer firefighter (or his estate if no beneficiary is so designated) shall be entitled to receive death benefits under the service award plan. Such benefits shall be equal to the amount of benefits earned by the volunteer firefighter under the plan at the date of death. At the option of the sponsor of the services award program, if the active volunteer firefighter dies during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, additional death benefits may be provided by the sponsor. The amount of such death benefit shall be stated in the referendum under which the program was established or amended. In the event of the death of an active volunteer firefighter during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, such death benefit amount shall be paid by the sponsor to the plan for distribution to the beneficiary or the estate if no beneficiary is designated.

(f) In the case of a state-administered service award program, a service award shall be paid only after an application is made to the program administrator and the administrator approves the application.

§ 219. Requirements and benefits under a defined benefit plan service award program.

- (a) An active volunteer firefighter's service award program that is a defined benefit plan shall be subject to minimum and maximum retirement benefit requirements as set forth in subdivision (b) of this section. In determining whether such minimum and maximum benefit requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsor shall be considered as one program.
- (b) The minimum and maximum retirement benefit requirements for a service award program that is a defined benefit plan shall be defined as follows. Each participating active volunteer firefighter shall be entitled to a minimum service award benefit of five dollars per month for each year of firefighting service completed after satisfying the program's eligibility requirement and after establishment of the program. The maximum benefit amount payable to a participating active volunteer firefighter entitled to a benefit shall be determined on the basis of an actuarial valuation. The valuation shall take into account the age, and such other factors as the actuary deems appropriate, of the eligible participating active volunteer firefighters and the amount of available financing available per active covered volunteer firefighter. The maximum service award under a service award program shall be a monthly payment, payable for life, that does not exceed an amount equal to thirty dollars for each year of firefighting service credited under the terms of the program to a maximum of forty years of firefighting service.
- (c) No benefit payments may be made under any service award program that is a defined benefit plan until the tenth anniversary of the establishment of the service award program. The foregoing sentence shall not preclude a service award program from providing for additional benefit payments after the tenth anniversary of the establishment of the service award program to reflect the fact that the payment of benefits could not commence until that date.
- Notwithstanding the preceding paragraph, if a program sponsor has been authorized pursuant to section two hundred sixteen or two hundred sixteen-a of this article to provide benefits prior to the tenth anniversary of the establishment of the service award program, it may provide for the payment of service awards from the date of establishment of the service award program or from such other date as is set forth in the authorization.
- (d) The governing board shall engage the services of an actuary for the purpose of determining the annual amount required to be contributed to a defined benefit service award program, which amount shall be based on the interest and mortality tables or other appropriate assumptions and methods selected by actuary. The sum so determined shall be

appropriated annually by the political subdivision. The governing board may also retain an actuary to provide advice with respect to any other aspect of the program.

(e) In the event that any active volunteer firefighter becomes disabled and in the event that the disability prevents the active volunteer firefighter from pursuing such volunteer's normal occupation and if the disability is total and of a permanent nature as certified by the workers' compensation board or other competent authority as approved by the program sponsor, the volunteer firefighter is entitled to receive the benefits described in this section, regardless of age or length of service. Such benefits shall begin on the first day of the first month following the establishment of such disability. At the option of the sponsor of the service award program, if the active volunteer firefighter becomes disabled during the course of service as a volunteer while actively engaged in providing line of duty services as defined in subdivision one of section five of the volunteer firefighters' benefit law, an additional disability benefit may be authorized. Additional disability benefit shall be equal to the amount of additional benefits that the volunteer firefighter would have been entitled to had he continued to earn years of firefighting service through his entitlement age if the rate of benefits being provided under the service award program at the time of disability continued to be provided through the entitlement age.

(f) A volunteer firefighter's retirement income plan may provide that, in the event of the death of an active volunteer firefighter who has a right to a nonforfeitable percentage of retirement income pursuant to subdivision (b) of this section, the designated beneficiaries of such active volunteer firefighter (or his estate if no beneficiary is so designated) shall be entitled to receive death benefits under the service award plan. Such death benefits shall be payable in the form of a lump sum amount designated by the sponsor as payable at death or a percentage of the retirement benefits otherwise payable. Such benefits shall be equal to the amount of benefits earned by the volunteer firefighter under the plan at the date of death.

At the option of the sponsor of the service award program, if the active volunteer firefighter dies during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, additional death benefits may be provided.

(g) In the case of a state-administered service award program, a service award shall be paid only after an application is made to the program administrator and the administrator approves the application.

§ 219-a. Administration, reporting and disclosure.

1. The sponsor or the designated program administrator shall provide each active volunteer firefighter who participates in a service award program maintained under this article with a summary of the program's provisions, including the program's provisions relating to the participation requirements, the rate at which a nonforfeitable interest in program benefits increases and the program's service awards formula. This summary shall be provided to each service award program participant within six months from the date the program participation commences. In addition, any material modification to such program provisions shall be communicated in writing to each participant within six months after the later of the date modification is adopted or the date it is effective. The designated program administrator shall cause a statement of contributions to be provided to sponsors at least once annually. A copy of this program, the summary of the program, and documents related to the funding or investment of the assets of the program and of any contracts or agreements with service providers to the program shall be provided to participants annually and a copy shall be made available for inspection or copying by a program participant or beneficiary at the sponsor's main office. The plan document and the summary of the plan document shall be made available for public inspection and copying.

2. (a) This program shall be administered by such political subdivisions in accordance with standards and procedures established by them. Payment shall be made when certified by such political subdivisions; provided, however, that in the case of a state-administered program, the procedures for administration and payment shall be consistent with the rules and regulations governing the state-administered program.

(b) It shall be the responsibility of each participating volunteer fire company to maintain all required records on forms prescribed by the governing board of such political subdivision of the state; provided, however, that in the case of a state-administered program, each participating fire company shall compile and maintain such records in a manner consistent with the rules and regulations governing the state-administered program.

(c) Each volunteer fire company shall furnish to the governing board of such political subdivision a list of all volunteer members, certified under oath, and shall identify those volunteer members who have qualified for credit under the award program for the previous year. Such list shall be submitted annually by March thirty-first. In the case of state-administered plans, such list shall be submitted annually by March thirty-first or otherwise as provided in the rules and regulations governing the state-administered program. Notwithstanding the provisions of this paragraph a volunteer firefighter may request that his name be deleted from said list as a "participant" in said "defined benefit plan"

or "defined contribution plan". Such request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

(d) The governing board of each such political subdivision shall review the list of each volunteer fire company and approve the final annual certification. The approved list of certified members shall then be returned to each company and posted for at least thirty days for review by members.

3. The sponsor or designated program administrator shall obtain an annual audit of its records by an independent certified public accountant or an independent public accountant. Such audit shall examine the program's financial conditions, actuarial assumptions, fiduciary investment and control, and asset allocations, including whether current assets are adequate to fund future liabilities. A copy of the audit shall be presented to the program sponsor and to the state comptroller by such accountant. Copies of the audit shall also be made available for public inspection and copying. The audit must be completed within ninety days of the program sponsor's fiscal year.