

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BOARD OF ELECTIONS**

DIRECTIVE

The State Board of Elections (hereinafter "Board") issues this Directive pursuant to R.I. Gen. Laws § 17-7-5(c). The Directive addresses the circumstance in which a person who has been elected to either the House or Senate of the General Assembly refuses to serve in that office. The issue is governed by provisions found in the Constitution of Rhode Island and our General Laws.

At any time between the day of his or her election to the General Assembly and the beginning of the term of said office, a person can submit a written declaration to the Secretary of State indicating that s/he refuses to serve in that office. R.I. Gen. Laws § 17-3-5(a). Upon receipt of the written declaration, the Secretary of State "will cause a warrant to be issued ordering a new election" for that seat. *Id.* The calendar for the special election is set by the Board, pursuant to R.I. Gen. Laws §§ 17-7-5(a)(7) and 17-15-3 ("In the event of a special election, the state board shall fix the date or dates on which the various party primary elections shall be held; provided that all the party elections shall be held by the thirtieth (30th) day preceding the date fixed for the special election..."). The election must be held at least 70 but not more that 90 days from the submission of the declaration. R.I. Gen. Laws § 17-3-5(a).

A related question concerns representation of the senate or representative district after a person files the declaration. Based upon provisions of both the Constitution and General Laws, the incumbent senator or representative remains in office until a successor is elected and qualified to serve:

The senators and representatives in the general assembly shall be elected on the Tuesday after the first Monday in November, biennially in even numbered years, and shall severally hold their offices for two (2) years from the first Tuesday of

January next succeeding their election *and until their successors are elected and qualified*.

R.I. Const. Art. IV, § 1 (emphasis provided); see also, R.I. Gen. Laws § 22-3-15. Thus, the General Assembly seat does not become vacant so long as the prior incumbent remains, as that incumbent is held over until his or her successor is able to take the seat. This interpretation has been confirmed on multiple occasions by the Rhode Island Supreme Court. See *Casey v. Willey*, 151 A.2d 369, 373 (R.I. 1959) (“where the term of an officer is for a period of years and until his successor is elected and qualified, no vacancy results in the office by reason of the failure to elect a successor at the time provided by law, since the incumbent continues to hold over until his successor is duly elected and qualified”); *State ex rel. Tanner v. Perry*, 27 A. 606, 607 (R.I. 1893) (finding that the General Assembly may provide in cases where a special election must be called, and that “when such provisions are exhausted, then, again, the incumbent holds over under the first section of article 8, and there is no vacancy in the office.”); *In re North Smithfield Election*, 27 A. 597, 599 (R.I. 1893) (“It may also be said that the constitution, in article 8, § 1, provides, as far as may be, that no town shall be without a representation, by allowing a senator or representative to hold his office until another is 'legally chosen and duly qualified' to fill the place, and so there is no vacancy.”).

The *North Smithfield Election* case is particularly instructive, as it involved a senator-elect who passed away prior to taking office, and addressed the issue of whether a vacancy existed as of the senator-elect’s death, such that the town clerk could call for a new election immediately. *In re North Smithfield Election*, 27 A. at 598. The Court held that, though the incumbent senator did hold over in his office, he did so by virtue of his membership in the prior Assembly. *Id.* at 599. Though much of the law has changed, the underlying principle and the constitutional text have not materially changed, and therefore the rule applies today: the

incumbent senator or representative holds over until such time as a special election can be held and a successor qualified and sworn into office.

As voted upon and issued by the Board of Elections this _____ day of December, 2018.

Diane C. Mederos
Chairwoman