

Western Cape, South Africa

Western Cape Privileges and Immunities of Councillors Act Act 7 of 2011

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Western Cape Privileges and Immunities of Councillors Act

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Western Cape South Africa

Western Cape Privileges and Immunities of Councillors Act Act 7 of 2011

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(Afrikaans text signed by the Premier)

ACT

To give effect to section 161 of the **Constitution of the Republic of South Africa, 1996**, and section 28 of the **Local Government: Municipal Structures Act, 1998**, by defining the privileges and immunities of municipal councillors; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"**Code of Conduct**" means the Code of Conduct for Councillors contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (**Act 32 of 2000**);

"**committee**", in relation to a council, means a committee established by the council in terms of any law and consisting of councillors only, including—

- (a) an executive committee established in terms of section 42 of the Municipal Structures Act;
- (b) an appeal committee established in terms of section 62(4)(c)(ii) of the Local Government: Municipal Systems Act, 2000; and
- (c) a special committee established in terms of item 14 of the Code of Conduct;

"**council**" means the municipal council of a municipality established in terms of section 12(1) of the Municipal Structures Act;

"**councillor**" means a member of a council;

"**mayoral committee**" means a committee appointed by an executive mayor in terms of section 60 of the Municipal Structures Act;

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (**Act 117 of 1998**);

"**precincts**", in relation to a council, means any venue or room where the council or any of its committees or subcouncils or its mayoral committee holds a meeting;

"**rules and orders**" means the rules and orders of a council as envisaged in section 160(6) of the **Constitution of the Republic of South Africa, 1996**; and

"**subcouncil**" means a metropolitan subcouncil established in terms of section 62 of the Municipal Structures Act and includes a committee appointed in terms of section 71 of that Act.

2. Freedom of speech of councillors

- (1) A councillor has freedom of speech in any meeting of the council of which he or she is a member, and in any committee or subcouncil or mayoral committee of that council.
- (2) A councillor's right to freedom of speech in terms of subsection (1)—
 - (a) includes participation in the deliberations and voting on any resolution, decision, report, paper or minutes adopted or approved by the council or any of its committees or subcouncils or its mayoral committee; and
 - (b) is subject to the council's rules and orders and the Code of Conduct.

3. Immunity of councillors

- (1) A councillor is not liable to civil or criminal proceedings, arrest, imprisonment or damages for—
 - (a) anything that the councillor has said in, produced before or submitted to the council of which he or she is a member, or any committee or subcouncil or mayoral committee of that council; or
 - (b) anything revealed as a result of anything that the councillor has said in, produced before or submitted to that council or any of its committees or subcouncils or its mayoral committee.
- (2) A councillor who is not otherwise protected in terms of this Act in respect of any decision of a council, committee or subcouncil or mayoral committee, is not liable to civil or criminal proceedings in respect of that decision if the councillor—
 - (a) voted against the decision; or
 - (b) where the matter concerned was not put to the vote, before the decision was taken, requested his or her opposition to the decision to be recorded.

4. Arrest of councillors and serving of court documents in council precincts

- (1) A person may not, within the precincts of a council—
 - (a) arrest a councillor; or
 - (b) serve any summons, subpoena or other document issued by a court upon a councillor, while the council, or any of its committees or subcouncils or its mayoral committee is sitting.
- (2) A person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both the fine and the imprisonment.

5. Short title

This Act is called the Western Cape Privileges and Immunities of Councillors Act, 2011.