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GENERAL NOTICE

NOTICE 636 OF 2005

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000

GAZETTE FOR PUBLIC COMMENT

I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, acting in terms of section 120(1) of the Local Government: Municipal Systems Act 2000 (Act No **32** of **2000**), hereby publish for public comment the draft guidelines contained in schedule 1 to this notice.

Any person wishing to submit comments on these guidelines should do so on or before 20 May 2005 at email address: themba@dpplg.gov.za or fax number 012-**334 0903**, or mail to: Private Bag **X804**, Pretoria, 0001. For attention: Mr Themba Fosi.

FHOLISANI SYDNEY MUFAMADI

MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT

EXPLANATORY NOTE ON DRAFT GUIDELINES

These draft guidelines relate to the assignment and delegation of functions from national or provincial government to local government. They are issued in order to provide a uniform approach to the assignment and delegation of functions. They do not deal with the assignment of powers between spheres of government.

Assignments and delegations produce a dynamic division of functions between the three spheres of government. Although the Systems Act does prescribe procedures for general and specific assignments in sections 9 and 10, there has not been guidance on when the transfer of functions is appropriate and, if so, which options (as between assignment and delegation) are most desirable. As a result, a wide-range of approaches has been adopted, not all of them conducive to effective local government.

The Department for Provincial and Local Government accordingly adopted a policy framework in 2003 to guide the decision about whether to assign or delegate a function and how to do so. These guidelines represent a formalization and codification of this policy framework.

These guidelines govern the process to be undertaken when a national or provincial department is considering transferring responsibility for a function to local government. The process involves two stages: a decision must be taken to transfer responsibility for a function to the local government sphere (see Part 3 of the guidelines); once such a decision is taken, it must be decided whether the appropriate mechanism for transfer is assignment or delegation (see Parts 5 to 9 of the guidelines). The differences between assignment and delegation are defined in the guidelines and a preference indicated for assignments and general assignments, in particular. The guidelines are, however, flexible in that they allow for the most appropriate mechanism to be determined for the particular function. The guidelines also make it clear that the financial and planning implications of any assignment or delegation must be considered and proper procedures followed if there is an impact on the destination of equitable share (see Parts 11 to 13 of the guidelines).

Departments and municipalities and stakeholders are invited to submit comments to the Department of Provincial and Local Government on the content of the guidelines on or before 20 May 2005.

SCHEDULE 1

ASSIGNMENT AND DELEGATION GUIDELINES

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Part I: Interpretation and Scope

1. Definitions

In these guidelines, unless the context indicates otherwise—

"Act" means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

"administrator" means the official in the assigning department, municipality or in the South African Local Government Association responsible for complying with these guidelines and appointed in terms of guidelines 15(1)(a) or 16(1)(a);

"Annual Division of Revenue Act" means the Act of Parliament which must be enacted annually in