**Section 521.90 Data Centers Memorandum of Understanding**

a) The Department and each qualifying data center seeking a certificate of exemption or tax credits shall enter into an MOU. The MOU shall specify the terms and conditions of the exemptions or credits. It shall define the rights and responsibilities of the Department and of the data center owner or operator (and, if applicable, its tenants). Provisions with which the data center owner/operator/ tenants will be contractually bound to comply include, but are not limited to, the following:

1) a detailed description of the project that is the subject of the MOU, including the location and amount of the investment and jobs created above the current project or statewide baselines;

2) the duration of the exemptions or credits;

3) *the details for determining the amount of capital investment to be made* [20 ILCS 605/605-1025(d)];

4) *the number of new jobs created,* including a specific method for determining the number of new employees and any relevant baseline headcount numbers;

5) a provision that the certified data center provide an agreed upon procedures audit performed by an independent, licensed certified public accounting firm attesting that the certified data center has made the capital investment, hired the new employees specified in the MOU, and entered into a project labor agreement with respect to the project;

6) *the timeline for achieving the capital investment and new job goals* [20 ILCS 605/605-1025(d)];

7) a provision that *the contractor and all subcontractors* *shall* *comply with the requirements of the Illinois Procurement Code as they apply to responsible bidders and to present satisfactory evidence of that compliance to the Department* [20 ILCS 605/605-1025(f)];

8) a provision that *new and existing data centers seeking a certificate of exemption for the rehabilitation or construction of data centers in the State shall require the contractor to enter into a project labor agreement approved by the Department* [20 ILCS 605/605-1025(g)]; provided, however, that, for an existing data center for which construction began prior to June 28, 2019, the applicant shall provide evidence, as required by the Department, in the form of affidavits and other supporting documentation from the contractor and the applicant demonstrating compliance with the standard provisions of a project labor agreement. Proof of project labor agreements must be accompanied by evidentiary materials from the labor organization affirming participation in the project;

9) *repayment obligations, should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption* or credit *will be required* [20 ILCS 605/605-1025(d)];

10) a requirement that the qualifying data center or data center tenant claiming the exemption or credit shall annually report to the Department the number of new employees, including those specifically associated with the operation or maintenance of the data center, the total overall headcount associated with the data center, estimated value of taxes avoided due to the exemptions and credits received, and any other information the Department requires to ensure compliance with the Statute, the MOU, or other applicable law;

11) a requirement that the Director of the Department is authorized to verify with the appropriate State agencies information required to be reported by the qualifying data center or data center tenant;

12) a requirement that the qualifying data center shall provide written notification to the Department not more than 30 days after it makes or receives a proposal that would transfer the qualifying data center's State tax liability to a successor entity;

13) a requirement that the qualifying data center shall provide written notification to the Department not more than 30 days after the qualifying data center determines that the minimum job creation or retention, employment payroll, or investment no longer is being or will be achieved or maintained as set forth in the MOU;

14) a provision that, if the total number of new employees or baseline employment falls a specified level, the allowance of the exemptions or credits shall be suspended until the number of new employees or baseline employment equals or exceeds the amounts set forth in the MOU; and

15) *other provisions as deemed necessary by the Department* [20 ILCS 605/605-1025(d)].

b) Data center tenants seeking separate certificates of exemption in the name of the data center shall execute a separate MOU with the qualifying data center in the form provided by the Department. The MOU must be submitted to the Department. If the Department finds that the MOU is acceptable under the Statute and this Part, it will acknowledge the MOU's appropriateness prior to the execution of any certificate of exemption.