

OU DPC
Exemptions Subcommittee
Virtual Meeting: February 19, 2021

Participants: Bryon Bedel, David Berens, Jeff Kursman, Scott Lucas, Mark Niehe, Regan Noble, Darren Owens, Steve Schafer, Les Schell, Kevin Schimming

EXEMPTIONS SUBCOMMITTEE DISCUSSION

The meeting began with a review of the Exemptions Subcommittee purpose. The current governmental exemptions included within Ohio Revised Code's Underground Utility Damage Prevention legislation are problematic for two reasons:

- 1) From a perspective of Public and Excavator Safety, the municipal exemptions create inequities between the safety and protection of public versus private sector workers. Contracted excavators are required to submit notifications a minimum of 48-hours prior to the commencement of their digging activities so that potential underground utilities can be safely located and marked, while municipal workers engaged in similar projects would not benefit from the safety afforded by such markings.
- 2) Under PHMSA guidelines, Ohio's current "entity"-based exemptions prohibit eligibility for annual One Call Grants and State Damage Prevention Grants. Transitioning to "activity"-based exemptions would no longer restrict grant eligibility.

The subcommittee initially identified 18 excavation activities commonly conducted by municipalities within right-of-ways. During review, it was determined several of these activities almost universally exceeded twelve inches in depth and should be eliminated from consideration. The current list represents a "meeting in the middle," with Darren specifically recognizing his collaborative discussions with the County Engineers Association of Ohio.

It was noted that these proposed exemptions would only be applicable in right-of-ways and that any proposed excavation activities exceeding twelve inches would not comply with the proposed exemptions and would require a locate notification.

In the accompanying draft of proposed revisions to ORC 3781.25(i), current language regarding the municipal exemption would need to be stricken and replaced with the proposed language. It was recognized that additional definitions for some of the exempted activities might be required by LSC in their drafting of ORC language for consideration.

The Subcommittee offered no additional "exemptions", agreed that this language represents its collective discussions around this topic and offered no opposition to it being presented to the full coalition for its review and consideration.

3781.25(l) "Excavation" means the use of hand tools, powered equipment, or explosives to move earth, rock, or other materials in order to penetrate or bore or drill into the earth, or to demolish any structure whether or not it is intended that the demolition will disturb the earth. "Excavation" includes such agricultural operations as the installation of drain tile, but excludes agricultural operations such as tilling that do not penetrate the earth to a depth of more than twelve inches. ~~"Excavation" excludes any activity by a governmental entity which does not penetrate the earth to a depth of more than twelve inches.~~ "Excavation" excludes activities listed below when performed in the public right of way and providing that the activity does not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes coal mining and reclamation operations regulated under Chapter 1513 of the Revised Code and rules adopted under it.

1. The cleaning of debris from open roadside drainage systems that does not alter the existing invert of that drainage system.
2. Milling of asphalt road surface except at signalized intersections and where signal and/or environmental sensors may be present.
3. Underground utility locating and surveying activities limited to uncovering valve enclosures, manhole covers, or similar utility components, placement of temporary marking flags or wooden lathe and grounding of locating equipment.
4. Utility wood pole inspection.
5. Repair or replacement of utility pedestals or enclosures in the same location
6. Tilling for sowing of grass and wildflower coverings for erosion control or beautification purposes.
7. Placement of temporary signage.
8. Addition or removal of roadside berm material.