

APA - Wisconsin Newsletter



American Planning Association
Wisconsin Chapter

Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

The Marcellus Shale, Fracking, and Wisconsin

Deep below the Mid-Atlantic region, the Marcellus Shale was formed millions of years ago. Long known to contain natural gas (the US Geological survey estimated 1.9 trillion cubic feet of gas in 2002) the potential for energy production was largely ignored as not worth the effort. This all changed in January 2008 when Penn State University released new geological findings, estimating 50 million cubic feet of natural gas, 26 times more than the previous estimate.

Currently, Mid-Atlantic states and companies are scrambling to uncover this recently realized resource. To obtain the gas, a controversial process known as "Horizontal High-Volume Slick Water Fracturing" (more commonly known as fracking) is used by pumping large amounts of water, sand, and chemicals into the ground to break up deposits and force out the natural gas.

Far from the Mid-Atlantic, Wisconsin has not escaped from the rush to frack the Marcellus Shale. A natural resource found in Wisconsin,

Minnesota, and Illinois is a critical link to unearthing the gas: silica sand. Silica sand is found in abundance in Wisconsin. In fracking, the sand is added to the water and chemicals to force the gas from the ground. Because it is only found in certain regions, those regions with the sand are new mining hot spots. The *StarTribune* has called silica sand the new "gold."

Local residents near silica sand deposits are excited about the boon to their economy. A story by Jason Smathers for the Wisconsin Center for Investigative Journalism highlights the economic impact for property owners in areas of the state where mining has surged (see map). One property owner whose property was valued at under \$150,000 last year sold to a mining concern for \$330,000. Unimin's Eagle Land Development, the mining developer, has purchased almost 500

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Submit articles by email attachment. Graphics are encouraged
 Deadlines:

Winter issue: submit by January 15.
 Spring issue: submit by March 15
 Summer issue: submit by June 15
 Fall issue: submit by September 15

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acres of land in Monroe County, and even more in Tunnel City near La Crosse.

But others question the safety and environmental damage that the mining can cause. Fears of air pollution and water contamination are not unfounded and could exact a toll on Wisconsin communities. The Department of Natural Resources has begun to research the effects of such mining operations. A DNR study concluded that Silica Sand can be harmful to people if above certain concentrations. The only air monitoring data related to silica sand is particulate matter, which includes silica sand but does not consider this source independently.

In September 2011, the DNR released a final report that studied the potential of silica sand as an airborne hazard. The study concluded that only one type of silica sand, the crystalline form, is a known carcinogenic hazard. The report notes that crystalline silica sand is most dangerous when particles are smaller than 4 microns, but instruments are not widely available to monitor this size of sand. Until this technology is created, it is impossible for communities to identify the true impact of the mining operations on their surrounding areas.

The DNR has limited rules concerning

silica sand mining and no specific limits on the amount of crystalline silica that blows off site or limiting concentrations nearby. Because of the lack of monitoring methods and data, the DNR concluded that information needed to make informed decisions for permitting are not available. The studies that are available show no concern for individuals "not living near" silica

sand sources. Conversely, silica sand mining may pose a concern for those living close to the sources, but natural processes also contribute to exposure in these areas. The report concludes that available literature provides little conclusive information on sources, controls, and levels of silica in the air.

By using zoning and permitting, some local governments are proceeding with caution. On September 6th, 2011 in Goodhue County, Minnesota, officials placed a moratorium on all silica sand mining for one year. Commissioner Jim Bryant was quoted as saying, "Is this really a good fit for us here?" Bryant said. "Maybe for some. Maybe in some areas but maybe not in other areas." Regardless, Goodhue County is going to wait for more information to come to light.

Here in Wisconsin, Howard and Cooks Valley, two unzoned towns in Chippewa County passed ordinances to stop silica sand mining. "Chippewa County circuit court judges threw both out, ruling that the zoning laws were invalid without County Board approval." (Smathers, 2011) Subsequently, according to the Smathers story:

Cooks Valley took its case to the state Court of Appeals, where officials argued they had enacted a regulatory ordinance, not a zoning ordinance. The appellate court said the matter required further clarification from the state Supreme Court, which has not yet announced whether it will take the case.



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After being contacted by constituents in her western Wisconsin district where mines are springing up, Sen. Kathleen Vinehout, D-Alma, asked the nonpartisan Legislative Council for clarification on what local communities can do to regulate them. The council determined that zoning is the most direct option, but it cannot be applied after plans for mining are under way. (Smather, 2011)

The DNR report provides alternatives for addressing the current particulate concerns. One such alternative suggests using available technology to monitor particulate matter. Though silica sand is only one particulate, it is captured in particulate matter monitoring and could identify

health risks. Another alternative is to use local ordinances to require paving of roads, covered transport trucks, and slower vehicle speeds in areas where the sand is laid bare. These types of ordinances may help to reduce the total amount of silica sand able to become airborne. Other possibilities include introducing new particulate matter levels, using sprayers to knock down dust, or to seek voluntary compliance.

Additional concerns will surface, however, in any community facing silica sand mining expansion, including truck traffic, stresses in environmental resources, and groundwater impacts. Some of these may be managed through special

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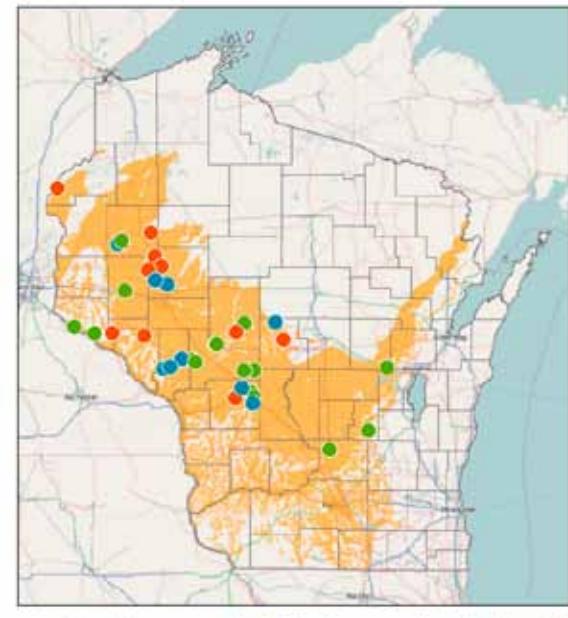
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Frac sand: Wisconsin sites



- Active (16)
- In development (11)
- Proposed (14)
- Sandstone areas of possible interest to frac sand miners

Mine and processing plant sites compiled in July 2011 from interviews with county and company officials; company websites; and Department of Natural Resources permit records. Sandstone identified with assistance from the Wisconsin Geological Survey.

Map: Kate Golden, Wisconsin Center for Investigative Journalism. Research: Jason Smathers and Julie Strupp, WCIJ.

use permits or performance zoning, if a local community has the appropriate regulations in place. The planning concern, however, is that the development of silica sand mines is likely to take place in areas without town zoning. In addition, county constituents may well be split on their view of the risks and benefits associated with mining operations. Moreover, controversy about the need for and appropriateness of fracking--even though that activity is taking place far from Wisconsin--may add to tensions around regulating silica sand mining.

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All in all, Wisconsin has likely seen only the tip of a very large iceberg involving new sand mining operations around the state. Now is the time for planners—especially county planners working with regional planning organization—to understand the nature of the sand resources in their area.

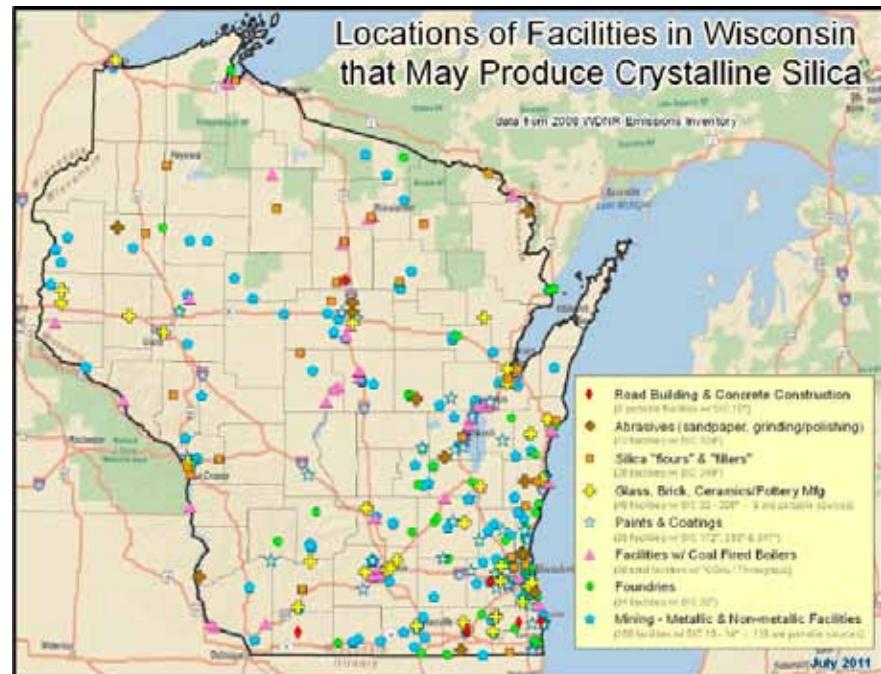
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Chapter Award Changes

In order to continue improving our chapter awards and provide new opportunities to recognize excellence in state planning, we are making some changes for the 2012 chapter awards. All the details can be found in the 2012 nomination form, which will be coming out in November.

Digital Format

First is a new submittal format, DIGITAL! Yes, we are accepting all documentation in digital format to make it easier for you and better for the environment. You will have the option of email or sending a CD for nominations that are too large to email. This will not only save you shipping costs, but also will save shipping costs for the chapter when we send the nominations to our jury members. By implementing this format we hope more of you will consider submitting this year.

New Categories

In addition to our past nomination categories, we are adding a few more areas that recognize current trends and innovations in planning. New categories include: Neighborhood Planning – this will be in addition to the planning document category to recognize a project or program for an individual neighborhood; Innovations in Planning (pushing art and practice) – innovative approaches within all areas of planning, examples could include: using new technology to improve planning efforts, best practices in sustainability, leadership in City or Regional plan-

ning, or creative public participation strategies; Great Places in Wisconsin – highlighting quality places that make a difference in your community.

Jury members will assign points based on criteria outlined in the nomination form. As in the past, each category can have multiple winners or no winners. Since Wisconsin will be hosting the Upper Midwest Planning Conference in September, the awards will be given in the Fall instead of our spring conference. However, we will continue to follow the same timing of nomination forms being due late winter, with a due date in March. Winners will be notified in May. The state chapter awards give recognition to outstanding achievements in planning and publicize persons and organizations whose activities advance planning in Wisconsin.

National Community Planning Month

Each October APA, its members, chapters, divisions, and professional institute sponsor National Community Planning Month to raise the visibility of the important role of planners and planning in communities across the U.S.

Help elevate the role of planning in your community. Host a planning department or planning commission open house, talk to kids in schools about a career in planning, present a library display about planning and planners, sponsor a neighborhood tour to highlight how planning helps the community.

To help with your community outreach in October to celebrate planning, APA has put together a set of images to brand your effort. <http://planning.org/ncpm/tools/>

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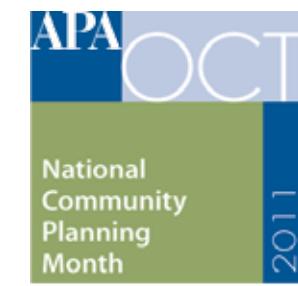
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Watch for announcements from your APA-WI district representative about Community Planning Month activities organized in your part of the state. Better yet, contact your district rep to find out how you can help!

Tips from APA About Making Planning Visible to Stakeholders

Make a video

- Look for assistance from local television stations, cable systems, audio-visual departments of major companies, and media programs at local colleges, technical schools, and high schools.



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- The final product can be screened at an open house, shown by a local television or cable company, or posted to a community website for viewing and download-ing.

APA-WI Endowment Donation Card

The APA-WI board established an endowment fund to support scholarships for students attending either of the accredited masters degree programs in planning in Wisconsin: UW - Madison and UW - Milwaukee.



APA-WI invites members to contribute to the endowment fund as a way to support the next generation of planners in Wisconsin. Just return this pledge form to APA-WI Treasurer Connie White with your contribution.

Your gift is tax deductible.

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- APA's Planning Advisor Service Report 500/501, Lights, Camera, Community Video, is an excellent how-to manual that offers numerous examples of places where this has been done and a DVD with some of the resulting videos.

Illustrate How Planning Makes Great Places

- APA's Community-Wide Audio/Web Conference Great Plans, Great Communities provides a striking introduction to planning and makes the case for the importance and wide-ranging benefits of planning. See a preview of the presentation below.

Lead a Tour

- Recruit planners from local agencies and firms as guides or produce self-guided brochures
- Team up with other interest groups to sponsor tours
- Promote tours to visitors staying at local hotels
- Offer in-depth mobile workshops or short, one- to two-hour walking tours.

Create an Exhibit

- Put together a display of maps, photographs, and drawings that shows how the community (or particular neighborhoods or districts within it) has evolved over time.
- Highlight ways that good planning has guided growth, creating assets enjoyed today, while always evaluating future options based on growth projections and community values.
- Use the display to reveal recurring phases in the planning process, from citizen participation to policy decisions to plan implementation.

- Point out the roles played by elected officials, professional planners, volunteers serving on planning commissions, and interest groups in the community.

- Display exhibit at the state capitol or city hall for the entire month

- Make it a traveling exhibit, moving to different locations around the community, such as public libraries, schools, and other venues.

- Consider capturing the text and visuals assembled for an on-site exhibit and using them to create a more lasting, digital exhibit placed on the city or county's website. Such a virtual exhibit could provide newcomers to the community with a quick history of its evolution, as well as a quick lesson in the important role played by planning. For additional suggestions on ways to engage the public through a website devoted to community planning issues and processes, see Section 9 of the Planners' Communication Guide (E-Communications).

Hold an Open House

- Use photographs, maps, and models to highlight past accomplishments and current planning projects.

- Demonstrate how planners use GIS, scenario modeling, and other visual simulation techniques to show what the community might look like 10 or 20 years from now.

- Use a short video, slide show, or PowerPoint presentation to give an overview of the community's history, pointing out how planning provided a good framework for aspects of the community people still enjoy.

- Provide light refreshments and giving visitors a take-home gift, such as a planning-related

T-shirt, mouse pad, or button.

Hold a Public Forum

- Invite representatives from different "stakeholder" groups in a community to share their insights into current planning issues and their vision of possible solutions. (Consider working with a local university that offers courses related to your topic.) Young people, the elderly, developers, realtors, environmentalists, public health professionals, major employers, union leaders, and many others have legitimate concerns as well as good ideas that the community as a whole needs to consider — and can consider through the planning process.

- Whether designed as a series of lectures, a symposium, or a hands-on design charrette, such public forums can demonstrate that planning in America is a robust process that welcomes many perspectives to the table and touches upon all aspects of community life, now and well into the future.

- Look at how other places in their region are grappling with issues that know no jurisdictional boundaries, such as air and water pollution, population and investment flows, transportation demands, and the like.

- Illuminate how communities elsewhere in the country are creating effective solutions to commonly held problems through innovative planning: increasing affordable housing, creating mixed-use, mixed-income districts, revitalizing waterfronts and warehouse districts, taming the commercial strip, creating a networks of trails and greenways, and so forth.

- Invite APA members who work in state or regional planning agencies, those in private prac-

tice, and those who teach in planning schools to speak.

Engage in the Community

- Have a display at a local music festival, arts celebration, or county fair.

- Reach out to other groups in the community to co-sponsor an event in recognition of National Community Planning Month, like a fund-raising 10K run or walk, with the proceeds going to a good cause like affordable housing, conservation, or K-12 education.

- Get pledges from businesses, organizations, and special interest groups as a sign that they recognize, support, and celebrate good planning.

- Recognize a prominent citizen who has contributed to good planning. Host the celebration at a local museum or art society, at a prominent outdoor space such as a waterfront or urban park, or at a local government building, such as your city hall. Put an announcement in a local newspaper or magazine featuring the citizen's accomplishments.

Resources to Reach Out to Youth in K12 Schools

Metropolis: A Green City of Your Own

This curriculum was developed by a third grade teacher — and planner — in the Bay Area. Metropolis was designed as a standards-based, interdisciplinary unit of study for grades 3-6. It is intended for use by elementary classroom teachers and other adults who seek to expose children to a variety of urban forms from around the world. The city elements presented in the

'Heard It on the Radio' Resources

APA recently released radio public service announcements (PSAs) and they're playing across the country. They've brought together information, examples, and tools to help you raise awareness about the benefits of planning among your neighbors, elected and appointed officials and the business people in your community and region.

<http://planning.org/ncpm/psa/index.htm>

APA has both 30 second and 60 second versions of PSAs for the radio.

- Fresh Food
- Little Things that Make Life Green
- Flooding
- Wildfires
- Drive Less
- Homelessness
- and many more.

lessons are edges, districts, public spaces, landmarks, and transportation. The lessons increase students' awareness of planning issues such as sustainability and sprawl, while giving them an opportunity to express their heritage, interests, and ideas using a creative design process.

The YouthPower Guide

Through the youth arts program, El Arco Iris, youth in Holyoke, Massachusetts have designed and painted local murals, renovated park spaces,

developed their own community maps, and served as the leaders of neighborhood planning workshops. *The YouthPower Guide: How to Make Your Community Better* is a manual based on the program's success. Written for use with young people ages 10 to 19 in an after-school setting, the guide contains 24 activities and a framework for developing new projects.

Green Map System

The Green Map System (GMS) is a locally adaptable, globally shared framework for environmental mapmaking. It invites design teams to map their community. The site also has a special section devoted to "Youth Mapmakers" with an activity guide for school or after-school use.



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Law Update

Court Decisions

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LARA ROSEN, M.S. CANDIDATE IN URPL, CONTRIBUTED TO THIS SUMMARY.

August Case Law Update

August 31, 2011

No Wisconsin Supreme Court decisions related to planning have been issued in August.

Wisconsin Court of Appeals Opinions

Disputing Neighbors: Determining the Boundaries of Riparian Areas

Manlick v. Loppnow involves a dispute between two lakefront property owners on Pewaukee Lake in Waukesha County. Each party owns less than 30 feet of lake frontage on a portion of the lake with a curved shoreline. The Manlicks traditionally placed their pier at the end of their property closest to the Loppnow



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property within parallel lines extending from the parties' property lines. In 2006, the Manlicks purchased a pontoon boat that they docked on the north side of their pier closest to the Loppnow property. After the Loppnows voiced concerns, the Manlicks moved the pontoon. In 2007, the Loppnows moved their pier so it was immediately next to the Manlicks' pier to prevent the Manlicks from using the north side of their pier.

The Manlicks then brought this lawsuit alleging the Loppnows' pier infringed upon their riparian rights. The Loppnows counterclaimed alleging nuisance and trespass. The circuit court denied the claims of the Manlicks and the

counterclaims of the Loppnows. The Manlicks appealed the circuit court decision. Court of Appeals decision in the case centers on how to determine the boundaries of the parties' riparian areas. Owners of lakefront property are entitled to exclusive possession of the waterfront to the extent necessary to reach navigable water, to have reasonable ingress and egress to navigable water and to have reasonable access for bathing and swimming. These rights, commonly referred to as "riparian rights," extend from a landowner's property line to the line of navigability. There is no set rule in Wisconsin for establishing the extension of boundaries into a lake between con-

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tiguous shoreline properties. However, Wisconsin case law sets forth three general methods for determining where riparian boundaries lie. First, where the course of the shore approximates a straight line and the onshore property division lines are at right angles with the shore, the boundaries are determined by simply extending the onshore property division lines into the lake

Second, if the boundary lines on land are not at right angles with the shore but approach the shore at obtuse or acute angles the division lines should be drawn in a straight line at a right angle to the shoreline without respect to the onshore boundaries (commonly known as the “coterminous method”). Third, where the shoreline is irregular then the boundary line should be run in such a way as to divide the total navigable waterfront in proportion to the length of the actual shorelines of each owner taken according to the general trend of the shore. The proper method to use is to be decided by the court, and not a jury, based on what is fair and equitable under the circumstances. In this case, the circuit court determined the second method, the coterminous method, was the most equitable method to define the parties’ riparian rights. Using this methodology, the circuit court determined that it was actually the Manlicks’ pier that was inside the Loppnows’ riparian area. The Wisconsin Court of Appeals decision affirms the methodological approach used by the circuit court. The case is recommended for publication.



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Legislative Update

By STEVE HINIKER, 1000 FRIENDS OF WISCONSIN
APA - WI LEGISLATIVE ANALYST

Bills Introduced 2010-2011			
AB 163 (update)	Disclosure Report for Vacant Land	Similar to the condition report that must be created when selling real estate, this bill would require the seller of vacant land to create a report to disclose certain conditions such as known underground storage tanks.	AB 163 History (Passed Committee on Housing 7-0)
AB 165 (update)	Turf Fertilizer Containing Phosphorus	Eliminates the prohibition of retailers displaying fertilizer that contains phosphorus, but requires them to post a sign describing the general laws against its use.	AB 165 History (Hearing held by Committee on Natural Resources)
AB 177 (update)	Time Limit for Permit Issuance for Activities Near Water	Even if an application for a permit related to construction or deposits near navigable waters deemed incomplete by the DNR the second time it is submitted, the time limit for public hearing process is triggered. This shortens the amount of time open for public comment on certain proposals.	AB 177 History (Passed amended bill by Assembly) Leg Council Explanation of Amended bill
AB 178 (update)	Authority of a County to Enact Ordinances	A county would not be allowed to enact any ordinance with regard to the extraterritorial area of a municipality as long as the municipality and the town within which the area is located are in agreement.	AB 178 History (Hearing held)
AB 179	Multijurisdictional TIF Districts	A number of cities and municipalities would be authorized to create multijurisdictional TIF districts after entering an intergovernmental cooperation agreement with shared responsibilities.	AB 179 History

<u>AB 181</u> (update)	Authority of a County to Enact Ordinances	A county would not be allowed to enact any ordinance with regard to the extraterritorial area of a municipality as long as the municipality and the town within which the area is located are in agreement.	<u>AB 181 History</u> (Hearing held)
<u>AB 201</u>	Geothermal Regulation	Expands the current law that regulates well drillers to include those engaged in well drilling for geothermal purposes.	<u>AB 201 History</u>
<u>AB 216</u>	Clearing Vegetation for Outdoor Advertising	Changes requirements for clearing vegetation obstructing signs. Generally makes it easier and cheaper to remove vegetation without the requirement to replace removed vegetation.	<u>AB 216 History</u> (Hearing to be held 9/20)
<u>AB 257</u>	Milwaukee County sales and use tax for parks, recreation and culture, transit services, and public safety.	Allows Milwaukee County to impose an additional sales tax of up to one cent for parks, recreation, transit services and public safety.	<u>AB 257 History</u>
<u>AB 260</u>	Elements that must be included in a county development plan.	Changes existing law to make inclusion of a city's or village's master plan in a county development plan optional. The bill also eliminates the requirement that any official map be included without changes.	<u>AB 260 History</u>



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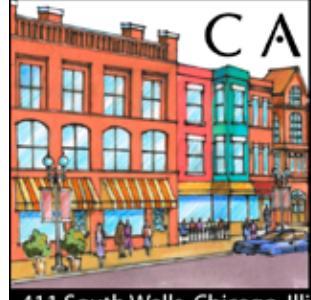
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AB 261	Rail passenger service assistance and promotion program.	Requires WisDOT to competitively bid for rail passenger support services, equipment, or facilities for rail passenger service, including the sale or lease of equipment or facilities acquired by DOT for the purpose of providing rail passenger service or support services for rail passenger service.	AB 261 History
AB 265	Definition of a bicycle and changes to operational requirements of a bicycle.	Allows Milwaukee County to impose an additional sales tax of up to one cent for parks, recreation, transit services and public safety.	AB 265 History

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<u>AB 260</u>	Changes the elements that must be included in a county development plan.	Changes existing law to make inclusion of a city's or village's master plan in a county development plan optional. The bill also eliminates the requirement that any official map be included without changes.	<u>AB 260 History</u>
<u>SB 171</u>	Income Tax Deduction for Employer-Paid Fringe Benefits for Transit	Creates an individual income tax exemption for the cost of a public transportation pass provided by an employer to an employee, or for the money paid by an employer to an employee to purchase such a pass, of up to \$230 per month.	<u>SB 271 History</u>

