



AGENDA ITEM NO.

1 c

COUNCIL MEETING

02-17-11

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

February 17, 2011

FROM: KENNETH P. HAMM, Director
Department of Transportation

SUBJECT: APPROVAL OF SENATE BILL 1561 ANNUAL REPORT

RECOMMENDATIONS

Staff recommends that the Council approve Senate Bill 1561 Annual Report prepared by the FAX staff and that the report be forwarded to the California State Legislature as required by this law.

EXECUTIVE SUMMARY

The City of Fresno, Department of Transportation/Fresno Area Express (FAX) was selected, along with the Sacramento Regional Transit District, in 2008 by the California State Legislature to develop and oversee a Senate Bill 1561 pilot program that would address safety on public transportation buses and protect the bus riders and operators from unruly behavior and assaults by some members of the riding public.

The City of Fresno, Department of Transportation/Fresno Area Express (FAX) implemented SB 1561 on February 1, 2010. As a prerequisite to SB 1561, an annual report is required to be approved by the Fresno Council and forwarded to the California State Legislature.

At FAX between February 1, 2010, and December 31, 2010, there were 503 radio calls to Dispatch from bus drivers regarding incidents with customers that were SB 1561 related. There were 56 violations of the Public Utilities Code resulting in the issuance of 26 Prohibition Orders. Activity aboard buses ranged from minor behavioral infractions to felonies. Swift response to behavioral problems on buses and prohibition as an outcome are helping improve the FAX image. Staff believes the program is effective. FAX recommends continuing this program. The program communicates to the riding public that we are working hard to create safe buses and stations. It also communicates to our riders that if you act out, you lose your riding privilege.

BACKGROUND

In September 2008, Senate Bill 1561 was signed by Governor Schwarzenegger into law. In September 2008, the Fresno City Council adopted Resolution 2008-246 supporting Senate Bill 1561. The bill provides the two transit systems a legal means for excluding customers from riding the public transit service if they display unruly behaviors. It also gives the customer who has been cited a process for appealing their exclusion.

In July 2009, the Fresno City Council approved a list of recommended committee members. In August 2009, the Transit Security Advisory Committee began conducting regularly scheduled meetings for the implementation of SB 1561. The committee and staff developed the specific

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implementation plans and tools. The committee also oversaw the development and implementation of the educational and marketing programs to educate the public and the City's Transportation employees. Aided by the City Attorney's Office, the committee made sure that the FAX program met all the legal requirements legislated by this new law.

In December 2009, training for FAX staff, bus operators, and City of Fresno police officers was initiated. Also initiated in December 2009, was a campaign to notify and educate the public regarding the law and date of implementation of SB 1561. Education occurred via flyers, placards, websites, and news media. Information was distributed to schools, social service organizations, community centers, at FAX transit centers, and aboard FAX buses. Placards, posters, and newspaper ads touted a theme stating "YOU MUST ABIDE TO RIDE."

In February 1, 2010, the City of Fresno implemented SB 1561, the FAX Exclusion Policy. During the eleven month period between February 1, 2010, and December 31, 2010, FAX drivers reported 546 behavioral incidents, 503 of which fell under SB 1561. There were 230 incidents of unruly passengers using profanity, playing loud music, eating on the bus, etc. There were 81 fare related incidents, either not paying the correct fare or trying to misuse tickets and passes. 108 incidents related to the use alcohol or other substances. On 84 occasions, physical or verbal confrontations occurred and were cited. There were 38 assaults and batteries, 19 toward passengers, 17 toward bus operators, and 2 toward transit supervisors. 28 incidents resulted in felony arrests.

FAX management believes that SB 1561 is helping create safe transit buses and stations. As with SRTA, FAX believes a few improvements should be made to the law. One challenge relates to the 60-day time period for three offenses to issue a prohibition order. The two agencies recommend 90 days. Another challenge is the lack of immediacy of the prohibition. We have to wait 10 days from the notice of an occurrence to prohibit an offender from riding. That is like waiting 10 days to discipline your child for something he just did. Both agencies believe that there should be an immediate prohibition with the possibility of an immediate appeal opportunity.

There is currently a lack of a penalty if someone prohibited continues to try and ride. The agencies would like this addressed by the Legislature. There is also no provision for physically identifying prohibited riders to transit operators and supervisors. The legislature is being asked to allow pictures to be taken of offenders and pictures to be posted at transit bases so employees know who is prohibited. FAX and SRTD are also asking that SB 1561 be made permanent and applicable to all State of California transit systems.

FISCAL IMPACT

Start up costs including staff time, training time and materials, marketing programs, printing costs, and developing a data base are estimated at \$4,950.00.

Costs for sustaining the program on an annual basis are estimated not to exceed \$2,500.

***FAX
ANNUAL
SB 1561
REPORT
FOR 2010***

January 24

2011

This is the annual report to the California Legislature regarding the implementation and use of SB 1561 by Fresno Area Express for 2010. The report contains data gathered from documented interruptions of service calls from bus operators regarding incidents occurring on and off the bus and statistics obtained from FAX police officers.

**SENATE BILL
1561**

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A Message from the City of Fresno/Department of Transportation/Fresno Area Express Transit Security Advisory Committee

Members of the California Legislature,

The Transit Security Advisory Committee for the City of Fresno/Department of Transportation/Fresno Area Express (FAX) has overseen various implementation components of SB 1561 (Chapter 528 Statutes of 2008) in order to guide the provisions of the Fresno Area Express' exclusion policy.

Public transportation users in Sacramento have identified passenger misconduct as one of the major issues that influences their continued use of public transit services. Effectively addressing passenger misconduct is critical to expanding the use of public transit. The Fresno Area Express exclusion policy program implemented through a Passenger Safety pilot program allowed by SB 1561 has provided a useful tool in protecting public transit passengers and public transit employees.

The availability of state funding for public transit operations has diminished over the past several years and Fresno Area Express, along with many of California's public transit operators, has struggled to preserve the state transit funding that remains. As 2012 approaches, the Passenger Safety pilot program that the California Legislature approved will sunset at a time when funding is at an all-time low. Public transit operators require stable resources to provide services; reliable authority to help control passenger misconduct would provide a more substantial deterrent to fare evasion to help preserve the fare revenue that Fresno Area Express receives.

We urge the Legislature to make this important program permanent and to extend this authority to all public transit operators in California. Should a new measure proceed, we ask the Legislature to provide public transit operators with the tools to effectively protect their passengers and alleviate the uncertainty of fare revenue losses from transit passengers who chronically evade payment to ride public transit.

Fresno Area Express is working to enhance and expand the capacity of the Capitol region's largest public transit system, and as Transit Security Advisory Committee Members, we are dedicated to finding solutions to these important issues surrounding public transit safety. As such, we will continue to volunteer our time to facilitate policy solutions related to public transit passenger misconduct and the continued implementation of Fresno Area Express' exclusion policy.

Gregory Barfield, Chair

FAX Transit Security Advisory Committee

Fresno Area Express (FAX) has worked closely with Sacramento Regional Transit District since the adoption of SB 1561 by the California Legislature. The City of Fresno, Director of Transportation, began establishing a FAX Transit Security Advisory Committee in February 2009, in accordance with SB 1561 provisions.

By August 2009, a committee consisting of five members was approved and seated. The five members were chosen because of their expertise in specific areas, in addition to other positive qualities that they have exhibited in the community.

In addition to the committee, there are a number of staff members who provide support to the committee with regard to ongoing status, recommendations, and challenges regarding the implementation of the exclusion law. The FAX Transit Security Advisory Committee includes:

Gregory Barfield, Chair

Homeless Prevention Policy Manager, City of Fresno
2600 Fresno Street
Fresno, CA 93721
Email: Gregory.Barfield@fresno.gov

Mitch Collins, Vice Chair

Clinical Supervisor, Kings View Behavior Health
1617 East Saginaw Way
Fresno, CA 93704
Email: mcollins@kingsview.org

Enrique Reade, Committee Member

Reade & Sons, Youth Advocate
1103 "E" Street
Fresno, CA 93706
Email: readeandsons@gmail.com

Kenneth Hamm, Committee Member

Director of Transportation, City of Fresno
2223 "G" Street
Fresno, CA 93706-1600
Email: Kenneth.Hamm@fresno.gov

Richard Steitz, Committee Member

President, Amalgamated Transit Union #1027
2135 Fresno Street, Room 244
Fresno, CA 93721
Email: atu1027@sbcglobal.net

Transit Security Advisory Committee

Support Staff:

Tei Yukimoto
City Attorney's Office
City of Fresno

Dean Huss
Operations Manager
Fresno Area Express

Judith Nishi
Public Relations Office
Fresno Area Express

Robert Mesel
Training Department
Fresno Area Express

Steven A. Garcia
Transit Supervisor/Exclusion Officer
Fresno Area Express

Ana Aguinaga
Executive Assistant
Fresno Area Express

The Transit Security Advisory Committee has the task of ensuring that FAX has established training, public notification, policies and procedures in accordance with SB 1561 before the implementation of the exclusion law. The committee meets at regularly scheduled meetings to review the ongoing implementation of the passenger exclusion policies and recommends necessary changes necessary to conform to provisions of SB 1561.

The Advisory Committee also provides members of the City Council with updates on the implementation of the exclusion law and will provide a copy of the annual report to the City Council for approval prior to review by the California Legislature.

Transit Security Advisory Committee Responsibilities

Training: The Advisory Committee established the type and level of training to be issued to individuals responsible for the issuance, enforcement and monitoring of prohibition orders. This included FAX staff, supervisors, dispatchers, bus operators, and police officers. Much of the training mirrored that established and used by Sacramento Regional Transit District.

Training was given by FAX training staff, Mental Health professionals, and Homeless and Youth advocates. The training process continues for supervisors and bus operators during mandatory annual Verified Transit Training classes.

Public Notification: The Advisory Committee ensured that the public was provided with reasonable notification prior to the implementation of the exclusion policy. Flyers and placards posted on buses and at system facilities, audio messages played on buses, exclusion rules printed in schedule books, FAX websites, and press conferences were among the methods used for notification. FAX continues to use these methods of notification for the riding public.

Prohibition Order: The Advisory Committee recommended the format to be used in the FAX Prohibition Order and ensured that the requirements of SB 1561 were met. The Sacramento Regional Transit District's prohibition order was used as an example. At this time, only police officers are authorized to issue prohibition orders.

Appeals Process: The appeals process is printed on the back side of the prohibition order. It contains the actual process for an appeal along with addresses, phone numbers, and the websites to file an appeal.

FAX police officers explain the process in detail to the person issued the prohibition order at the time of issuance.

Outreach: Police officers and supervisors make every attempt to assist those passengers who are homeless or have mental disabilities. Officers use their training and discretion to determine if the passenger who violates an SB 1561 provision will be transported to a homeless shelter, hospital, or home in lieu of incarceration or citation.

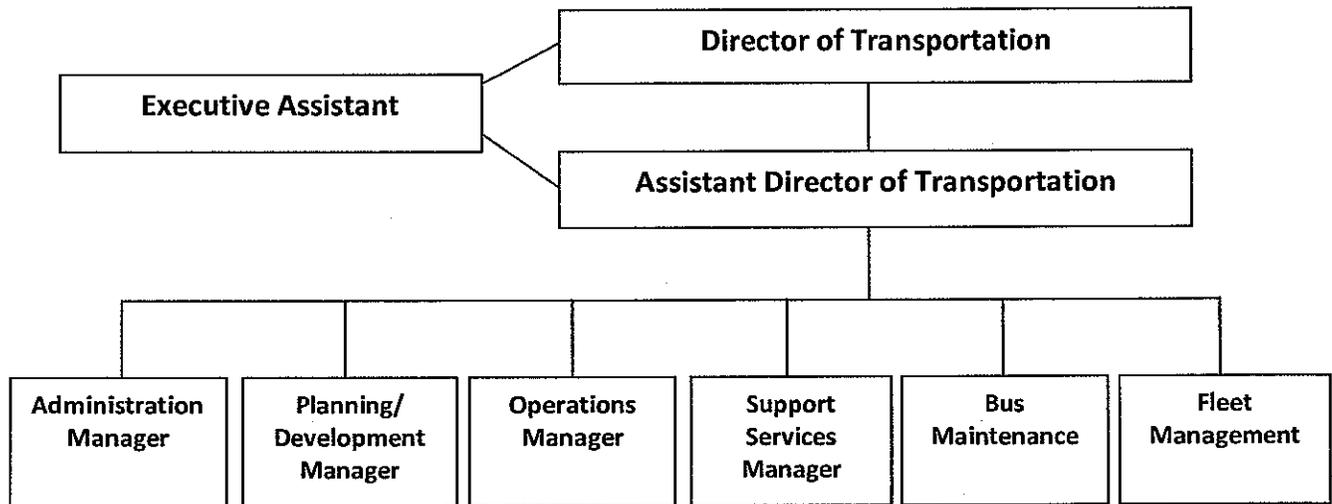
Monitoring: The Advisory Committee ensures that prohibition orders issued are reviewed, modified, or dismissed if necessary in accordance with Section 51 of the Civil Code.

Recommendations: The committee will make recommendations in the Annual Report to the California Legislature regarding changes needed in the exclusion law to alleviate the challenges faced in enforcing SB 1561.

Fresno Area Express System Profile

FAX is within the Transportation Department of the City of Fresno which includes the Transit Division. The Director of Transportation heads and oversees the operation of the divisions and reports to the City Council.

The Transit Department of the City of Fresno includes an Operation, Maintenance and Paratransit Division. The system provides fixed route and demand response service to the Fresno/Clovis metropolitan area. FAX provides transit service utilizing 40 foot Compressed Natural Gas and diesel transit coaches, 30 foot Trolley buses and El Dorado mini buses to provide transit service to the riding public.

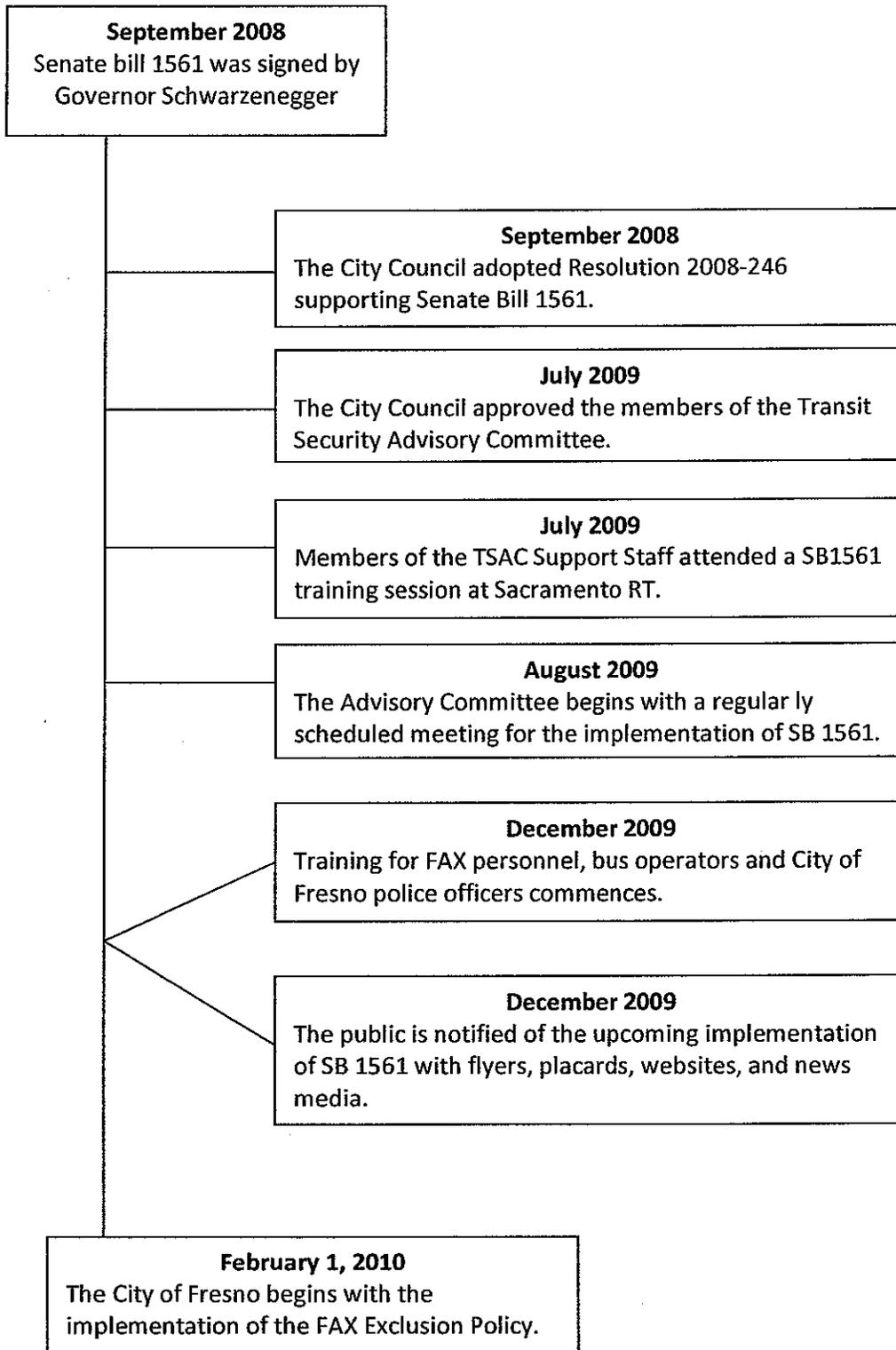


Facts on FAX:

Fixed Route Ridership	18,049,800
Demand response Ridership	234,400
Local Bus Miles	4,690,200
Service Area	104 sq. miles
Service Area Population	495,900
Operating Budget	\$47,563,500
Local Bus Routes	17
Local Peak Hour Buses	95
Local Bus Fleet	123
Demand Response Vehicles	57
Alternatively Fueled Vehicles	56
Fixed Route Employees	372

(Based on 2009 data)

Timeline of Events Leading to the Implementation of Exclusion Policy at FAX



PROHIBITION ORDERS FOR FY 2010

PO#	DATE	REASON	DISPOSTION	MISC.	APPEAL
1	03/04/10	Obstruction and threatening serious bodily harm on a Peace Officer during fare dispute	Arrested	PO Modified	No
2	03/04/10	Assault on a Peace Officer during fare dispute	Arrested	PO Modified	No
3	03/17/10	Vandalism – Broke front door glass during fare dispute	Misd. Cite	PO Modified	No
4	02/24/10	Battery on a Bus Operator (Pending service due to incarceration)	Arrested	PO Modified	No
5	03/23/10	Battery on a Bus Operator	Misd. Cite		No
6	03/17/10	Battery on a Bus Operator	Misd. Cite	PO Modified	No
7					
8					
9					
10	07/04/10	Disturbance on a bus	Misd. Cite		No
11	08/15/10	Disturbance on a bus	Misd. Cite	Dismissed	No
12	08/29/10	Arrested on a warrant off of bus, not SB 1516 related	Arrested	Dismissed	No
13	04/13/10	Battery on a Bus Operator	Misd. Cite		No
14	09/03/10	Battery on a Bus Operator	Arrested		No
15					
16					
17					
18	04/07/10	Battery on a Bus Operator	Arrested	Incarcerated	No
19	12/01/10	Possession of a controlled substance for sale at bus stop	Misd. Cite		No
20	06/01/10	Battery on a Bus Operator/Obstructing a Peace Officer	Arrested		No
21	06/16/10	Battery on a Bus Operator	Misd. Cite		No
22	06/30/10	Brandishing a deadly weapon at a Bus Operator	Arrested		No
23	10/12/10	Battery on a Bus Operator	Arrested		No
24	10/27/10	Battery on a Bus Operator	Misd.Cite		No
25					
26					
27					
28					
29					
30					
31					
32	11/01/10	Battery on a Bus Operator	Arrested		No
33	12/03/10	Unruly and obstructing a Peace Officer	Arrested		No
34	12/21/10	Battery on a Transit Supervisor	Arrested		No
35	08/31/10	Battery and Robbery at Bus Stop	Arrested		No
36					
37					
38					
39					
40					

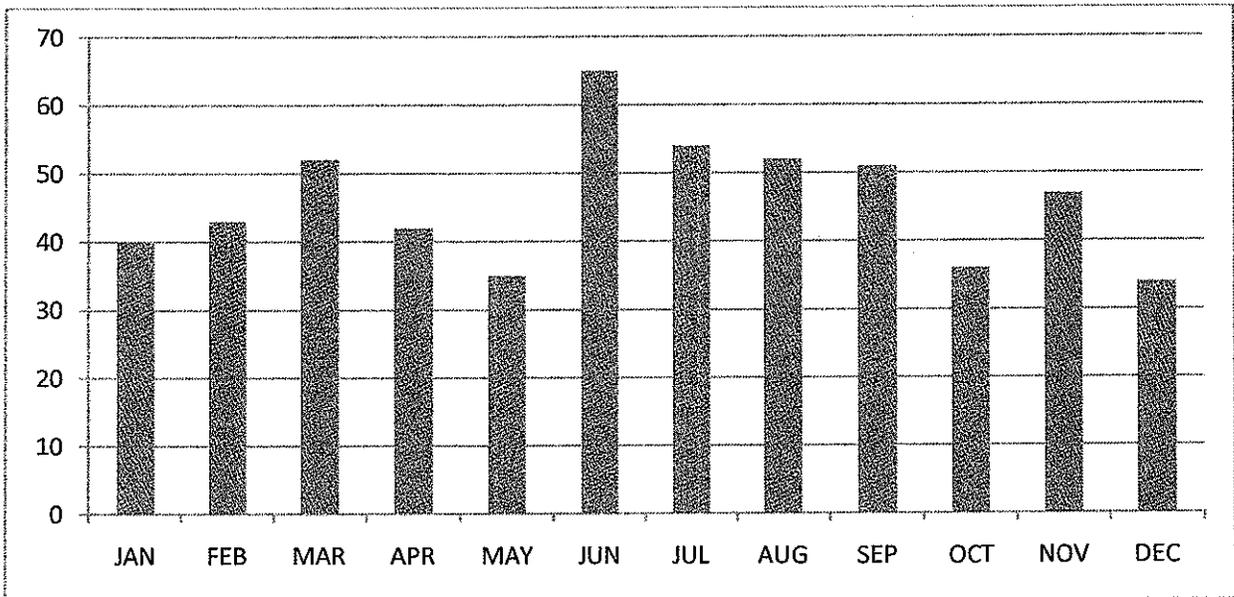
PO#	DATE	REASON	DISPOSTION	MISC.	APPEAL
41					
42					
43					
44					
45					
46					
47					
48					
49					
50					
51					
52					
53					
54					
55					
56					
57					
58					
59					
60	08/10/10	Threatening a bus operator with great bodily harm	Arrested		No
61	12/06/10	Unruly and fighting on a bus	Misd. Cite		No
62	12/06/10	Unruly and fighting on a bus	Misd. Cite		No
63	12/06/10	Unruly and fighting on a bus	Misd. Cite		No
64					
65					

None of the Prohibition Orders have been appealed. Two have been dismissed and three modified.

Prohibitions Orders per Category

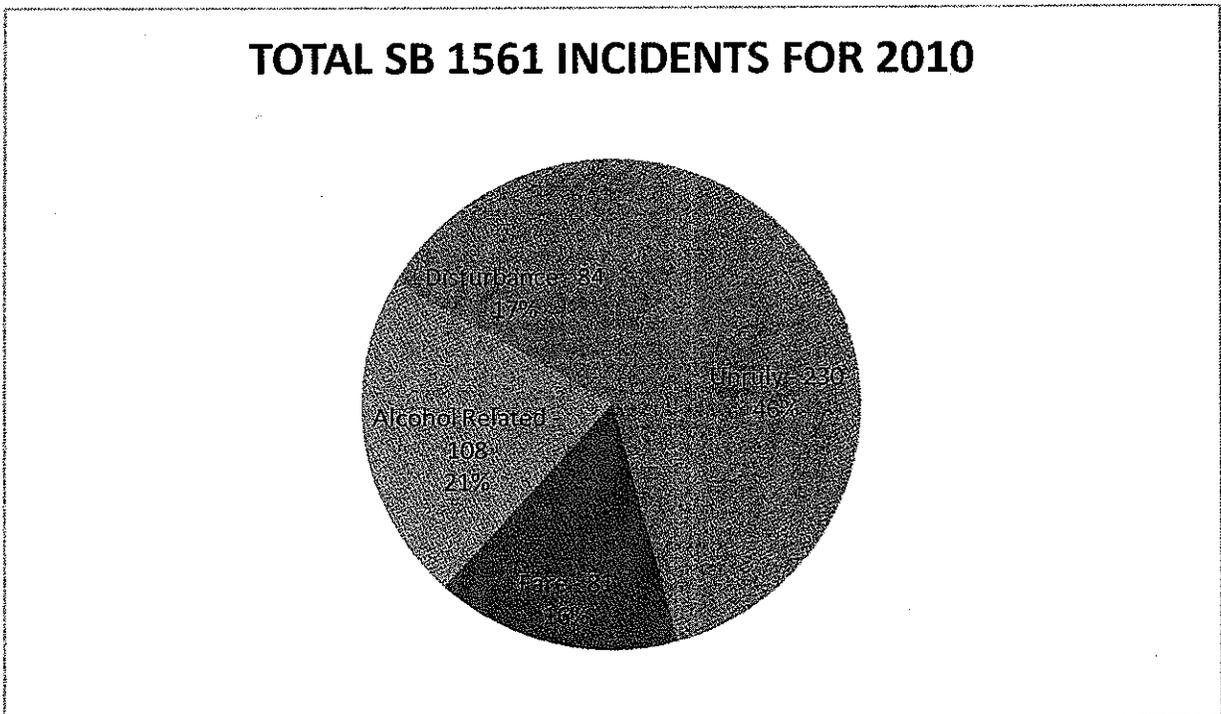
Code	Description	Number of Violations	Percentage of Total Arrest
PC 211	Felony Battery and Robbery	1	3.8%
PC 69	Felony Resisting a Peace Officer	1	3.8%
PC 243(c)	Battery on Peace Officer	1	3.8%
PC 243.3	Battery on Public Transit Employee or Passenger	14	54.4%
PC 415	Fighting, Disturbing the Peace	3	11.4%
PC 417	Threatening with Weapon	1	3.8%
PC 422	Felony making Terrorist Threats	1	3.8%
PC 594	Vandalism	1	3.8%
PUC99170(a)(5)	Commit an act which could cause injury/harm	2	7.6%
HS11532(a)	Loiter with intent to engage in drug related act	1	3.8%
Totals		26	100%

DOCUMENTED SERVICE INTERRUPTIONS FOR 2010



There were a total of 546 calls from bus operators regarding incidents occurring at a transit facility or transit vehicle which required police or supervisory assistance. This does not include traffic related incidents. Except for 43 calls, all were SB 1561 related.

TOTAL SB 1561 INCIDENTS FOR 2010



There were 503 SB 1561 related calls from bus operators that were logged for 2010.

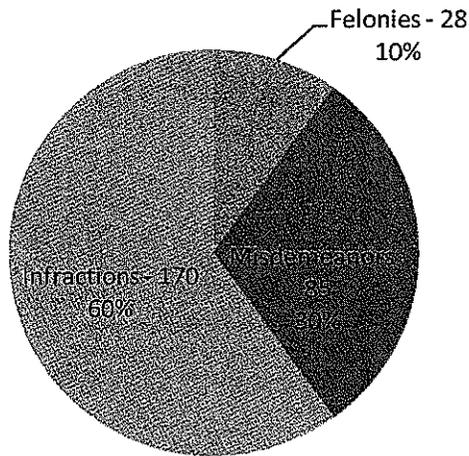
Unruly – Passenger uses profanity, plays loud music, eats, or does not comply with request to cease.

Fare – Passenger evaded paying a fare or intentionally misused a pass or transfer.

Alcohol Related – Under the influence or consumption of alcohol at a transit facility or vehicle.

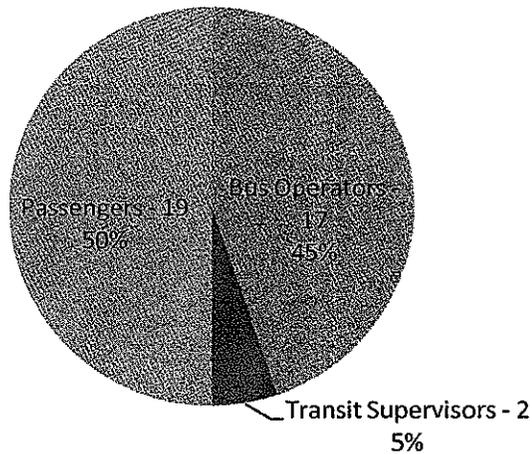
Disturbance – Physical or verbal disturbances involving passengers at a transit facility or vehicle.

FELONIES, MISDEMEANORS AND INFRACTIONS FOR 2010



Felony – crime which is punishable with death or by imprisonment in a state prison.
Misdemeanor – crime which is punishable by imprisonment in a county jail or by fine.
Infraction – crime punishable by fine.

ASSAULTS AND BATTERIES FOR 2010



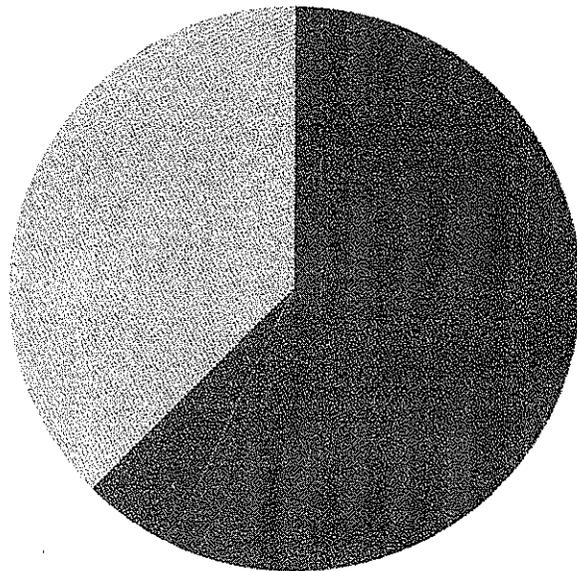
This chart reflects the number of incidents that have occurred on a FAX bus or bus stop where a bus operator or passenger was the victim of an assault or battery.

An **assault** defined is the unlawful attempt to use force on another person.

A **battery** is the unlawful use of force on another person.

This chart does not differentiate between the two violations or the severity of injuries sustained.

SB 1561 VIOLATIONS



- PC 640(b)(6)
- PC 640(b)(7)
- PC 640(b)(8)
- PC 640(b)(9)
- PC 640.5(a)(1)
- PUC 99170(a)(2)
- PUC 99170(a)(5)

SB 1561 Violations: Public Utilities Code Section 99171(a)(1)(A)

Since the implementation of FAX's exclusion policy, there have been 56 violations from February 1, 2010 to December 31, 2010. The chart below reflects those violations.

Violation Codes	Description	Number of Violations
PC 640(b)(6)	Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.	30
PC 640(b)(7)	Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a public transit facility or vehicle.	0
PC 640(b)(8)	Urinate or Defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to person who cannot comply with this paragraph as a result of a disability or a medical condition.	0
PC 640(b)(9)	Willfully blocking the free movement of another person in a system facility or vehicle.	1
PC 640.5(a)(2)	Any person who defaces with graffiti or other inscribed material the interior or exterior of the facility or vehicle.	1
PUC 99170(a)(2)	Interfere with the operator or operation of a transit vehicle, or impede the safe boarding or alighting of passengers.	3
PUC 99170(a)(5)	Commit any act or engage in any behavior that may, with reasonable foresee ability, cause harm or injury to any person or property.	21
Total		56

CONCLUSIONS AND CHALLENGES

The Data compiled for this report shows:

- SB 1561 documented Calls for Service occur at a more frequent rate on weekdays during summer months.
- There was an increase in the number of assaults on bus operators during 2010. There is no specific reason for the increase in the occurrences.
- Drug/Alcohol related incidents are the most frequent Calls for Service by FAX PD officers. These types of calls can be addressed with current laws and municipal codes.
- Unruly passenger related incidents are the most frequent types of calls made by bus operators and have lead to a number of assaults on transit employees.

Challenges:

- The unruly passenger is the most common behavior committed by some of the passengers who utilize the FAX transportation system. The 60-day time period for the issuance of three specific violations before a prohibition order can be issued is too short. Many of the passengers who exhibit unruly behavior on our system can easily circumvent the current time period. Extending the time period to 90 days would assist our department to change the behavior of these individuals.
- The current exclusion law does not provide a specific penalty for those individuals who have been prohibited from using the system. Because of this oversight, many of the persons who have received Prohibition Orders continue to ride the buses without fear of further enforcement or penalty.
- It is very important for our personnel to feel safe while providing the transportation service in Fresno. We have received queries regarding the ability for FAX employees to identify those persons who are prohibited from using the system. They have requested that FAX take pictures of the violators and post them in a secure location at the FAX facility. Our legal advisor believes that there may be a confidentiality issue with the pictures. This issue needs to be addressed and clarified.

Conclusion:

- Bus operators who have been assaulted have an increased sense of safety and security knowing that the suspects are being excluded from using the transit system due to SB 1561 in addition to prosecution for the penal code violation. SB 1561 is a positive step in ensuring safety on our buses, but modifications are needed to improve the bill.
- In cases where the behavior of an individual warrants an immediate prohibition order due to an arrest for a felony or misdemeanor violation on a transit facility or vehicle, the exclusion should be immediate. The appeal for such exclusion could be heard as early as the next business day. This would ensure that due process is afforded to the individual and would not affect the 3 consecutive violations in the predetermined time period rule.

FAX has experienced threatening behavior between customers and toward FAX drivers that is violent in nature and demands immediate exclusion. Waiting ten days for an appeal gives an angry person additional

opportunity to reoffend. The modification proposed would put more teeth in the law. It would also assist in changing the negative behavior exhibited by some individuals using the transit system. It would also ensure the bus operator or passenger involved in an assault that they would not come into contact with the suspect who presently is able to use the system during the 10-day appeal period.

- The exclusion law, as currently written needs modifications in a number of the provisions to assist those who enforce the legislation. SB 1561 is an important program being used at Sacramento RT and FAX to assist in providing the safe and comfortable environment for the riding public and transit employees. Strengthening certain provisions in the bill would enhance our ability to enforce and monitor exclusions.
- SB 1561 is set to sunset on January 1, 2012. This bill allows Sacramento RT and FAX the opportunity to address concerns regarding system safety for the passengers who utilize the transportation systems. Although modifications are necessary in the bill, it will not assist our departments unless the bill is extended beyond the current expiration date. FAX recommends that SB1561 become permanent and be extended to all transit systems in the State of California.