

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

The Use of Jet Skis

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 14

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JOINT SUBCOMMITTEE STUDYING THE
USE OF JET SKIS
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA
RICHMOND, VIRGINIA
DECEMBER, 1990

TO: The Honorable L. Douglas Wilder, Governor
and
The General Assembly of Virginia

I. AUTHORITY FOR STUDY

The 1990 Session of the General Assembly passed Senate Joint Resolution Number 29 requesting that a joint subcommittee be established to study the use of jet skis (Attachment A). The subcommittee was charged with reviewing the current regulation of personal watercraft, assessing the necessity or advisability of certain safety measures and determining the need for further regulations. The subcommittee was composed of eight members: William E. Fears, Accomac; Virgil H. Goode, Jr., Rocky Mount; John H. Chichester, Fredericksburg; Howard E. Copeland, Norfolk; Willard R. Finney, Rocky Mount; Glenn R. Croshaw, Virginia Beach; Lacey E. Putney, Bedford; and, Harry R. Purkey, Virginia Beach.

II. BACKGROUND

Pleasure boating as a family sport is growing in popularity every year. In 1961, the Coast Guard estimated that there were 5.85 million recreational boats in the United States. Today, there are close to 15 million boats operating on the waters of the United States, and almost one-fourth of the people in this country enjoy boating each year. Currently, 198,435 boats are registered in Virginia with an additional estimated 40,000 nonmotor smaller boats being operated on the waters of the Commonwealth. The number of boats and boat operators has steadily increased each year, and within the last year 10,000 new boats were registered with the Department of Game and Inland Fisheries.

Throughout Virginia, boating opportunities abound with more than 8 million acres of salt water, 98 major rivers, and 5,000 miles of shoreline. Virginia boasts 181

public boat ramps and access areas to allow the public to enjoy the Commonwealth's waterways.

One of the newest forms of recreational boating is the personal watercraft. These craft are small, agile powerboats that provide an experience similar to a combination of boating and waterskiing. Personal watercraft are propelled through the water by the action of a jet pump driven by an engine. Jet pumps do not pose the same risks as propellers because the jet-driven system has no moving parts on the exterior surface of the hull. These watercraft cost an average of \$4,000, weigh 400-700 pounds, and can reach speeds of 40 m.p.h.

There are a variety of personal watercraft sold by trade names such as Jet Ski, WaveRunner, and Surf Jet. Depending on the model, the rider sits, kneels or stands on the personal watercraft. Some of the craft can be steered by directing the water stream at the stern of the boat either by steering a ski at the front of the craft or by the operator leaning and shifting his weight. Other personal watercraft have a water nozzle at the rear of the boat which is controlled by a handlebar or steering wheel.

With most personal watercraft, falling overboard is an expected occurrence in the operation of the vessel. The craft are ostensibly designed to allow the operator to fall off and reboard. Personal watercraft have one of two different safety measures in the event that an operator does fall off his craft. The first allows the engine to continue running at idle speed, but causes the boat to slowly circle, so that the operator can retrieve the boat and remount it. The other type utilizes an engine shut-off lanyard. The operator attaches the lanyard to himself or his life vest. Should the rider fall off the personal watercraft, the lanyard disengages the engine.

Based on their degree of stability, personal watercraft generally fall into one of two categories. Models like Kawasaki's 650 SX Jet Ski and the Yamaha Wavejammer are known as "performance-oriented" models because they are considered to require a certain level of experience to mount and stay aboard while in operation. The models in the second category are designed for cruising or extended riding and include models such as the Wetjet, Fazer, and Yamaha WaveRunner. These cruising-oriented craft have static stability, which means they remain upright in the water. Some models in this category are designed for two riders.

The growth in recreational boating is reflected in the sales and development of personal watercraft. Sales of the personal watercraft are estimated to have doubled since 1984, and there are now 200,000 such boats in use from coast to coast. The Department of Game and Inland Fisheries estimates that there are 3,500 personal watercraft in use in Virginia.

Increased usage has led to a greater number of accidents involving personal watercraft. According to the report of the National Boating Safety Advisory Council's Personal Watercraft Subcommittee, between the years 1987 and 1988 the number of reported personal watercraft accidents nationwide nearly doubled (from 376 to 650) and deaths quadrupled (from 5 to 20). According to data supplied by the Virginia Department of Game and Inland Fisheries, during the same period accidents in Virginia increased from two to eight. In 1989, there were eight accidents, including three injuries and one fatality in which a personal watercraft hit a swimmer. In the incidents in which injuries resulted, an operator fell overboard and was hit by another vessel; a passenger fell overboard, and the personal watercraft hit him; and two jet skis collided and minor

injuries were sustained. Of the eight accidents, three were falls overboard and four were collisions with other boats. Damage resulting from the accidents totaled \$16,000.

III. SUMMARY OF REGULATION AT THE FEDERAL LEVEL AND IN SELECTED STATES

As defined by the U.S. Coast Guard, personal watercraft are Class A inboard boats, which are those boats less than sixteen feet in length. As Class A inboard boats, personal watercraft must comply with the U.S. Coast Guard minimum requirements regarding personal flotation devices, fire extinguishers and sound signals. The operators of personal watercraft must follow all regulations of the safe operation of boats, including those regarding right-of-way, maneuvering and safety equipment.

Generally, the states which regulate the use of personal watercraft mandate the distance the boat must maintain from swimmers and the shore, set hours of operation, and establish a minimum age for operators.

New Hampshire

The New Hampshire legislature enacted legislation in 1988 which regulates the operation of personal watercraft in the state. Personal watercraft is defined by statute as any motorized watercraft less than thirteen feet in length as manufactured, capable of exceeding a speed of ten miles per hour, with the capacity to carry not more than two riders. Such watercraft are prohibited from being operated between sunset and sunrise, and must be operated by someone at least sixteen years old. Operators and passengers are required to wear personal flotation devices. Personal watercraft cannot "be" operated within 300 feet of the shoreline, except for their crossing from the shore to the 300-foot boundary. Such crossing must be made in a direct line and must be made at less than headway speed. Operators also must reduce their crafts to headway speed when they come within 150 feet of other personal watercraft, boats, rafts or swimmers. A violation of these requirements is a misdemeanor.

In addition, the 1990 New Hampshire General Assembly established a new hearing process by which residents of localities may petition the Commissioner to restrict or prohibit the use of personal watercraft within their jurisdictional waters. The legislation includes guidelines for the Commissioner to follow in considering whether to restrict the use of personal watercraft.

Connecticut

As part of a comprehensive boating education legislative package, the 1989 Connecticut Legislature enacted laws regulating the operation of personal watercraft. The act defines personal watercraft as any Class A inboard vessel which has an internal combustion engine powering a water-jet pump as its primary source of motor propulsion and which is designed to be operated by a person sitting, standing or kneeling on the craft. The law prohibits a person from operating a personal watercraft without first completing an agency approved course in the use and handling of the craft. Each violation of these requirements subjects a violator to a fine of not less than

\$100 nor more than \$200. The requirements were to become effective January 1, 1991; however, the 1990 General Assembly extended the effective date until January 1, 1992.

Maryland

The Maryland Department of Natural Resources currently is promulgating regulations governing the operation of personal watercraft in the state. The Department recently completed a public hearing on the proposed regulations and expects the regulations to become final in the fall, 1990. A personal watercraft is defined as a vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of propulsion is a propeller. The proposed regulations require that operators of personal watercraft be at least fourteen years old and that operators born after July 1, 1972, carry a certificate of boater safety education. Each person on board a personal watercraft must wear a personal flotation device. Personal watercraft cannot be operated at night, and a person may not operate a personal watercraft in excess of six knots when it is within 100 feet of another vessel, the shore, structures, or people in the water. The proposed regulations also require that personal watercraft be equipped with either a lanyard-type engine cutoff switch or a self-circling device.

Florida

The 1989 Florida General Assembly established statutory requirements governing the use and operation of personal watercraft in the state. In order to operate a personal watercraft, a person must be fourteen years or older; however, businesses cannot rent personal watercraft to any person under sixteen years of age. The operator of a personal watercraft equipped with a lanyard-type cutoff switch must attach the lanyard to his person and must wear a personal flotation device. Personal watercraft cannot be operated between one-half hour after sunset and one-half hour before sunrise. A violation of the statute is punishable as a second degree misdemeanor. Personal watercraft is defined as a Class A vessel which uses an outboard motor, or an inboard motor powering a water jet pump as its primary source of motive power, and which is designed to be operated by a person sitting, standing or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

California

Currently, there are no laws specific to personal watercraft. Although no legislation has been introduced in the past ten years concerning personal watercraft, officials in the California Office of Legislative Counsel said each year they expect that such legislation will be introduced.

North Carolina

No laws concerning the regulation of personal watercraft exist in North Carolina, and according to the North Carolina General Assembly's Research Division, no legislation has ever been introduced relating to personal watercraft.

IV. SUBCOMMITTEE DELIBERATIONS AND FINDINGS

In Virginia, every boat propelled by machinery, whether or not the machinery is the principal source of propulsion, must be registered and display its identification number (Va. Code § 29.1-702). When an owner renews his registration every three years, it has been the policy of the Department of Game and Inland Fisheries to include safety information and safety course descriptions and applications; however, completion of such courses is not required by state law.

The 1990 Session of the General Assembly considered several measures pertaining to the operation and use of personal watercraft. Three bills specifically regarding the operation of this type of vessel were introduced. Two measures, HB 872 and HB 981, were carried over to the 1991 Session, thus allowing time for an interim study. A compromise substitute (HB 590) adopted by the House Committee on Conservation and Natural Resources authorized the City of Virginia Beach to regulate the operation of personal watercraft under a one-year sunset provision pending the findings of the joint subcommittee. The ordinance, adopted by the city on August 7, 1990, makes it unlawful to operate a jet ski from one-half hour after sunset to one-half hour before sunrise and requires those persons riding in or being towed by the boat to wear flotation devices.

In its study of the use of personal watercraft, the subcommittee sought to assess (i) any problems existing with the operation of personal watercraft, (ii) the current regulation of the boats, and (iii) the advisability or necessity of additional regulation. The subcommittee held two business meetings, and two public hearings, one at Smith Mountain Lake and the other at Virginia Beach. The meetings were attended by approximately 100 people and the subcommittee received testimony from 25 people including representatives of the Personal Watercraft Industry Association, members of personal watercraft clubs, riparian landowners, law enforcement officials, representatives of the Smith Mountain Lake Association and the Smith Mountain Lake Policy Advisory Board, the Virginia Governor's Advisory Board on Boating, manufacturers of the craft, and operators of personal watercraft rental businesses.

Opponents of personal watercraft view them as a "dangerous presence" on waterways and cite accidents and fatality statistics in support of their position. Resort-area residents also complain about the noise generated by the vessels. Industry spokesmen and personal watercraft owners maintain that the vessels are safe but too often are operated irresponsibly. Representatives believe that the lack of exposed propellers, shallow draft, and correspondingly small wake make the personal watercraft among the least likely of all motorized craft to have a negative impact on the marine environment. Kawasaki Motors Corporation, U.S.A., and the Personal Watercraft Industry Association have undertaken an educational campaign in an effort to instruct operators, renters and owners about responsible use of the boats.

During its study, the subcommittee considered issues surrounding the safe operation of personal watercraft. The study focused on promoting safe boating practices while enhancing the recreational value of personal watercraft. Issues considered included operator age, the wearing of personal flotation devices, hours of operation, distance to shore requirements, standards of operation and noise levels. There was general agreement among riparian landowners, personal watercraft

operators and industry that certain restrictions were necessary for personal watercraft. Many organizations and individuals discussed the relative merits of establishing a minimum age for operators. Several people testified that their minor children had been educated about boat safety, were responsible operators of personal watercraft and should not be prohibited from operating the boats. Other testimony indicated that while youthful operators may possess the physical ability to handle the craft, they lack the maturity of judgment necessary in dangerous situations. The industry association and a manufacturer of the craft supported a minimum age requirement in recognition of the boats' unique maneuverability.

A second measure discussed was the mandatory wearing of personal flotation devices (PFD's). Current law does not require that a PFD be worn, only that one be on board for each passenger. Accident statistics for motorboats, supplied by the Department of Game and Inland Fisheries, illustrated the fact that in most accidents in which fatalities resulted, PFD's were not worn. The Personal Watercraft Industry Association presented model legislation which included a section mandating the wearing of life preservers. The representative pointed out that PFD's should be worn by operators of personal watercraft because the boats lack the same degree of stability that other boats have and falling overboard is an expected occurrence in the operation of personal watercraft. Consideration was also given to the fact that sailboards are somewhat unstable and that mandatory wearing of PFD's by the operators of sailboards would be advisable.

The hours of operation of personal watercraft was also an issue before the subcommittee. Currently, a boat operated at night must be equipped with lights. While personal watercraft are not manufactured with lights, they can be fitted with lights after purchase. Operators testified that they would not recommend operation at night. The industry also included a prohibition on nighttime operation in its model legislation.

The subcommittee received a great deal of testimony regarding a distance to shore requirement as contained in HB 981, which was carried over to the 1991 Session of the General Assembly. Operators of personal watercraft stated that they do not bear the responsibility for safe and courteous operation alone. Operators of other motorized boats should also respect others' rights to enjoy Virginia's waterways. For example, a mandatory distance of 150 feet from docks, swimmers and shore, for personal watercraft only, would penalize the operators of personal watercraft while allowing larger, more powerful boats to remain unrestricted. Testimony also indicated that, if a distance requirement is adopted, 150 feet is too restrictive and does not take into account the narrowness of certain bodies of water where the 150-foot distance would effectively prohibit operation. Some operators also stated that such a restriction could send youthful operators from the protection of a cove into the traffic on a lake. Others advocated a 50-foot distance from docks, swimmers, and shore as an appropriate restriction. The 50-foot distance recognizes the fact that personal watercraft can be operated in very shallow water, that is, very close to shore, where other recreational activities take place. Speakers before the subcommittee also stated that operation close to shore has not been a problem in all localities and any standard adopted should be appropriate for the area.

In its consideration of safety issues and the enforcement of present boating laws, the subcommittee also examined the definition of "reckless operation." The

present standard is "reckless operation" and enforcement officials explained their difficulty in obtaining a conviction under the standard. An additional standard establishing the lesser offense would allow citations to be issued for certain types of operation which did not rise to the level of recklessness. The subcommittee, persuaded by the apparent difficulty in obtaining convictions, supports establishing "improper operation" as a lesser standard as recommended by the joint subcommittee studying licensing of boat operators and mandatory safety education (HJR 102, 1990).

Testimony was given regarding the establishment of permissible noise levels. Several individual riparian landowners advocated the enactment of such levels. A representative from a manufacturer stated, however, that, as manufactured, the maximum noise level of the Bombardier See-Do is 72 decibels, much lower than standards proposed by interest groups. Enforcement officers testified about the difficulty and cost of enforcing noise levels. The testimony received by the subcommittee did not overwhelmingly favor adoption of a statewide noise level and the subcommittee finds that the issue is better dealt with by each locality.

V. CONCLUSIONS AND RECOMMENDATIONS

Because of an emerging problem of overcrowding on Virginia's waters, all motorboat operators share the responsibility for safe boating. The solution lies in attempting to balance competing interests by allowing all forms of water recreation to co-exist without unduly restricting one segment of the boating public. The subcommittee, therefore, finds that a certain degree of regulation is appropriate for all motorboats. However, personal watercraft require specific regulation because they have a unique design, lack the stability of traditional boats, and are highly maneuverable.

The subcommittee recommends the following:

1. That the General Assembly enact legislation regulating the operation of personal watercraft while not unduly restricting the operation of these boats. The legislation should include the following provisions:
 - A mandatory minimum age of fourteen for operators of personal watercraft. (Attachment B)
 - Mandatory wearing of personal flotation devices by operators of personal watercraft and windsurfers. (Attachment B)
 - A prohibition on the operation of personal watercraft between one-half hour after sunset and one-half hour before sunrise, except on Smith Mountain Lake where the prohibition shall be effective from sunset to sunrise. (Attachment B)
 - The requirement that the operator attach the safety cutoff lanyard to his person, if the personal watercraft is so equipped. (Attachment B)
 - A prohibition on operation of a personal watercraft with a number of passengers in excess of the manufacturer's recommendations. (Attachment B)

2. That localities be authorized to regulate the operation of motorboats within fifty feet of docks, swimmers and the shore. (Attachment C)
3. That the General Assembly enact the legislation proposed by the joint subcommittee studying boating safety which establishes improper operation of a motorboat as a Class 2 misdemeanor.

Respectfully submitted,

Virgil H. Goode, Jr., Chairman
Howard E. Copeland, Vice Chairman
John H. Chichester
Glenn R. Croshaw
William E. Fears
Willard R. Finney
Harry R. Purkey
Lacey E. Putney

ATTACHMENT A
SENATE JOINT RESOLUTION NO. 29

Establishing a joint subcommittee to study the use of jet skis.

Agreed to by the Senate, March 9, 1990

Agreed to by the House of Delegates, March 7, 1990

WHEREAS, the Commonwealth of Virginia is committed to protecting the health and safety of all Virginians; and

WHEREAS, use of jet skis has gained popularity as a type of water recreation; and

WHEREAS, there has been no comprehensive consideration as to the regulation of jet skis or the necessity or advisability of certain safety measures; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee is established to examine the use of jet skis in the Commonwealth.

The joint subcommittee shall consist of eight members as follows: two members of the Senate Committee on Agriculture, Conservation and Natural Resources, one member of the Senate at large, all to be appointed by the Senate Committee on Privileges and Elections; and two members of the House Committee on Agriculture, two members of the House Committee on Conservation and Natural Resources, and one member of the House of Delegates at large, all to be appointed by the Speaker of the House of Delegates.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The indirect costs of this study are estimated to be \$8,465; the direct costs of this study shall not exceed \$4,620.

LD5294442

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HOUSE BILL NO. 981

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House/Senate Committee on/for

on)

(Patron Prior to Substitute--.....)

A BILL to amend the Code of Virginia by adding in Chapter 7 of Title 29.1 an article numbered 4, consisting of sections numbered 29.1-747 through 29.1-750, relating to personal watercraft and sailboard safety; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 7 of Title 29.1 an article numbered 4, consisting of sections numbered 29.1-747 through 29.1-750, as follows:

Article 4.

Personal Watercraft.

§ 29.1-747. Definitions.--As used in this article:

"Personal watercraft" is a type of motorboat and means a small Class A-1 or A-2 vessel which uses an outboard motor, or an inboard motor powering a jet pump, as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

"Sailboard" means a surfboard-type vessel which uses a swivel-mounted mast not secured to the hull by guys or stays.

§ 29.1-748. Restrictions on operation; penalty.--A. It shall be unlawful for any person to:

1. Operate a personal watercraft unless he is at least fourteen years of age;

2. Operate a personal watercraft or sailboard unless each person riding on the personal watercraft or sailboard is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard;

3. Fail to attach the lanyard to his person, clothing, or personal flotation device, if the personal watercraft is equipped with a lanyard-type engine cut-off switch;

4. Operate a personal watercraft on the waters of the Commonwealth between the hours from one hour after sunset to one hour before sunrise, except that on inland lakes (i) more than 500 feet above sea level and (ii) of 20,000 acres or more and wholly located within the Commonwealth, such operation shall not be conducted between sunset and sunrise.

5. Operate a personal watercraft while carrying a number of passengers in excess of the number for which the craft was designed by the manufacturer.

B. A violation of any provision of this section shall constitute a Class 4 misdemeanor.

§ 29.1-749. Owner of personal watercraft permitting violation; penalty.--A. It shall be unlawful for the owner of or any person having control of a personal watercraft to authorize or knowingly permit a person under the age of fourteen to operate the personal watercraft.

B. A violation of any provision of this section shall constitute

a Class 4 misdemeanor.

§ 29.1-750. Exemptions.--The provisions of this article shall not apply to participants in regattas, races, marine parades, tournaments, or exhibitions approved by the Board or United States Coast Guard.

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SENATE BILL NO. HOUSE BILL NO.

A BILL to amend the Code of Virginia by adding a section numbered
29.1-744.1, providing for the local regulation of boating.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered
29.1-744.1 as follows:

§ 29.1-744.1. Local regulation of motorboat distance from
shore.--Any county, city, or town may, by ordinance, regulate the
distance motorboats in operation shall maintain from the shore, docks,
and swimmers, provided that such distance is not greater than fifty
feet. Nothing in this section shall be construed to prohibit access
to and from waters where operation is not restricted.

Any such ordinance adopted by a county, city, or town may provide
for penalties not exceeding those applicable to Class 4 misdemeanors.

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