

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3677 and 2807**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 18, 2023

The Senate Environment and Energy Committee reports favorably and with committee amendments Assembly Bill Nos. 3677 and 2807 ACS.

This bill would prohibit the sale, offering for sale, distribution, importation, exportation, or other propagation of certain invasive plant species in the State, except under a valid permit issued by the Department of Agriculture (DOA), and it would require the DOA to adopt rules and regulations establishing and implementing a permitting program to facilitate the safe sale, import, export, introduction, distribution, and propagation of regulated invasive species in the State. The bill would also establish, in the statutory law, with certain modifications, the New Jersey Invasive Species Council (council) that was originally created by Governor Corzine's Executive Order No. 97 of 2004.

The bill defines "regulated invasive species" to mean an invasive plant species, and any non-hybrid sub-species, variety, cultivar, or other subcategory thereof, which is included in a list of invasive species to be developed by the DOA under the bill. The bill would expressly exempt, from its prohibitions and permitting requirements, certain plant cultivars and varieties of Chinese Silvergrass, which have been deemed to be non-invasive, and it would further authorize the department's rules and regulations to establish criteria for the exemption, from the bill, of other cultivars, subspecies, and varieties of ordinarily invasive plant species which are proven to be non-invasive, by virtue of sterility factors or other unique and stable genetic traits.

The bill would require the DOA, within one year after the bill's effective date, to develop a list of the regulated invasive species that are subject to the bill's permitting requirements. Each year thereafter, the DOA would be required to update the departmental list, as necessary to designate new species as regulated invasive species for the bill's purposes. In order to designate a new plant species as a regulated invasive species, the DOA would be required to find that the species threatens, or has the potential to threaten, the ecological, cultural, historical, or infrastructure resources of, or human health in,

the State. The departments would not be authorized to designate a species as a regulated invasive species solely on the basis that it is non-native to New Jersey.

The bill also requires the DOA's rules and regulations to incorporate labeling requirements for regulated invasive species, permit application requirements, criteria for permit approval, and a fee schedule. The DOA would further be required, in consultation with the Invasive Species Council and other relevant entities, as deemed appropriate, to develop or provide physical and digital educational materials, for distribution to consumers at the point of sale. These materials are to identify the State's regulated invasive species, as well as the best propagation, cultivation, and management practices to be used in order to prevent the spread of a regulated invasive species, and, where applicable, alternative species that can be more safely propagated in the State.

A person who violates the bill's provisions would be subject to a warning for a first offense and a civil penalty of up to \$1,000 for a second offense, up to \$2,000 for a third offense, and up to \$5,000 for a fourth or subsequent offense. Any violator would be provided with a three-month period in which to remediate any violation before being subjected to an enhanced penalty for a subsequent offense under the substitute bill's provisions. The DOA would also be authorized to seek injunctive relief, as necessary to prevent an ongoing violation, and to seize and destroy any invasive plant species that forms a basis of a violation. The DOA would be required to conduct nursery inspections, in a manner and form similar to inspections for nursery stock conducted pursuant to law, to evaluate compliance with the bill's provisions.

The New Jersey Invasive Species Council, as established under the bill, would consist of a combination of ex-officio members from State agencies and public members appointed by the Governor. The council would be charged with examining and revising the 2009 New Jersey Strategic Management Plan for Invasive Species, prepared by the New Jersey Invasive Species Council pursuant to Executive Order No. 97 of 2004. The council would be required to submit the revised plan to the Governor and the Legislature no later than two years after the effective date of the bill. The council would also be charged with the following duties: (1) reviewing comprehensive lists of invasive species and likely invasive species present in New Jersey and the nearby states of New York, Pennsylvania, Connecticut, Maryland, Delaware, and Virginia for possible inclusion on the list; (2) developing procedures for the addition of new species to the departmental list maintained under the bill; (3) providing recommendations to the DOA regarding their addition of new species to the list of regulated invasive species; and (4) performing various other tasks related to the management of invasive species. The bill would exclude, from the council's responsibilities, the requirement – present in Executive Order No. 97 –

to plan, design, and implement two invasive species eradication and native plant restoration pilot projects.

As amended and reported by the committee, Assembly Bill Nos. 3677/2807 (ACS) is identical to Senate Bill No. 2186 (SS), which was also amended and reported by the committee on this date.

The committee amendments to the bill would:

(1) restrict the bill's provisions to cover only invasive plant species (rather than also including animals, microorganisms, and fungi);

(2) delete the definitions of "invasive animal species" and "invasive microorganism species," revise the definition of "invasive plant or fungi species" to remove references to fungi, revise related definitions of "invasive species," "permit," and "regulated invasive species," and add a new definition of "non-native";

(3) provide that the DOA would be solely responsible for implementing and enforcing the bill (rather than the DOA in conjunction with the Department of Environmental Protection)

(4) clarify that the bill is to take effect immediately (instead of 24 months after the date of enactment); however, the amendments specify that the bill's prohibition on the un-permitted importation, propagation, or other introduction of regulated invasive species will take effect on the first day of the 13th month next following the bill's effective date, and the bill's prohibition on the un-permitted sale, distribution, exportation, and offering for sale, distribution, or exportation, of regulated invasive species will take effect on the first day of the 49th month next following the bill's effective date;

(5) for new species that are subsequently added to the DOA's list, provide for a timeline under which the new species would be included in the bill's prohibitions;

(6) remove the provisions of the bill that would have prohibited the un-permitted purchase of regulated invasive species;

(7) remove an exemption from the bill's provisions for certain cultivars and varieties of Japanese Barberry;

(8) explicitly authorize the DOA to impose fees to cover its permitting and inspection costs under the bill;

(9) specify that the civil monetary penalties, authorized under the bill, are to be levied for each day on which a person engages in conduct that violates the bill's provisions and, thus, would not be levied for each plant that is imported, propagated, introduced, sold, distributed, exported, or offered or otherwise made available for sale, distribution, or exportation in violation of the bill's provisions;

(10) clarify that no civil monetary penalty may be levied, under the bill, if the violation at issue is remediated within the three-month corrective action timeframe established, under the bill, for the voluntary remediation of the violation;

(11) increase the number of members on the New Jersey Invasive Species Council from 13 to 17, by adding two representatives from the agricultural sector, one representative of the nursery and landscape

sector, two representatives from academia, and removing one representative of the general public;

(12) modify the council's duties in various ways, including providing the council two years (rather than one year) to submit a revised New Jersey Strategic Management Plan for Invasive Species; and

(13) make technical and clarifying corrections.