SPONSOR: Sen. Hansen & Rep. Heffernan
Sens. Buckson, Huxtable, Lawson, Lockman, Richardson, Sokola, Townsend; Reps. Baumbach, Chukwuocha, K. Johnson, Morrison, Phillips, Romer, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 197

AN ACT TO AMEND CHAPTER 256, VOLUME 81 OF THE LAWS OF DELAWARE AND TITLE 29 OF THE DELAWARE CODE RELATING TO NATIVE PLANTS.

WHEREAS, the sustainability of Delaware's local ecology is important to the quality of life of all Delawareans; and

WHEREAS, Delaware's colleges and universities are home to preeminent research in ecology; and

WHEREAS, research specific to the ecology of Delaware by the University of Delaware has revealed an alarming occurrence of extinction and extirpation of local plants and animals, including Delaware's loss of 78% of its freshwater mussel species, 34% of its dragonflies, 20% of its fish species, and 31% of its reptiles and amphibians; and

WHEREAS, 40% of all native plant species are threatened or already extirpated from this State; and

WHEREAS, 41% of Delaware's bird species that depend on forest cover are now rare or absent from this State; and

WHEREAS, research has revealed a nearly 50% reduction in population sizes for many of our bird species within the last 50 years; and

WHEREAS, the loss of species and biodiversity in ecosystems decreases watershed management, including water quality and flood control, and reduces pollinators, carbon sequestration, and soil enrichment; and

WHEREAS, invasive species pose significant environmental threats, as well as economic threats to resource-based industries and the agricultural economy; and

WHEREAS, the use of native plant species increases biodiversity, improves the local ecology, and controls the proliferation of invasive species; and

WHEREAS, the 2017 Final Report of the Statewide Ecological Extinction Task Force recommends that government lead by example in the planting of native plant species on state property to support our local ecology; and

WHEREAS, the use of native plant species on public property is included in the Delaware Native Species Commission Top Ten list of recommendations.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6937. Purchase of native plants.

(a) For purposes of this section:

(1) "Athletic field" means land that is used for athletic events and does not include land that is adjacent to the playing area.

(2) "Cultivar" means a genetic variant of a native species that enhances a particular trait and is maintained by propagation.

(3) "Golf course" means land that is used for playing the game of golf and does not include land that is adjacent to the playing area.

(4) "Historic" means a historic resource as defined in § 1803 of Title 30, a certified historic property as defined in § 1812 of Title 30, or property otherwise designated as historic on a landscape plan kept by an agency and available for public review.

(5) "Invasive plant" means a plant on the Invasive Plant List under § 2904 of Title 3.

(6) "Lawn" means an area of short, mown grass.

(7) "Native plant" or "native species" means a plant that occurs naturally in the eastern temperate forest ecoregion of the United States. "Native plant" includes any viable portion of a plant, including seeds.

(8) "Pasture" means land covered with grass and other low plants suitable for grazing animals.

(9) "Secretary" means the Secretary of the Department of Agriculture.

(b)(1) The Secretary shall adopt regulations that maintain a list of native plants that are generally available and appropriate for the needs of agencies.

(2) The Secretary shall adopt regulations under paragraph (b)(1) of this section with the advice of the Department of Natural Resources and Environmental Control and the Delaware Native Species Commission.

(c)(1) Except as provided under this section, an agency shall purchase only native plants in the development of new landscaped areas and in the rehabilitation of existing landscaped areas, including parks and landscaped areas surrounding buildings.

(2) An agency may also purchase any of the following:

a. A cultivar of a native species.

b. A hybrid of a native species, if the hybrid is a cross of 2 native species.

c. A wildlife habitat seed mix consisting of more than 75% native plant seed.

(d) If the plant is not an invasive plant, an agency may purchase a plant that is not allowed under subsection (c) of this section for any of the following purposes:

(1) Land purchased and managed as an historic property.

(2) Appropriate habitats for zoo animals.

(3) Agriculture, including crop fields, pastures, and fruit or vegetable gardens.

(4) Areas maintained as grass or turf, including lawns, athletic fields, golf courses, and a right-of-way along a road. Agencies are encouraged to minimize grass or turf areas and instead, use meadow areas and natural habitats.

(5) Botanical gardens.

(6) Plots used for ecological research.

(7) Flowering annuals within landscape beds.

(8) Any of the following, if approved by the Department of Natural Resources and Environmental Control or the Department of Agriculture:

a. Wildlife plantings for food or habitat.

b. Land where no plants allowed under subsection (c) of this section can thrive.

c. For trees, any of the following:

1. A lack of commercial availability.

2. Maintenance needs of the tree or property.

3. General safety, such as preventing tripping hazards from shallow spreading roots.

Section 2. Amend Section 3, Chapter 256, Volume 81 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 3. ~~This Act expires 10 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.~~

Section 3. This Act is effective immediately and is to be implemented as follows:

(1) The initial list of native plants required under § 6937(b) of Title 29 must implemented no later than January 1, 2025.

(2) Section § 6937(c) and (d) of Title 29 are to be implemented on January 1, 2026.

SYNOPSIS

This Act revises State procurement rules to require that beginning January 1, 2026, state agencies under Chapter 69 of Title 29 must purchase only native plants, including cultivars and hybrids of native plants, in the development of new landscaped areas and in the rehabilitation of exiting landscaped areas. Beginning January 1, 2025, the Department of Agriculture, with the advice of the Department of Natural Resources and Environmental Control and the Delaware Native Species Commission, must maintain a list of native plants that are generally available and appropriate for the needs of agencies.

This Act provides exceptions to the requirement to purchase native plants, if the plant is not invasive and is being used for any of the following purposes:

1. Land purchased and managed as an historic property.
2. An appropriate habitat for zoo animals.
3. Agriculture.
4. Areas maintained as grass or turf, such as athletic fields, golf courses, lawns, and a right-of-way along a road.
5. Botanical gardens.
6. Ecological research.
7. Flowering annuals within landscape beds.
8. With the approval of the Department of Natural Resources and Environmental Control or the Department of Agriculture: wildlife plantings, land where a native species cannot thrive, and when necessary for trees.

This Act also makes the Delaware Native Species Commission permanent.

Author: Senator Hansen