

Department of Legislative Services  
Maryland General Assembly  
1999 Session

**FISCAL NOTE**

Senate Bill 243 (Senator Ferguson)

Judicial Proceedings

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**Mechanics' Liens - Subcontractors and Homeowners - Burden of Proof at Interlocutory Stage**

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This bill provides that during the interlocutory stage of a mechanic's lien case between a homeowner and a subcontractor, the subcontractor is not required to show that the homeowner is indebted to the contractor.

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**Fiscal Summary**

**State Effect:** None. This bill would not affect the workload of the Judiciary.

**Local Effect:** None.

**Small Business Effect:** Meaningful. This bill would have a positive effect on small subcontractors.

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**Fiscal Analysis**

**Background:** Section 9-104(f)(3) of the Real Property Article provides that a subcontractor's mechanic's lien against a single family residence cannot exceed the amount that the owner is indebted to the general contractor at the time the owner receives notice of the lien. In *F. Scott Jay & Company, Inc. v. Vargo*, 69 Md. App. 364 (1996), the Maryland Court of Special Appeals considered whether a subcontractor or an owner bears the burden of proving the extent of indebtedness of the owner at the time of notice. The court held that: "where a subcontractor seeks to establish a lien against a single family residence, it is the subcontractor's burden to demonstrate the extent to which the homeowner was indebted to the general contractor at the time that the homeowner received notice of the lien." In reaching its determination, the court relied on the legislative history of the statute and

concluded that: “Given this history, we are confident that, had the legislature intended to make lack of indebtedness an affirmative defense, it would have done so by clear and explicit language.”

In effect, the bill overturns the F. Scott Jay decision, by requiring the court to enter an interlocutory lien on behalf of a subcontractor without requiring the subcontractor to prove that the owner is indebted to the contractor.

**Small Business Effect:** This bill shifts the burden of proof from the subcontractor to the owner in mechanics’ lien cases. Consequently, the bill makes it more likely that a small subcontracting firm working on a single family dwelling will perfect a lien against the property in the event that the subcontractor goes unpaid by the general contractor.

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**Information Sources:** Judiciary, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 1999

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Analysis by: Jo Ellan Jordan

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 946-5510

(301) 970-5510