

First Extraordinary Session, 2005

HOUSE BILL NO. 32

BY REPRESENTATIVES GALLOT AND ANSARDI AND SENATOR LENTINI

CONTRACTS: Provides for the suspension of performance of contracts due to the impracticability of performance (Item #51)

1 AN ACT

2 To enact R.S. 9:2561, relative to the performance of contracts; to provide for the suspension  
3 of performance of contracts due to impracticability; to provide for a definition of  
4 impracticability of performance; to provide relative to default by the obligor; to  
5 provide relative to partial performance; to provide that Hurricanes Katrina and Rita  
6 are fortuitous events; to provide relative to obligations for the payment of money; to  
7 provide for applicability to contracts effected by Hurricanes Katrina or Rita; to  
8 provide for retroactivity; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:2561 is hereby enacted to read as follows:

11 §2561. Impracticability; suspension or dissolution of obligations; partial  
12 performance; default; fortuitous events; applicability

13 A. The provisions of this Section shall apply to any contract the performance  
14 or partial performance of which was made impracticable as a result of Hurricane  
15 Katrina or Hurricane Rita, unless under the terms of the contract the parties have  
16 expressly agreed otherwise.

17 B. When an obligor's performance has become impracticable without his  
18 fault as a result of either Hurricane Katrina or Hurricane Rita, performance due under  
19 the contract is suspended until the performance is no longer impracticable. For the  
20 purposes of this Section, performance is impracticable when the burden of

1 performing in accordance with the terms of the contract has increased beyond any  
2 reasonable expectation of the parties. The provisions of this Section shall not apply  
3 to the extent that the obligor assumed the risk of hurricane effects.

4 C. An obligor is liable for his failure to perform when he is already in default  
5 at the time the impracticability of performing arose.

6 D. When either Hurricane Katrina or Hurricane Rita has made a party's  
7 performance impracticable in part, only the impracticable part is suspended and the  
8 other party's counterperformance is reduced proportionally until the suspension ends.  
9 If the partial performance would have no value to the obligee, or the delay in the  
10 remaining performance would be excessively burdensome to the obligee, the obligee  
11 may, in accordance with law, regard the contract as dissolved.

12 E. Hurricane Katrina and Hurricane Rita shall be deemed "fortuitous events"  
13 within the meaning of Louisiana Civil Code Articles 1873, 1876, 1877 and 1878.

14 F. Performance consisting of payment of money may not be suspended under  
15 the provisions of this Section, except when the performance of the other party is  
16 suspended as provided in this Section.

17 Section 2. The provisions of this Act are remedial and shall apply retroactively to  
18 August 26, 2005.

19 Section 3. This Act shall become effective upon signature by the governor or, if not  
20 signed by the governor, upon expiration of the time for bills to become law without signature  
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
23 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Gallot

HB No. 32

**Abstract:** Provides for the suspension of performance of a contract due to the impracticability of performance of the contract.

Present law provides for the impossibility of performance of contracts.

Proposed law provides for the applicability of proposed law to existing contracts unless the parties agree otherwise.

Proposed law provides for the suspension of performance of contracts due to impracticability.

Proposed law provides that performance is impracticable when the burden has increased beyond any reasonable expectation of the parties.

Proposed law provides for the liability of the obligor who was in default at the time the impracticability arose.

Proposed law provides for proportional suspension or reduction of counterperformance in the case of partial performance.

Proposed law provides that hurricanes Katrina and Rita are fortuitous events.

Proposed law provides for the suspension of monetary payments.

Proposed law provides for the retroactive application of proposed law to August 26, 2005.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2561)