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Section: [New York](#) > [Printer-Friendly Version](#)

Victorious Senate Democrats Could Target Eminent Domain

By **PETER KIEFER**, Staff Reporter of the Sun | September 22, 2008

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A DEMOCRATIC TAKEOVER OF THE SENATE IN NOVEMBER COULD RESULT IN CHANGES TO THE STATE'S EMINENT domain law, possibly complicating several of the city's largest development projects.



Laurie Olin

A rendering of the Atlantic Yards project in Brooklyn.

State Senator Bill Perkins, a Democrat of Harlem, is calling for a moratorium on the use of eminent domain and said he is willing to push for more restrictions on the use of eminent domain, provided the political climate is right in [Albany](#).

"I don't know of too many other issues where you have such diverse and pervasive outrage," he said yesterday in an interview.

Mr. Perkins said he would be meeting with [Governor Paterson](#) this week to discuss the findings of a hearing he held last week examining the possible use of eminent domain for the proposed \$7 billion expansion of Columbia University's campus. He said Mr. Paterson was "supportive" of his work on eminent domain, but said he had not discussed specifics with the governor.

Other projects that could require the use of eminent domain and thus be affected if the laws governing it are changed are Forest City Ratner's Atlantic Yards mixed-use development project in downtown Brooklyn and the [Bloomberg](#) administration's plans to redevelop the 62-acre Willets Point site in Queens.

Both the Atlantic Yards and Willets Point projects are facing legal challenges from resident groups and landowners, while a private landowner with property within the footprint of the proposed Columbia expansion has vowed to fight the project in state court.

With the Republicans holding a one-seat edge in the Senate, a changing of the guard in Albany could lead Mr. Perkins and Assemblyman Richard Brodsky to lead the charge to change the state's eminent domain law.

"I think the Democrats taking control will mean a lot of important things and I would hope eminent domain would be one of them," Mr. Brodsky said.

A land-use attorney, Michael Rikon, said an effective alteration of New York State's law would not be easy.

He said the obstacles are myriad, ranging from vague definitions of "public purpose," which can be used in certain instances to justify seizure of privately owned property, to whether "economic development" is justifiable cause for land seizure. Mr. Rikon said the process of designating an area as "blighted" is flawed and added that there are too few procedures to allow private property owners to effectively challenge the state.

Mr. Rikon, who said he favors changing the law, said that under the current law, "Every home can be shown to be worth less than a site for a Costco."

To date, 42 states have revised their eminent domain laws since the landmark 2005 *Kelo v. City of New London* Supreme Court ruling.

New York's City Council is considering legislation proposed by Council Member Hiram Monserrate that would require the inclusion of more detailed financial impact statements for projects the city is considering that require the use of eminent domain.

Mr. Monserrate said his legislation could serve as a partial blueprint for changes at the state level.

Mayor Bloomberg has repeatedly stated the need for the use of eminent domain in certain instances, and any legislative change would also likely require the approval of the Assembly speaker, [Sheldon Silver](#). A spokesman for Mr. Silver declined to comment on whether he would support such changes.

A spokesman for Mr. Bloomberg, Andrew Brent, said in a statement: "The Bloomberg Administration has a clear track record of consenting to the use of eminent domain only when it is absolutely needed for an important public purpose, and even then, as a last resort. If and when those situations arise though, it can be an essential mechanism to allow the city to create a safe environment, develop sustainable communities, and prepare for growth."

A senior attorney for the Institute of Justice, Dana Berliner, said that while she felt the timing of eminent domain alterations was ripe, she was skeptical that it would be tied to the Democratic takeover of the Senate.

"We have had support for eminent domain reform in many states, and it was always a bipartisan effort and it has been led by both parties," she said. "But more than which party is in power it is a question of someone coming forward and ensuring that it really happens."