

**Email from New York State Board of Elections to Voting Machine Vendors
Regarding Microsoft Position on NY Election Law Source Code Escrow Requirements
April 13, 2007**

From: Allison Carr, New York State Board of Elections
Date: Fri, 13 Apr 2007 15:38:19
To: Representatives of Avante, Diebold, ES&S, Sequoia, and Liberty Election Systems

Subject: Escrow - Microsoft

Dear Vendors:

The New York State Board of Elections has been meeting with representatives from Microsoft to discuss the source code escrow requirements, which are found in New York State Election Law §7-208. Those requirements state that the manufacturer of such voting system "shall place into escrow with the state board of elections a complete copy of all programming, source coding and software employed by the voting machine, system or equipment."

The statute also requires the manufacturer of such voting system file with the state and local boards of elections, a waiver "which shall waive all rights of the vendor or manufacturer to assert intellectual property or trade secret rights in any court of competent jurisdiction hearing a challenge to the results of any election."

Finally the statute requires the manufacturer of such voting system file with the state and local boards of elections, "a consent to having and cooperating in the testing of any programming, source coding, firmware, or software, pursuant to an order of any board of elections or court of competent jurisdiction."

In addition to the discussions which were held, a list of questions was submitted by the State Board to Microsoft for review and response.

The questions and answers are as follows:

1. Does Microsoft have source code currently escrowed with NYS at any level or elsewhere?

No. Microsoft does not put source code in escrow accounts.

2. Does Microsoft have an escrow agent in NY or do we have an idea of what agent we might use?

No. Microsoft does not escrow source code through any third parties.

3. Does Microsoft have source code escrowed at NIST (National Institute of Standards and Technology) and if so, could we use that model if it would be easier?

No. Microsoft does not have source code escrowed at NIST.

4. If there are significant problems with the law as written and those problems would preclude us from agreeing to an escrow arrangement, are there any changes to the law that Microsoft would suggest?

At this time, Microsoft doesn't have any suggestions, but we're working on a similar issue before Congress and may be able to offer language at some point.

Based upon Microsoft's answers to these questions, it is apparent that Microsoft is not willing to comply with the statutory requirements: the requirement to escrow source code, the waiver requirements, nor the consent to testing. We do not anticipate further meetings with Microsoft, at this time.

Be advised that you should prepare to take whatever actions you deem necessary to comply with the requirements of Election Law §7-208 in order to obtain certification.