

HB 1384: The Mark Splonskowski Protection Act

A bill designed to prevent the Burleigh County Commission from using its "nuclear option" will also cause a loss of oversight powers in all counties in the future.



DUSTIN GAWRYLOW
JAN 22, 2025



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(Note: This is a bill analysis that I was procrastinating about writing since it was introduced the first week of the session. But due to [the public statements published in the Bismarck Tribune this afternoon](#), it can no longer be avoided.)



Over the last couple years and more recently again in the last few months, I have written extensively about the situation with Burleigh County's finances and continuing squabble between the Burleigh County Commission and the Burleigh County Auditor.



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This is and has been a sticky issue for the Burleigh County Commission has been wrestling with as it has sought to figure out what has been going and what has also not been getting done in the county's name.

[As I wrote back in early December](#), part of the solution is probably to de-couple the Treasurer and Auditor jobs back to the way it used to be prior to the 1980s/90s when the jobs were combined:

The county commission should explore the following steps:

1. Separate the Role of Treasurer from the Auditor's Role:

- Merge the Treasurer's responsibilities with those of the Finance Director.
- Convert this new position into an appointed role that reports directly to the commission.
- Require the appointee to hold an advanced degree in finance or accounting.

2. Create a County Administrator Position:

- Establish a long-debated county administrator position that reports directly to the commission.
- Seek out candidates for the role who have experience that can translate, including that of budget director
- Transfer day-to-day administrative responsibilities from the Auditor's office to this position.

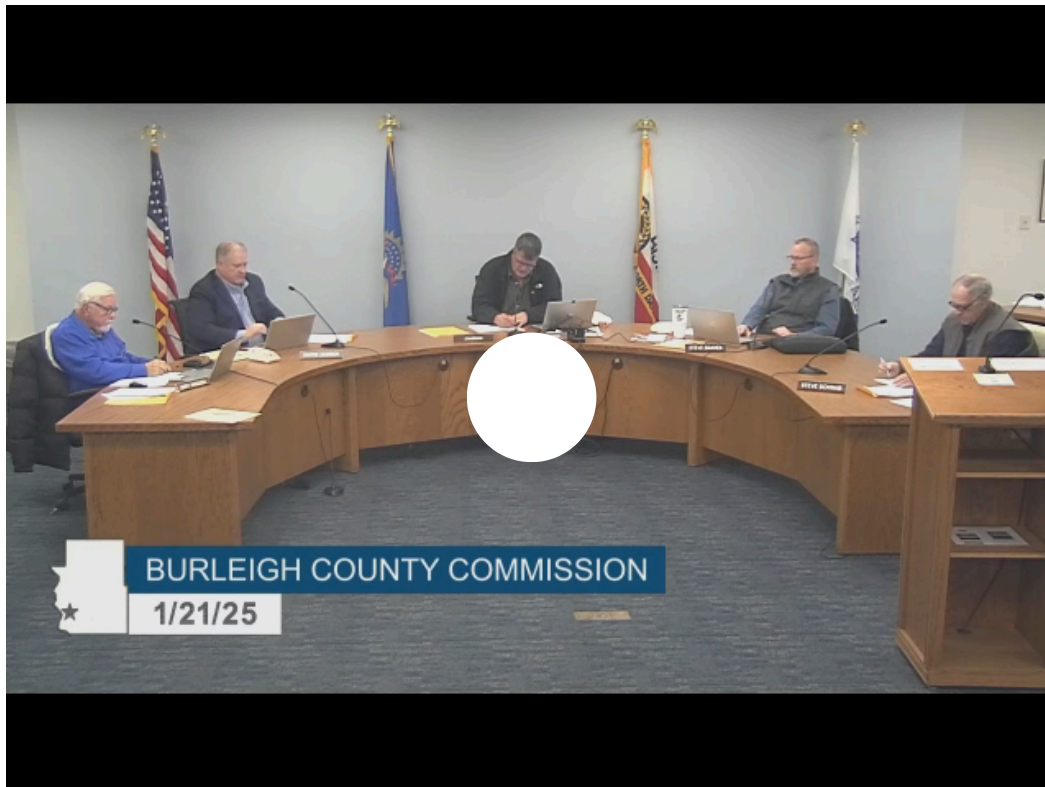
- Ensure that the position does not become a “king-maker” by limiting contract durations and preventing “golden parachute” contracts.

3. Retain the Auditor’s Office as an Elected Oversight Role:

- Maintain the legal obligations required by state law within the Auditor’s office.
- Adjust the Auditor’s salary to reflect the reduced scope of responsibilities transferred to the Treasurer and Administrator positions.
- Offer flexibility for an elected Auditor to opt for a reduced salary if he/she lack the qualifications to perform all the job’s functions independently.
- Encourage candidates for the elected Auditor’s at a reduced-scope to have management training and experience; and mandate that new auditors seek formal training in the 6-months between being elected and taking office, including paying for such training. (Auditors are elected in November but do not take office until April, so there is plenty of time to get up to speed.)

It is imperative that the Auditor remain elected, but with scaled-down job description and expectations - and move the role of Treasurer to the Finance Director as an appointed job. (The legislature should consider examining this part of the issue, if it does anything.)

Yesterday, the Burleigh County Commission discussed the current situation:



Burleigh County's Home Rule Charter currently states:

The Board of County Commissioners may follow state law converting the elected offices of the county auditor/treasurer and the county recorder into appointed offices. Any resolution to convert an elected office to an appointed office shall not shorten the term for which the official was elected nor reduce the salary of the official's office for that term.

The commission tabled action at yesterday's meeting, but this is where the current legislative session and one particular bill comes into play:

HB 1384 seeks to repeal the ability for counties or their voters to make the decision have an appointed auditor if the electorate votes to do so - even if the voters have made that decision.

Notwithstanding chapter 11 - 10.2 or 11 - 10.3, if the county auditor as provided for in subsection 1 is a full - time employee of the county, the county auditor must be an elective office. A county may not exercise any power under a home rule charter to circumvent this subsection.

To those observing, this particular proposed state-powergrab is especially transparent [with what is happening in Burleigh County](#), leading some lawmakers to not-so-jokingly refer to HB 1384 as “The Mark Splonskowski Protection Act”.

This afternoon, [an article was published with quotes from the bill sponsor and the Burleigh County Auditor confirming this is indeed the intent of the bill](#):

State law and the county's home rule charter allows the commission to convert elected positions to appointed ones, but that authority could be at risk. A proposed bill in the state Legislature, [House Bill 1384](#), would require full-time county auditors, such as the one in Burleigh County, to be an elected office. The bill was introduced by Rep. Matthew Heilman, R-Bismarck.

Heilman told the Tribune he introduced the bill in response to efforts, dating back a few years, to make the Burleigh County auditor position appointed. He cited a 2020 ballot measure that asked county voters to make the position appointed. That measure failed, with more than two-thirds of county residents voting against it.

He added that Splonskowski is a friend of his.

Splonskowski in a statement said it's concerning to him, both as the elected official affected and as a resident of Burleigh County, that the commission would "entertain eliminating the voice of the people." He also cited the 2020 ballot measure, saying the move would go against the will of the people.

"The people strongly voted to have this position remain elected. I would hope the commission would respect the opinion the people stated at the ballot box," he said.

Converting an elected office to an appointed one would start with a preliminary resolution, passed by the commission on a majority vote. The board would then be required to hold public hearings on the change. Lawyer suggested the board consider holding public hearings over several months so it can collect as much public input as possible.

[...]

The board would then need to pass a final resolution. County residents would have 30 days to file a petition protesting the change. If enough signatures are filed, equal to 10% or more

of the total number of qualified electors that voted for governor in the most recent gubernatorial race, the commission would either have to repeal the resolution or put it to a vote.

If converted, Splonskowski would still be allowed to serve the rest of his term, which ends on April 1, 2027.

Conclusions

1. HB 1384 should be defeated. The idea of changing state law to hamstring all counties that have voter approved Home Rule Charters just to protect one Auditor in conflict with his County Commissioners over a multitude of issues is absurd. Legislators should know better than to make these issues that personal.
2. In fact, the legislature should instead examine the qualifications for offices like county auditors to prevent disputes over qualifications from happening. Currently the only requirements are a high school diploma and living in the county. That may have been enough in 1889, but the times have changed. Voters deserve to know that the people they vote for, especially when it comes to financial oversight, are somehow qualified in the first place to do the job.
3. Burleigh County must conduct more open meetings about the issues occurring behind the scenes in the county offices. There have been reports and rumors for well over a year that have not been fully disclosed. The Burleigh County Commission has gone out of its way to try to remedy these issues internally and behind the scenes in the hopes of avoiding the public “food fight” that has been exposed since two weeks before the election.
Many in the public get the sense that this has just developed recently because the commissioners were trying to resolve it quietly. That is not the case.
[Callers into the KFYZ Kafe felt in December that this was “all of a sudden”](#) when it absolutely has NOT been all of a sudden.
The public may even need to hear from county staff directly about the drama behind the scenes so that the public does not think that it is just a conflict between personalities on the county commission and the county auditor. There is way more to this situation than meets the eye.

4. The Burleigh County Commission should commit to a restructuring that ensures the work gets done and that whomever the next auditor is can do the job and not be “set up to fail”.

This restructuring should include scaling back the job so there is still a check-and-balance from an elected auditor, but that no one official can cause county business to grind to a halt. (The legislature should examine whether the statutory roles are appropriate if they do not place higher requirements on the job.).

5. Finally, the Burleigh County Commission should put its fix up to a vote of the people, even if it means holding a special election prior to the next regular election in June 2026.

Even with the justifications for the change, doing so without voter consent could be even more damaging. As [Rob Port wrote back in December](#): “...as a political matter I'd caution prosecutors that they're at risk of making Splonskowski a martyr. His particular breed of populist politics is never so potent as it is in the context of martyrdom.”

This is sticky problem. Legislators should be looking to fix the problem rather than just protecting those involved with problematic situations.

Let's fix the problem, and not create martyrs that can be portrayed as victims.

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