Impacts of the FOCUS Act on Governance in Tennessee Higher Education Institutions

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ABSTRACT

With the final passage of the Focus on College and University Success (FOCUS) Act which was signed into law on April 19, 2016, state universities within Tennessee are heading for major transitions in governance structure and autonomy. With changes moving at a speed atypical of higher education, these six soon-to-be former Tennessee Board of Regents (TBR) universities must determine the best way to proceed from the current governance structure to a localized governing board while considering the future direction of the institution. Drawing on historical precedents and current policy changes, recommendations are made to the six universities for future governance structure, appointment of the board, and proposed future directions and policy discussions for the institutions.

INTRODUCTION

With the passage of the FOCUS (Focus on College and University Success) Act on April 19, 2016, it is necessary to analyze the Act itself and the governance changes it legislates and make recommendations to administrators while informing the academic community about the Act itself. The legislation mandates the restructuring of Tennessee higher education by incorporating independent governing boards to oversee each of the state’s six public universities, which are: Austin Peay State University, East Tennessee State University, Middle Tennessee State University, Tennessee State University, Tennessee Technological University, and the University of Memphis. These local, independent governing boards will ultimately report to the Tennessee Higher Education Commission (THEC). The Tennessee Board of Regents (TBR) previously governed the six public universities as well as Tennessee’s 13 community colleges and 27 technical colleges. After the FOCUS Act is fully implemented, the TBR will only have jurisdiction over the community colleges and technical schools. These changes are part of Tennessee Governor Bill Haslam’s Drive to 55 Initiative, wherein the stated objective is to have 55 percent of the citizens of the state with completed collegiate education or training by 2025. As a part of this initiative, the Tennessee Promise ensures last dollar funding toward community college tuition, thereby making community college education essentially free for Tennesseans who qualify. Because of these higher education reforms and initiatives at the state level, a major revision of the state’s governance and system structure in higher education should not be altogether unexpected.

Currently, the TBR’s mission is varied and includes acting as the “responsible agency for purposes and proposals of the (TBR) System subject only to legislative mandated
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The FOCUS Act is part of a larger statewide program that focuses on higher education, which is part of the larger statewide program that focuses on higher education. The FOCUS Act is part of a larger statewide program that focuses on higher education. The six independent governing boards will provide direct oversight while also being a part of the TEC to maintain some consistency between the six independent governing boards and ensuring a stable basis of shared responsibility. More focused and directly supervised institutions are expected to have increased ability to reach potential students, retain current students, and promote higher educational attainment across the state (Leder- man, 2016).

New changes in leadership can cause concern in any organization, and higher education is no exception. The Act is planned to be fully implemented in Tennessee by July 2018. At that time, which have six separate missions that are largely based on programming, geographical location, corporate ties, and political situation. The six independent Boards of Trustees will provide focused oversight for their individual institutions, but will also ultimately report to TEC. This will arguably transform THEC from a relatively silent commission compared to the oversight of the TBR system, to one that is empowered to a greater level. The FOCUS Act will essentially strengthen THEC’s influence and base.

The FOCUS Act has the potential to transform the way businesses operate, creating a harmful political environment for the TBR. Currently, it is not clear how the four-year institutions will be impacted. As stated previously, TBR oversaw the six universities, 13 community colleges, and 27 technical schools, while the UT system oversaw UT Knoxville, UT Chattanooga, UT Martin, and the UT Health Science Center (Appendix 3). After the full implementation of the Act, TEC remains at the top of the organizational chart, except each of the six universities will then report directly to TEC through the local governing board (Appendix 4). The most notable element of the Act will include the creation of decentralized local governing boards for the six regional universities. The FOCUS Act board membership requirements and major responsibilities include hiring the institution’s president (who reports directly to the board), executive officers, confirming their mission, establishment of administrative personnel, faculty, and other employees as well as the ability to set salaries, prescribe curriculum requirements for graduation, approve budgets, and establish campus policies.

It is important that the governing boards are organized in a logical manner based on proven methods. According to Cathy Trower, an expert in higher education board governance, there are several focal points that boards and university officials need to work in order to create exceptional governance, which includes oversight, foresight, and insight (Trower, 2014). Oversight pertains to operations, resources, and finances, or the ‘what’ questions. Foresight is related to strategic planning, or the “how” questions, while insight is comprised of problem-framing and the confrontation of issues with others. Trower noted that best practices include creating a team of experts’ advice will be heeded as boards are formed.

The Act will be implemented in phases over the next few years. In the first phase, the focus will be on developing the governance structures and processes necessary to support the implementation of the Act. In the second phase, the focus will be on developing the policies and procedures necessary to support the implementation of the Act. In the third phase, the focus will be on developing the financial and operational infrastructure necessary to support the implementation of the Act.

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The Tennessee Higher Education Commission (THEC) was created in 1967 for several reasons, such as to deal with issues ranging from student retention to equity and appropriateness governed by an independent board, but his acknowledgement never turned into serious action (Roberts, 2013). In the 2010 election for Tennessee governor, Former Governor Phil Bredesen agreed that the university would be more appropriately governed by an independent board, but his appointment and power of the Board

Appointment and Power of the Board

According to Section 19 of the FOCUS Act, appointment to the governing board will be a gubernatorial appointment of the ten board members, eight will be direct appointee of the governor and will be on a rotating term, with the ninth voting member being a faculty member that serves for a two year period, and the tenth member being a student who serves for a one year term. It is recommended that the university president maintain the ability to work closely with the governor to make recommendations, thus helping to avoid the potential for politically motivated appointments that can hamper the work of the board. It is further recommended that several schools had clear parameters defined for their governing boards, the investigators found that several institutions over the last few decades. In 1999, there was a group of business and education leaders that recommended that university presidents have the ability and power to review the exact role of the governing board and their relationship with the administrative process. It is further recommended that THEC be responsible for several items that are also included in the FOCUS Act.

The Governor's Council on Higher Education

Tennessee has made several changes to its higher education classification systems over the last few decades. In 1999, a group of business and community leaders across the state participated in the Governor's Council for Higher Education. The group dealt with issues ranging from student retention to equity and suitability to governance. At this time, the Council recommended a stronger THEC which is coming to fruition with the FOCUS Act. The group recommended that THEC be responsible for several items that are also included in the FOCUS Act.

"Allocating state resources to operating segments, consistent with budget deliberation priorities, coordinating activities occurring across segment of the public higher education system, and systematically reviewing, approving, and where appropriate, terminating Tennessee's publicly sponsored supported higher education programs" (Governor's Council on Higher Education, p. 43).
experience in marketing, finance, and leadership, medi-
cal or hospital administration experience on a corporate
level, previous alumni of the institution, and some repre-
sentation from across the state (not only in the geographic
location of the university) and representation from out
of state. These diverse individuals will then be equipped
to meet the demanding changes in higher education and
would be well qualified to lead the institution through the
difficult years that lie ahead. This diversification includes
representatives from various professional backgrounds.

In addition to the recommendations about board selec-
tion are recommendations about the governing practices
of those boards. Common concerns among university
presidents who will operate under the structures promul-
gated by the FOCUS Act center around the potential for
overbearing board involvement. This ranges from dictat-
ing that classes such as constitutional law be mandatory
for undergraduates in an effort to stem the tide of social-
ism among the student body, to wanting to be involved
in the day to day operations of the university. Taking a
“hands on, but fingers out” approach is most appropriate
for the governing board. Amendment 1 of the FOCUS
Act, which was proposed largely by ETSU faculty senate
and ENTSU President Brian Noland, proposed a non-inter-
ference clause, which essentially predicates a dividing line
between being involved in the oversight of the institution,
and being explicitly involved in or interfering with any
employee, officer, or agent under the direction of the uni-
versity president. It is recommended that the university
president be the one and only employee of the localized
governing board.

Potential issues can also arise between the governing
board and the president if there is dissatisfaction from
either party. Anne D. Neal, President of the American
Council of Trustees and Alumni has said that presidents
need to take responsibility for keeping their board mem-
bers privy to the latest information on campus for board
members to make the best decisions possible (Ryad, 2013).

“So if the trustees are not well-informed, certainly some
of the blame has to be placed at the foot of the presidents,
or it certainly represents a failure of communication be-
tween the presidents and lay board members who are, at
the end of the day, volunteers.” (Ryad, 2013). Though the
board members may be “volunteers” at the end of the day,
they are endowed with the power to remove a president if
decision deemed necessary. Potential conflicts between this lay
board and the president can arise in myriad ways. The
board must leave the day to day operations of the univer-
sity to the president and allow them to execute their posi-
tion as they see best. The board is only mandated to meet
time four times each year. Within those meetings the board
must be focused on the performance and outcome metrics
of the institution and use these as the indicators to mea-
sure the performance of the president and the institution.

Funding
In response to concerns about fair funding and proper
representation, the legislature recently passed Amend-
ment Four to the FOCUS Act, which says “each president
from a state university in the state university and com-
community college system, instead of just one such president,
will be assigned to the THEC funding formula commit-
ttee” (Tennessee General Assembly); an amendment that
President Glenda Glover of TSU claims to have directly
influenced as stated in a TSU FOCUS Act Update dated
March 25, 2016 (http://www.tnstate.edu/president/doc-
ument/TSU_Focus_Update_2016_0235.pd.pdf). Gover-
nor Haslam has also said that he would make it a priority
to “consult with lawmakers to ensure strong boards would
be appointed for each school and that he would work to
avoid competing lobbying efforts by each institution for
state dollars and construction projects” (Shelzil, 2016).
However, Gerald McCormick expressed concern about
what could happen after Governor Haslam’s term is over
in 2019 (Shelzil, 2016).

Autonomy from THEC for these governing boards is cru-
cial for their success. While oversight is necessary, the pre-
vious size of the TBR system is a testament to how a large
system with too much oversight can weaken the overall
system with bureaucracy. It is recommended that THEC
become the centralized voice for higher education in the
state of Tennessee as is practiced in such states as West
Virginia and Kentucky. In this case the chancellor or an-
other key THEC figure would represent the interests of
the six institutions and their boards to the state legisla-
ture and governor. It is recommended that THEC not
only increase in statute (as is proposed by the FOCUS
Act), but that it also increase in practice. With this cen-
tralized voice in the state, it is important that each of the
independent boards be allowed to operate with a level
of autonomy that increases the interests of that institu-
tion. However, it is possible and a concern that with the
increase in statute and practice, the same model that was
just overturned by the legislature will be repeated as more
regulation and oversight are promulgated by the newly
empowered THEC.

Possible Future Directions and Conversations
A major interest of these boards will be financial. In other
systems such as Virginia, these boards are referred to as
“corporations”. If true autonomy is ultimately granted,
conversations in the future should revolve around the
ability of each institution to issue debt, giving the institu-
tion the ability to build, lease, and ultimately drive invest-
ment at the institution without the heavy hand of a board
of regents and the cumbersome pace at which it moves.
Becoming a “corporation” of sorts would allow the insti-
tutions to deal in real estate, issuing bonds to raise capital,
and to manage and finance its own debt. Many univer-
sities use this structure currently by buying retail spaces
that are then leased. The revenues from these real-estate
investments are then used by the university to further the
mission, offer scholarships, and to facilitate other institu-
tional goals. According to one medium-sized university
president, this is likely to be the conversation and debate
that will ensue in the next 10 years within the state of
Tennessee.

CONCLUSION
The true test of success for the FOCUS Act was not in the
passage of the bill, which occurred in March and April
2016, but in the separation and restructuring of the Ten-
nessee Board of Regents. As has been pointed out, THEC
has been empowered beyond its current standing in stat-
ute, but in practice has yet to be seen. This is going to
require a major organizational restructuring for THEC
that may include the addition of staff members and de-
partments. Though the necessity of additional personnel
can be argued as many states, including neighboring Vir-
ginia, oversee many more students with less formalized
structure at the state level. This may also promulgate
the emergence of a large, cumbersome system that delays
and hinders the progress of the centralization of the
university contracts. Will contracts still be maintained
by the TBR system, or will they transition to THEC or
to the university? Will previous agreements be honored
and maintained? All of these questions and issues must
be dealt with in the years, months, and even weeks ahead
since the passage of the Act.

Despite the conversations and debates that will undoubt-
edly follow, the Act has placed things in motion that will
fundamentally change the landscape of higher education
within the state of Tennessee, and possibly the nation.
Tennessee has been on the forefront of change in higher
education, and has been frequently placed on the national
stage. These changes are likely the subject of conversation
at higher administrative agencies, and will certainly be
closely watched by other states.
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APPENDIX 1

Pros and Cons of the FOCUS Act

Pros
- More local control by independent leadership.
- Increased speed and agility for the institutions.
- Increase in true shared governance among administrators, faculty, staff, and students.
- Increased and localized focus on institutional priorities and mission.
- Opportunities for future diversification of debt issuance and revenue sources.

Cons
- Alumni statues is loosely defined (two-year attendance), which means the member may not have a deep understanding of the campus culture and an appreciation for institutional history.
- No limits on political affiliation may mean a biased board.
- No current specifications on conflicts of interest, which may make it easy for members to act in their best financial or personal interest.
- Less power for small universities compared to the UT system.
- Potential political issues and conflict of interests with qualified board members.
- Potential for increased competition among universities that violates state interests.

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## Public and Private University Governance Systems and Bylaws Matrix Diagram

<table>
<thead>
<tr>
<th>Institution</th>
<th>Control</th>
<th>Meetings</th>
<th>Officers</th>
<th>Responsibilities</th>
<th>Committees</th>
<th>Curriculum and Instruction</th>
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<tbody>
<tr>
<td>Virginia Tech</td>
<td>Under the General Assembly of the state. 14 voting board members (art. 1 §1)</td>
<td>Board sessions are open and may be attended by selected student constituents and the faculty senate president. Meetings occur 1x per year. Closed meetings are permitted for certain reasons. No voting is permitted unless a quorum is present.</td>
<td>The board annually elects a Rector to preside and Vice Rector if absent for a maximum of two one-year terms.</td>
<td>Responsible for the operation of the institution, and to write policy. Authority is delegated to the U. President. Responsible for capital improvement and care of property. Specific examples delineated below:</td>
<td>Executive, Nominating, Finance and Audit, Buildings and Grounds, Student Affairs and Athletics, Research</td>
<td>Must include agriculture, mechanic arts, military tactics, sciences and classes in conformity with institutional mission.</td>
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<tr>
<td>William &amp; Mary</td>
<td>17 members including officers (Rector, Vice Rector, and Secretary) are gubernatorial. Student and faculty representatives are included.</td>
<td>Meets four x per year. A simple majority is required for a quorum to be present.</td>
<td>Rector, Vice Rector, and Secretary</td>
<td>Appoints President, Provost, and other key administrative positions.</td>
<td>Academic Affairs, Administration, Buildings and Grounds, Athletics, Audit and Compliance, Financial Affairs, Richard Bland College, Strategic Initiatives and New Ventures, Student Affairs, University Advancement. One or more board members appointed by Rector to be chair.</td>
<td>The Provost who reports to the board is responsible for curricular decisions.</td>
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<td>University of Virginia</td>
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<td>Rector, Vice Rector, and Secretary</td>
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<td>West Virginia University</td>
<td>Supervised by the Higher Education Policy Commission. Made up of 17 members (including 1 faculty, 1 staff, and 1 student. The Chairperson of WVU Institute of Technology must hold a seat</td>
<td>Must meet at least 6 times per year with at least 9 members present. The executive committee creates the agenda with consultation from the university president.</td>
<td>Chair, Vice Chair, and Secretary, all of which serve one year terms. The Chair is selected from the laypersons serving on the Board. Officers can be removed at any time by majority vote.</td>
<td>Oversees financial, business and educational policy, appointments and evaluates the President; prepares budget requests; manages personnel matters; supervises fundraising; oversees contracts</td>
<td>Executive Committee; Strategic Plans and Initiatives Committee; Accreditation and Academic Affairs Committee; Health Sciences Committee; Finance Committee; Facilities and Revitalization Committee; Divisional Campus Committee; and Audit Committee.</td>
<td>Oversees educational policy; approves education programs.</td>
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<td>Marshall University</td>
<td>16 Board members, including a faculty member, staff person, and student. Meetings have varied from 4-12 over the last 7 years.</td>
<td>Board Chairperson, Vice Chair, Secretary, and Committee Chairs</td>
<td>&quot;Members...oversee the university's operations and establish its policies.&quot;</td>
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<td>University of Oregon</td>
<td>Currently, 15 serve on the board.</td>
<td>Meet at least once quarterly. A quorum is a majority.</td>
<td>President, Treasurer, General Counsel, Secretary, and Committee Chairs</td>
<td></td>
<td>Executive and Audit; Academic and Student Affairs; Finance and Facilities</td>
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<tr>
<td>Western Oregon University</td>
<td>Currently, 14 serve on the board.</td>
<td>Meet at least once quarterly. A quorum is a majority.</td>
<td>President, Provost, Vice President for Finance &amp; Administration, General Counsel, and Secretary</td>
<td></td>
<td>Executive, Governance, and Trusteeship Committee; Finance and Administration Committee; and Academic and Student Affairs Committee</td>
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## Appendix 2 (Continued)
### Public and Private University Governance Systems and Bylaws Matrix Diagram

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<td>Yale</td>
<td>Board known as the &quot;president and fellows of Yale College&quot;. Made up of 19 members, including the Governor and Lt. Governor of CT. There is no time limit for service.</td>
<td>Held 5 times per year.</td>
<td>Chair, two Vice Chairs, and the President of Duke.</td>
<td>Prudential (Executive), Finance, Audit, Investments, Educational Policy, Institutional Policies, Honorary Degrees, Buildings and Grounds, Development and Alumni Affairs, Compensation, Trusteeship, Investor Responsibility and School of Medicine.</td>
<td>Academic Affairs Committee; Audit, Risk, and Compliance Committee; Business and Finance Committee; Facilities and Environment Committee; Human Resource Committee; Institutional Advancement Committee; Medical Center Academic Affairs Committee; Undergraduate Education Committee</td>
<td>The Academic Affairs Committee oversees all activities that support the academic mission of the University, including the articulation of the academic mission of the University, enhancing the quality of the academic program, considering new academic programs, all matters relating to the graduate and professional student experience, promoting scholarly research, and overseeing strategic planning for the University and its constituent schools.</td>
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<td>Duke University</td>
<td>The Board of Trustees has 37 members who are elected by the Student Government, Graduate and Professional Student Council, the Alumni Association, and the Duke Endowment. Two grad students observe.</td>
<td>3 meeting per year, plus special meetings as necessary. A majority is necessary for quorum.</td>
<td>Chair, two Vice Chairs, and the President of Duke.</td>
<td>Academic Affairs Committee; Audit, Risk, and Compliance Committee; Business and Finance Committee; Facilities and Environment Committee; Human Resource Committee; Institutional Advancement Committee; Medical Center Academic Affairs Committee; Undergraduate Education Committee</td>
<td>The Academic Affairs Committee oversees all activities that support the academic mission of the University, including the articulation of the academic mission of the University, enhancing the quality of the academic program, considering new academic programs, all matters relating to the graduate and professional student experience, promoting scholarly research, and overseeing strategic planning for the University and its constituent schools.</td>
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<td>Virginia Tech Board Responsibilities:</td>
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<td>1. Appointment of the President of the University.</td>
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<td>2. Approve appointments and fix salaries of the faculty, university staff, and other personnel.</td>
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<td>3. Establish fees, tuition, and other charges imposed by the University on students.</td>
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<td>4. Review and approval of the University’s budgets and overview of its financial management.</td>
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<td>5. Review and approval of proposed academic degree programs and the general overview of the academic programs of the University.</td>
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<td>6. Review and approval of the establishment of new colleges or departments.</td>
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<td>7. Ratification of appointments by the President or vice presidents.</td>
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<td>8. Representation of the University to citizens and officers of the Commonwealth of Virginia, especially in clarifying the purpose and mission of the University.</td>
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<td>9. Approval of promotions, grants of tenure, and employment of individuals.</td>
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<td>10. Review and approval of physical plant development of the campus.</td>
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<td>11. The naming of buildings and other major facilities on campus.</td>
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<td>12. Review and approval of grants of rights-of-way and easement on University property.</td>
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<td>13. Review and approval of real property transactions.</td>
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<td>14. Exercise of the power of eminent domain.</td>
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<td>15. Review and approval of personnel policies for the faculty and university staff.</td>
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<td>16. Subject to management agreement between the Commonwealth of Virginia and Virginia Tech, the Board has full responsibility for management of Virginia Tech. (§23-38.91, Code of Virginia, as amended).</td>
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<td>West Virginia University Board Responsibilities</td>
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<td></td>
<td>1. The Board has the authority to control financial, business, and education policies.</td>
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<td>2. The board oversees the master plan and files it with the WV Education Policy Commission.</td>
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<td>3. The board prepared the budget request</td>
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<td>4. The board reviews academic programs at least every five years to ensure transferability, logical course sequence, etc.</td>
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<td>5. The board approves teacher education programs</td>
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<td>6. The board manages personnel matters, such as compensation, employment, and discipline</td>
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<td>7. The board supervises the fundraising arm (financial and in-kind)</td>
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<td>8. The board appoints the President as well as evaluates his/her performance</td>
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<td>9. The board oversees contracts/agreements with other schools of all types</td>
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<td>10. The board manages the transfer of funds/properties to other agencies or institutions</td>
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<td>11. The board has the right to delegate power to the President of other senior administrator in any case deemed necessary</td>
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<td>12. The board has authority of the computer/computer donation program</td>
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<td>13. The board decides where to concentrate attention and resources on state priorities</td>
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<td>14. The board will continue to provide certain administrative services to WVE-Parkesburg</td>
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</table>
Appendix 3
Tennessee Higher Education Governance Structure before the FOCUS Act

Tennessee Higher Education Commission (THEC)

University of Tennessee
UT-Memphis
UT-Knoxville
UT-Chattanooga

Tennessee Board of Regents (TBR)

Six Four-Year Universities
Austin Peay
East Tennessee State
Memphis
Middle Tennessee
Tennessee State
Tennessee Tech

27 Colleges of Applied Technology (TCATs)
Athens
Chattanooga
Cleveland State
Columbia State
Dyersburg State
Jackson State
Morbison
Motlow College
Nashville State
Northeast State
Pellissippi State
Roane State
Southwest Tennessee
Volunteer State
Walters State

13 Community Colleges
Chattanooga State
Cleveland State
Columbia State
Dyersburg State
Jackson State
Morbison
Motlow College
Nashville State
Northeast State
Pellissippi State
Roane State
Southwest Tennessee
Volunteer State
Walters State

Appendix 4
Tennessee Higher Education Governance Structure after the FOCUS Act

Tennessee Higher Education Commission (THEC)

University of Tennessee

Tennessee Board of Regents (TBR)

Board of Trustees *

27 Colleges of Applied Technology (TCATs)
Athens
Chattanooga
Cleveland State
Columbia State
Dyersburg State
Jackson State
Morbison
Motlow College
Nashville State
Northeast State
Pellissippi State
Roane State
Southwest Tennessee
Volunteer State
Walters State

13 Community Colleges
Chattanooga State
Cleveland State
Columbia State
Dyersburg State
Jackson State
Morbison
Motlow College
Nashville State
Northeast State
Pellissippi State
Roane State
Southwest Tennessee
Volunteer State
Walters State

* There are six individual Board of Trustees. Each university has its own Independent Board.