Fall 2016

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

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Citation Information
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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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PROBLEM STATEMENT

The FOCUS Act is part of a larger statewide program that focuses on higher education, which is part of the larger Tennessee Higher Education Expenditure (THTE) program, which is tied to 35 programs and a set of recommendations for university governing boards. 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 presidents should move forward with 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 effective solutions. Many TBR institutions lack a clear mission and vision. Tennessee Board of Regents Chancellor John Morgan resigned over this very issue, saying in his resignation letter that the FOCUS Act would weaken the effective collaboration we have worked so hard to achieve and instead drive competition and shift priorities away from the state’s goals” (Freeman, 2015). Morgan called the process “unworkable” and “contrary to efforts to enhance oversight and accountability in higher education” (Shel- zid, 2016).

Tennessee institutions have been collaborating in several ways, complicating the issue and making potential opportunities and threats. The Tennessee Board of Regents has implemented a program titled Tennessee eCampus, which will change when the FOCUS Act is implemented and boards are in place. Another outlier to the non-compete and non-duplication policies is the TBR’s cooperation with a multi-state collaboration, the Southern Regional Education Board (SREB), which is overseen by the Southern Regional Education Board (SREB), a non-profit group that provides research, data, and recommendations to educational institutions across the Southeast. The SREB allows students to enroll in programs at participating institutions throughout the Southeast, and that are not offered in their home state at an in-state tuition rate. The program also includes various online courses and programs (SREB, Academic Common Market). In the 2014 calendar year, 174 Tennessee students participated in the program (SREB, 2015). With the duplication that occurs through the TN eCampus and the Academic Common Market program, one may question whether there are quality differences among courses and programs based on location or students served. Tennessee higher education officials have been previously challenged on differences in institutional quality as well as diversity in Geier v. University of Tennessee.
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Over the past 30 years, even after agreeing to the creation of THEC, the leadership of the University of Memphis (UM) has repeatedly attempted to gain independence in governance (Stockard, 2015). Although reasons are not always clearly documented in the news or in scholarly journals, there are clear indications as to why leaders at Memphis would request some autonomy in the wake of the TBR system. Scholars have expressed mutual animosity in the perception that UM has a reputation as a top tier research university, is categorized as having higher research activity by the Carnegie Classification of Institutions of Higher Education, and is located in an urban setting, thus making its culture, population, and needs different than the other institutions previously governed by the TBR system.

According to the creation of the TBR system (which was the State Board of Regents, or SBR, at the time) in 1972, UM pressed for its own governing board and vowed to cooperate with the inclusion of community colleges. However, the TBR simultaneously decided to compete with SBR for funding with UT prompted the president of UM Cecil C. Humphreys to support the creation of the new board (Stinson, 2003, p. 82). Also of note is that Humphreys was selected to serve at the first chancellor for the SBR (Stinson, 2003, p. 83). In 1989, the school created the Board of Visitors, which was strongly in favor of an independent governance structure. The Board was founded by prominent business leader Robert Fogelman and was comprised of other wealthy and well-connected people in Memphis. Former Governor Phil Bredesen agreed that the university would be more appropriate governed by an independent board, but his acknowledgement never turned into serious action (Roberts, 2013). In the 2010 election for Tennessee governor, candidates from Memphis, Bill Gibbons and Jim Kyle, both pledged to remove UM from the TBR system.

There has been some disagreement among administrators, however. Interim President Brad Martin, who led the university during the current president, M. David Rudd, switched his position on the matter. In 2013, the Commercial Appeal ran an article about Martin’s disaffection with the administrative tag in dealing with the TBR, but that he had brought his concern before the Board who agreed that the administrative processes should become more streamlined (Roberts, 2013). In light of that information, there is still limited support for THEC by the board to voice support of autonomy. President Rudd has been a supporter of the FOCUS Act, however.

1999 Governor’s Council on Higher Education

Tennessee has made several changes to its higher education system since the last reported objectives in 2006. It was seen as a way to more directly allocate funds for programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years.

Historical Background and the University of Memphis

THEC was created in 1967 for several reasons, such as maintaining stronger oversight of the state’s universities as they were growing and becoming interested in awarding doctorate degrees. The University of Tennessee’s then-president, Andy Holt, was concerned about the potential for funds to be diverted from the UT system. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years. Other universities were in favor of the creation of THEC because it was seen as a way to more directly fund programs to the TBR over the years.

THEC was established in 1912 and is characterized as a historically black college and university (HBCU), while UT-N, a primarily white school, was established in 1947 as a way for students in Nashville to be able to attend class with greater convenience. Although desegregation in Tennessee higher education occurred in 1960, at the time of Geier’s concern, there had been little progress toward this end. Geier v. University of Tennessee, 1979. The TBR has attempted to maintain equality between the two institutions by attempting to limit competition over geographic space and programming, thus expanding effort to level the playing field, but failing to promote excellence.

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 appointments 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 presents at least one opportunity 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 the Governor’s Office told The Tennessean that FOCUS will not change the current funding formula which has been in place since 2010. The current funding formula for all institutions involves the allocation of funds through the Tennessee Higher Education Commission and is based on student performance and other outcome metrics. The Tennessee Higher Education Commission is a significant case that led the state to combine the University of the University of Tennessee-Nashville (UT-N) with Tennessee State University (TSU), which offered many duplicate programs and were located less than five miles apart (Epstein, 1980). Geier v. University of Tennessee, 1979. TSU is a land grant university that was established in 1912 and is characterized as a historically black college and university (HBCU), while UT-N, a primarily white school, was established in 1947 as a way for students in Nashville to be able to attend class with greater convenience. Although desegregation in Tennessee higher education occurred in 1960, at the time of Geier’s concern, there had been little progress toward this end. Geier v. University of Tennessee, 1979. The TBR has attempted to maintain equality between the two institutions by attempting to limit competition over geographic space and programming, thus expanding effort to level the playing field, but failing to promote excellence.

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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 better prepared to face the challenges and experi-
ence. Having such a diverse board would constitute a com-
petency based board, rather than a constituency based
board, which would be better able to lead the institution
through the various changes (AHA, 2009).

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 ETSU 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).

“No 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 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
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-
 munity college system, instead of just one such president,
will be assigned to the THEC funding formula commit-
tee” (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-
uments/TSU_Focus_Update_2016_0325.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” (Shelzig, 2016).

However, Gerald McCormick expressed concern about
what could happen after Governor Haslam’s term is over
in 2019 (Shelzig, 2016).

Autonomy and the Move toward a Corporation
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
sacrifice some of their centralization of power to give the
institutions more autonomy. As has been pointed out, THEC
has been empowered beyond its current standing in sta-
ute, but in practice has yet to be seen. This is going to
require a major organizational restructing 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 more students with less formalized
structure at the state level. This may also promulgate the
resurgence of a large, cumbersome system that delays and
hinders the progress of the system (Ryad, 2013). In either
case, the formal passage of power from TBR to THEC may
take time as TBR has expressed concern and doubt over the
transition.

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 by its current standing in statute,
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Prospers & 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.

Appendix 1


Appendix 1

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- Potential for increased competition among universities that violates state interests.
## Appendix 2
### Public and Private University Governance Systems and Bylaws Matrix Diagram

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<tr>
<th>Institution</th>
<th>Control</th>
<th>Meetings</th>
<th>Officers</th>
<th>Responsibilities</th>
<th>Committees</th>
<th>Curriculum and Instruction</th>
</tr>
</thead>
<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 4x 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>
</tr>
<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>
</tr>
<tr>
<td>University of Virginia</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.</td>
<td>Oversees financial, business and educational policy, appoints 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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<tr>
<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.</td>
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<td>Oversees educational policy; approves education programs</td>
</tr>
<tr>
<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>
<td>Academic &amp; Student Affairs and the Finance, Audit and Facilities Planning Committee.</td>
<td>Executive and Audit; Academic and Student Affairs; Finance and Facilities</td>
<td>Oversees multiple facets from faculty compensation to policy regarding textbooks and syllabi, and more but with no authority over course curriculum.</td>
</tr>
<tr>
<td>University of Oregon</td>
<td>Currently, 15 serve on the board. Meet at least once quarterly. A quorum is a majority.</td>
<td>President, Treasurer, General Counsel, Secretary and Committee Chairs</td>
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<td>Currently, 14 serve on the board. Meet at least once quarterly. A quorum is a majority.</td>
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### Appendix 2 (Continued)

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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>
</tr>
<tr>
<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></td>
</tr>
<tr>
<td>Virginia Tech</td>
<td>Board Responsibilities: 1. Appointment of the President of the University. 2. Approve appointments and fix salaries of the faculty, university staff, and other personnel. 1 3. Establish fees, tuition, and other charges imposed by the University on students. 4. Review and approval of the University's budgets and overview of its financial management. 5. Review and approval of proposed academic degree programs and the general overview of the academic programs of the University. 6. Review and approval of the establishment of new colleges or departments. 7. Ratification of appointments by the President or vice presidents. 8. Representation of the University to citizens and officers of the Commonwealth of Virginia, especially in clarifying the purpose and mission of the University. 9. Approval of promotions, grants of tenure, and employment of individuals. 2 10. Review and approval of physical plant development of the campus. 11. The naming of buildings and other major facilities on campus. 12. Review and approval of grants of rights-of-way and easement on University property. 13. Review and approval of real property transactions. 14. Exercise of the power of eminent domain. 15. Review and approval of personnel policies for the faculty and university staff. 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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<th>Responsibilities</th>
<th>Committees</th>
<th>Curriculum and Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<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 Resources 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>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>West Virginia University</th>
<th>Board Responsibilities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Board has the authority to control financial, business, and education policies. 2. The board oversees the master plan and files it with the WV Education Policy Commission. 3. The board prepared the budget request 4. The board reviews academic programs at least every five years to ensure transferability, logical course sequence, etc. 5. The board approves teacher education programs 6. The board manages personnel matters, such as compensation, employment, and discipline 7. The board supervises the fundraising arm (financial and in-kind) 8. The board appoints the President as well as evaluates his/her performance 9. The board oversees contracts/agreements with other schools of all types 10. The board manages the transfer of funds/properties to other agencies or institutions 11. The board has the right to delegate power to the President of other senior administrator in any case deemed necessary 12. The board has authority of the computer/computer donation program 13. The board decides where to concentrate attention and resources on state priorities 14. The board will continue to provide certain administrative services to WVE-Parkersburg</td>
<td></td>
<td></td>
</tr>
</tbody>
</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
- UT-Martin
- Tennessee Board of Regents (TBR)
- Six Four-Year Universities
  - Austin Peay
  - East Tennessee State
    - Memphis
  - Middle Tennessee
  - Tennessee State
  - Tennessee Tech
- 13 Community Colleges
  - Chattanooga State
  - Cleveland State
  - Columbia State
  - Dyersburg State
  - Jackson State
  - Motlow College
  - Northeast State
  - Pellissippi State
  - Southwest Tennessee
  - Volunteer State
  - Walters State
- 27 Colleges of Applied Technology (TCATs)
  - Athens
  - Chattanooga
  - Covington
  - Crossville
  - Crump
  - Dickson
  - Elizabethton
  - Harriman
  - Hohenwald
  - Jackson
  - Jacksboro
  - Jenkins
  - Kirkwood
  - Lauderdale
  - Lawrence County
  - Lebanon
  - Lawrenceburg
  - Lewisburg
  - Lenoir City
  - Liberty
  - Livingston
  - McMinnville
  - Milan
  - Morristown
  - Naoma
  - Newbern
  - Oneida
  - Paris
  - Peoria
  - Ripley
  - Shelbyville
  - Whiteville

Appendix 4

Tennessee Higher Education Governance Structure after the FOCUS Act

- Tennessee Higher Education Commission (THEC)
  - University of Tennessee
  - UT-Memphis
  - UT-Chattanooga
  - UT-Knoxville
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  - Tennessee Board of Regents (TBR)
  - 13 Community Colleges
    - Chattanooga State
    - Cleveland State
    - Columbia State
    - Dyersburg State
    - Jackson State
    - Motlow College
    - Nashville State
    - Northeast State
    - Pellissippi State
    - Southwest Tennessee
    - Volunteer State
    - Walters State
  - East Tennessee State University
  - University of Memphis
  - Middle Tennessee State University
  - Tennessee State University
  - Tennessee Tech University
  - Boards of Trustees *

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