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

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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 Ten-

nessee'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

review,” providing coordination of institutions, and establishing and overseeing uniform policies and procedures (TBR, 2016). The TBR is designed to help the system’s institutions to more effectively compete for state appropriations and efficiently distributes funds. Laypeople serving on the board are intended to preserve public control of Tennessee higher education (TBR, 2015). In sum, none of the 46 institutions governed by the TBR could implement policies, create programs, make curriculum changes, or request funds without oversight and approval.

Because the TBR served as the coordinating entity for the 46 total institutions, the FOCUS Act was created to redistribute this responsibility, thus allowing the TBR to have a greater focus on community colleges and technical schools – the primary vehicles of the governor’s education initiative for the state. Independent boards are slated to individually govern each four-year institution, which have 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 ultimately report to THEC. 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 TBR system has traditionally been viewed by administrators and faculty to be a cumbersome and largely bureaucratic organization, and many have expressed dissatisfaction with current practices (Lederman, 2016). There is undoubtedly some concern that the scope, membership, and goals of the Boards have not been clearly stated within the FOCUS Act itself. Although Tennessee is a pioneer state in this project, governing boards at other institutions have many similarities to what Tennessee is doing. As such, the researchers explored board membership, demographics and qualifications of other institutions to determine where these similarities lied and if best practices could be seen. Additionally, a university president of a medium-sized institution in Tennessee was interviewed for additional perspective on the implementation of the act. This research has resulted in a list of pros and cons for policy-makers and administrators to consider as they move forward with implementation and a set of recommendations for university governing boards.

PROBLEM STATEMENT

The FOCUS Act is part of a larger statewide program that focuses on higher education, which is part of the larger implementation of the governor’s Drive to 55 program and is seen by many as the next step. The FOCUS Act was written in order to provide decentralized governance

for the state’s four-year institutions, and greater oversight for the community colleges and technical schools, while at the same time reducing redundancies in the state system. With the TBR’s primary focus on community colleges and technical centers, the six independent governing boards will provide direct oversight while also being a part of THEC in order to maintain some consistency between schools and ensuring coordination around programming and tuition caps. 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 (Lederman, 2016).

New changes in leadership can cause concern in any organization, and higher education is no exception. The FOCUS Act is planned to be fully implemented in Tennessee by July 2016; though there are still many questions about how the four-year institutions will be impacted. Prior to the FOCUS Act, THEC held ultimate responsibility for higher education in the state, with the TBR and University of Tennessee Systems reporting directly to it. 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, THEC remains at the top of the organizational chart, except each of the six universities will then report directly to THEC 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 the appointment 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 presidents should keep in mind 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 institutional values and traditions (Chait, Ryan, Taylor, & BoardSource, 2005; Trower, 2014). Trower’s recommendations include maintaining a clear focus and agen-

da for the board, aligning structure with strategy rather than allowing the structure of the board to dictate priorities, and building a culture of inquiry that focuses on an agenda with questions on critical issues and robust discourse rather than becoming impeded by excessive details (Chait, Ryan, Taylor, & BoardSource, 2005; Trower, 2014). It is also important for leadership to have a clear purpose, challenging goals and a sense of urgency with shared responsibility, as well as to have checkpoints of accountability and reflection for all members to prevent a “group think” mentality (Trower, 2013). Currently, it is unknown to what extent Trower’s or other governance experts’ advice will be heeded as boards are formed.

With the important oversight that the board is intended to provide, there are concerns about how effective boards can be in carrying out their responsibilities. Articles that appear Inside Higher Education detailing results of a college president survey claimed that “68 percent of public four-year college presidents said they would replace board members if they could, and 11 percent of college presidents clearly disagree that their institutions are well-governed at the board level” (Ryad, 2013). Bastedo (2009) conducted research on governing board conflicts and interviewed university presidents about issues within their boards. Some of the most common issues cited included strong alliances to a political party or to the governor that appointed them, strong financial interests in areas of university business (such as construction projects, for example), strong claims of competency, and cliques that formed among members, creating a harmful political environment (2009). The FOCUS Act does contain language to address some of these possible effectiveness issues. For instance, prohibitions are made for state employees and other members of university governing boards, and no elected official can serve; though there is no mention about limiting party affiliation as other schools have specified, such as West Virginia University (West Virginia Board of Governors). This presents the possibility of a politically affiliated board in lieu of a competency based board, which may be cause for concern. John Casteen, president emeritus of the University of Virginia, told Inside Higher Education that “some public college boards can end up populated by board members with a history of political donations to the governor who does the selecting rather than because of any higher ed experience” (Ryad, 2013).

In addition to specifying board member composition, the FOCUS Act has the potential to transform the way business is conducted at the university level. Although THEC will remain as the central coordinating entity, there is a possibility of less cohesion between schools, as stated by John Morgan, former TBR Chancellor upon his resignation. “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 program “unworkable” and “contrary to efforts to enhance oversight and accountability in higher education” (Shelzig, 2016).

Tennessee institutions have been collaborating in several ways, complicating the issue and making potential opportunities and threats less clear. Although the initial reason for the TBR’s creation was to fairly distribute funding to its institutions in order to avoid competition for appropriations within the system (Stinson, 2003, p. 81), there have been cases that do foster competition. For example, the Tennessee Board of Regents offers Regents Online Degree Programs (RODP), recently renamed TN eCampus, to students within the state. Because many offered courses overlap with offerings at the various institutions, duplication and competition has been created. For instance, a student may take ENGL 1020, a basic literature class at East Tennessee State University (ETSU), or they may elect to take an online RODP course while maintaining enrollment at ETSU. There are over 500 degrees and certificates available as well as over 400 individual courses (TN eCampus). The tuition is billed separately, and the money is shared between the university and TBR. This program can be interpreted as direct competition between the six Tennessee universities and the TBR, because potential tuition money is lost to the program. It is unknown how the TN eCampus 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 through the Academic Common Market program, which is overseen by the Southern Regional Education Board (SREB), a nonpartisan group that provides research, data, and recommendations to educational policymakers (SREB). The Academic Common Market allows students to enroll in programs at participating institutions throughout the Southeastern U.S. 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

(1979), which was filed by a Tennessee State University (TSU) faculty member, Rita Sanders, who was eventually joined by other TSU professors Ray Richardson and H. Coleman McGinnis as co-plaintiffs (tnstate.edu/about_tsu/history.aspx). This is a significant case that led the state to combine 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, there had been little progress toward this end. Geier v. Tennessee challenged the higher education leadership by claiming that there was inequality and segregation among the schools because they were offering duplicate programs to different populations that were not equal in quality (Geier v. University of Tennessee, 1979). Geier v. Tennessee sought an injunction to dismantle UT-N and to create a single governing board that could equalize facilities and educational opportunities for students at TSU and to prevent even unintended segregation among institutions, and eventually the case led to the merging of UT-N and TSU in July of 1971, which helped desegregate the institutions as well as close the quality gap that Geier detailed (Epstein, 1980). Although the single governing board that Geier argued for was not realized, the court required that THEC, the State Board of Regents (an early version of the TBR), and the UT Board create a long-term desegregation plan (Geier v. University of Tennessee, 1979).

Current TSU President Glenda Glover has expressed some concern about the FOCUS Act and the potential pitfalls of independent governance as Freeman (2015) discussed. Glover (2016) said that she believes that the six universities were stronger together, especially compared to the UT system. The UT system is of special concern to TSU because of the Geier case (Glover, 2016). Currently there is discussion of UT operating an MBA program in Nashville where TSU already offers their own MBA program; another concern to Glover due to a potential duplication of programs (2016). Glover's worry is that TSU will lose bargaining power and UT will be able to operate its programs in what has been considered to be the TSU market, thus reversing the landmark victory from Geier v. Tennessee.

Funding is another concern among some higher education officials, although according to Daniels (2016), 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 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. However, there is still concern over state funding for special projects which was formerly filtered through the TBR. House Majority Leader Gerald McCormick, R-Chattanooga, has expressed concern that the independent governance structure could create unhealthy competition and an unfair advantage for some institutions (Shelzig, 2016). For now, Gov. Haslam has said that he is committed to preventing competing efforts (Shelzig, 2016).

According to the president of a medium-sized Tennessee public institution, the TBR has traditionally failed to maintain a level of control over competition in the state among the TBR institutions. Examples range from direct recruitment efforts for one institution in the campus area of a sister institution, to community colleges renting recruitment spaces near another state university, then leasing desk space back to that university for a transition counselor, to one state university implementing a masters program in the direct market area of another state university.

Historically, state regulating and coordinating agencies for higher education such as the TBR system have been charged with overseeing the efficient use of state resources. One of the most common forms of state oversight is non-duplication policies such as TBR's policy on program modifications and new academic programs. According to this policy, "if a university tries to develop a new program or modify an existing one, the university must notify the community college within the designated service area to ensure there is no unwarranted duplication of effort" (Program Modifications and New Academic Programs : A-010. According to a Tennessee university president, the TBR has attempted to maintain equality between the institutions by attempting to limit competition over geographic space and programming, thus expending effort to "level the playing field", but failing to promote excellence.

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 objectively process financial requests from institutions (Stinson, 2003), and so was viewed as a potential win-win for all the involved schools.

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 controlled higher education system. Memphis 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.

Upon 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 voiced concern about the inclusion of community colleges. However, the concern over competing for funding with UT prompted then 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 Fogelmen and was comprised of other wealthy and well-connected people in Memphis. Former Governor Phil Bredesen agreed that the university would be more appropriately 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 before the current president, M. David Rudd, switched his position on the matter. In 2013, The Commercial Appeal ran an article about Martin's dissatisfaction with the administrative lag 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, he was more hesitant than 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 systems over the last few decades. In 1999, there was a push to improve the higher education system in Tennessee, though not with same force that is being experienced

with the FOCUS Act. 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 equitable salaries 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)

PROPOSED SOLUTION

Current guidelines in the FOCUS Act are ambiguous about the exact role of the governing board and their relation to the executive team at the institution; in particular to the president. In researching other institutions current localized governing boards, the investigators found that several schools had clear parameters defined for their boards, as well as functional, beneficial relationships with the university president. Though there are clear variances among the boards in relation to the institution's needs, there are several similarities among the committees, financial structures, and contract negotiations (Appendix 2). These governing boards traditionally appoint presidents and have a direct reporting structure for the position.

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 university presidents have the ability and 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 eight gubernatorial appointments be diverse in background and knowledge, with each member having one of the following unique characteristics and background: prior knowledge of higher education administration, policy expertise in higher education or a related field, business

experience in marketing, finance, and leadership, medical or hospital administration experience on a corporate level, previous alumni of the institution, and some representation 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 represent various schools of thought and experience. Having such a diverse board would constitute a competency 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 selection are recommendations about the governing practices of those boards. Common concerns among university presidents who will operate under the structures promulgated by the FOCUS Act center around the potential for overbearing board involvement. This ranges from dictating that classes such as constitutional law be mandatory for undergraduates in an effort to stem the tide of socialism 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-interference clause, which essentially predicated 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 university 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 members 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 between 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 university to the president and allow them to execute their position 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 measure the performance of the president and the institution.

Funding

In response to concerns about fair funding and proper representation, the legislators recently passed Amendment Four to the FOCUS Act, which says “each president from a state university in the state university and community college system, instead of just one such president, (will be assigned) to the THEC funding formula committee” (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/documents/TSU_Focus_Update_2016_0325.pdf). Governor 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 crucial for their success. While oversight is necessary, the previous 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 be the centralized voice for higher education within the state of Tennessee as is practiced in such states as West Virginia and Kentucky. In this case the chancellor or another key THEC figure would represent the interests of the six institutions and their Boards to the state legislature 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 centralized 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 institution. 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 institution the ability to build, lease, and ultimately drive investment 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 institutions to deal in real-estate, issuing bonds to raise capital, and to manage and finance its own debt. Many universities 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 institutional 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 Tennessee Board of Regents. As has been pointed out, THEC has been empowered beyond its current standing in statute, 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 departments. Though the necessity of additional personnel can be argued as many states, including neighboring Virginia, oversee many 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 institutions. 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.

Of particular note is the large loss of revenue that TBR will experience when its oversight of the four-year universities is officially dissolved. Currently the system receives a total of \$8.6 million in fees from the 46 TBR institutions. Of that amount, \$5.7 million comes from the six universities that will transition away from TBR. That is an incredible financial loss for the system, and transition away from those fees will likely take time. Currently the universities are paying TBR for access to software systems for finance and administration and for teaching and learning. Those relationships will likely continue, though independent boards are likely to find other software systems that complement the needs and resources of the individual institution better. In this instance, THEC may be able to leverage the purchasing power that was had through the TBR system.

This leaves further questions about what will happen with 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 undoubtedly 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

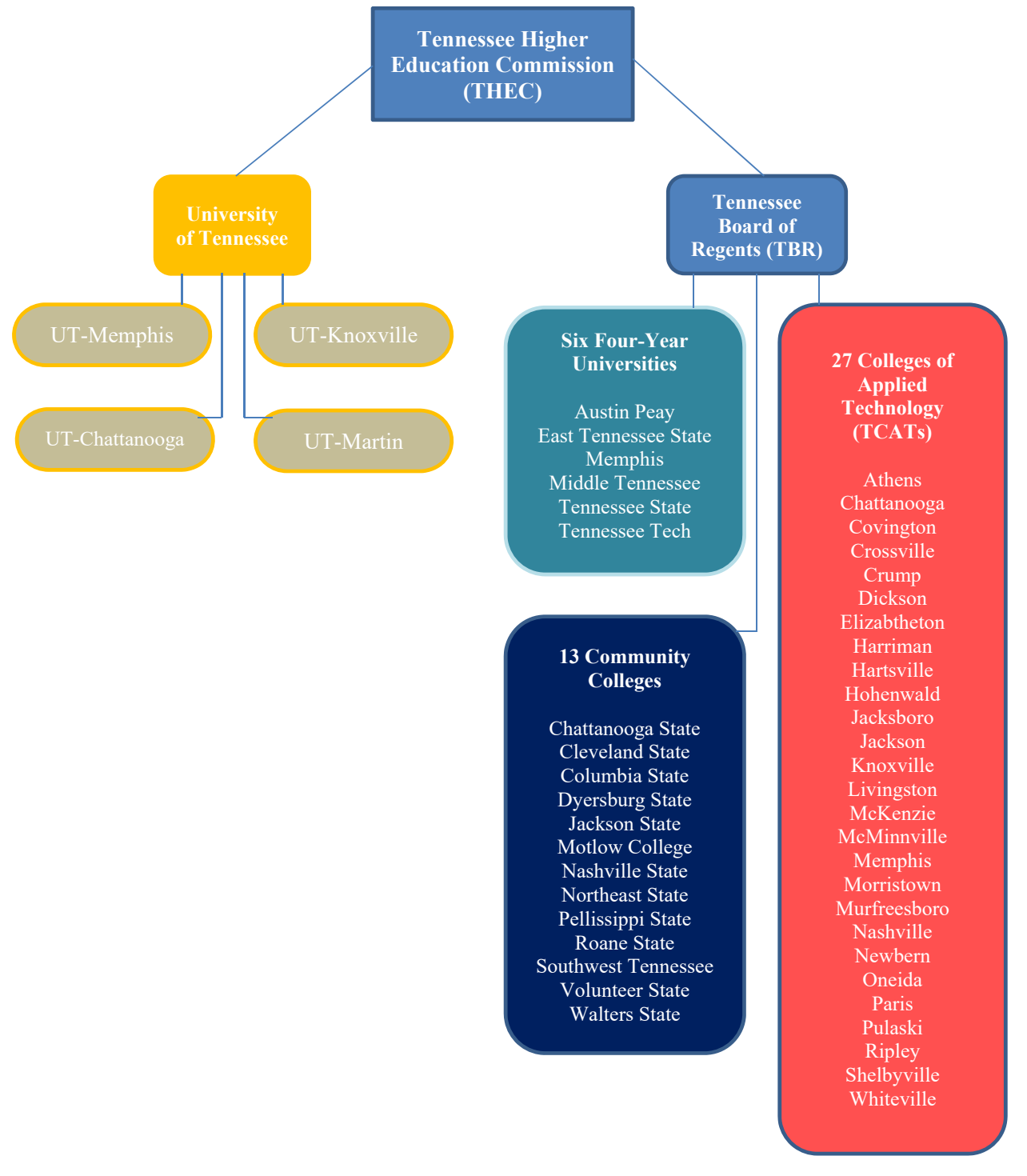
- Alumni status is loosely defined (two-year attendance), which means the member may not have a deep understanding of the campus culture and an appreciation for institutional history.
- No limits on political affiliation may mean a biased board.
- No current specifications on conflicts of interest, which 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 2 PUBLIC AND PRIVATE UNIVERSITY GOVERNANCE SYSTEMS AND BYLAWS MATRIX DIAGRAM							
PUBLIC							
Institution	Control	Meetings	Officers		Responsibilities	Committees	Curriculum and Instruction
Virginia Tech	Under the General Assembly of the state. 14 voting board members (art. 1 §1)	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.	The board annually elects a Rector to preside and Vice Rector if absent for a maximum of two one-year terms.		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:	Executive, Nominating, Finance and Audit, Buildings and Grounds, Student Affairs and Athletics, Research	Must include agriculture, mechanic arts, military tactics, sciences and classes in conformity with institutional mission.
William & Mary	17 members including officers (Rector, Vice Rector, and Secretary) are gubernatorial. Student and faculty representatives are included.	Meets four x per year. A simple majority is required for a quorum to be present.	Rector, Vice Rector, and Secretary		Appoints President, Provost, and other key administrative positions.	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.	The Provost who reports to the board is responsible for curricular decisions.
University of Virginia			Rector, Vice Rector, and Secretary			Academic and Student Life, Advancement, Audit, Compliance and Risk, Buildings and Grounds, Executive, Finance, Medical Center Operating Board, MCOB Quality Subcommittee, UVA College at Wise	
West Virginia University	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	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.	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.		Oversees financial, business and educational policy, appoints and evaluates the President; prepares budget requests; manages personnel matters; supervises fundraising; oversees contracts	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.	Oversees educational policy; approves education programs
Marshall University	16 Board members, including a faculty member, staff person, and student.	Meetings have varied from 4-12 over the last 7 years.	Board Chairperson, Vice Chair, Secretary, and Committee Chairs		"Members...oversee the university's operations and establish its policies."	Academic & Student Affairs and the Finance, Audit and Facilities Planning Committee.	Oversees multiple facets from faculty compensation to policy regarding textbooks and syllabi, and more but with no authority over course curriculum.
University of Oregon	Currently, 15 serve on the board.	Meet at least once quarterly. A quorum is a majority.	President, Treasurer, General Counsel, Secretary and such other officers as may be deemed necessary by the President to conduct University business.			Executive and Audit; Academic and Student Affairs; Finance and Facilities	
Western Oregon University	Currently, 14 serve on the board.	Meet at least once quarterly. A quorum is a majority.	President, Provost, Vice President for Finance & Administration, General Counsel, and Secretary			Executive, Governance, and Trusteeship Committee; Finance and Administration Committee; and Academic and Student Affairs Committee	

APPENDIX 2 (CONTINUED) PUBLIC AND PRIVATE UNIVERSITY GOVERNANCE SYSTEMS AND BYLAWS MATRIX DIAGRAM								
PRIVATE								
Institution	Control	Meetings	Officers		Responsibilities	Committees	Curriculum and Instruction	
Yale	Board known as the “president and fellows of Yale College”. Made up of 19 members, including the Governor and Lt. Governor of CT. There is no time limit for service.	Held 5 times per year.				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.		
Duke University	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.	3 meeting per year, plus special meetings as necessary. A majority is necessary for quorum.	Chair, two Vice Chairs, and the President of Duke.			Academic Affairs Committee; Audit, Risk, and Compliance Committee; Business and Finance Committee; Facilities and Environment Committee; Human Resourced Committee; Institutional Advancement Committee; Medical Center Academic Affairs Committee; Undergraduate Education Committee	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.	
Virginia Tech Board Responsibilities:					West Virginia University Board Responsibilities			
<ol style="list-style-type: none"> 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). 					<ol style="list-style-type: none"> 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-Parkesburg 			

Appendix 3

Tennessee Higher Education Governance Structure before the FOCUS Act



Appendix 4

Tennessee Higher Education Governance Structure after the FOCUS Act

