

Approaches to Streamlining the Toll Rate Setting Process Assessment Update

Aaron Halbert

Financial Analyst

WA State Transportation Commission



Background

As the State Tolling Authority, the Washington State Transportation Commission is **responsible for setting toll rates and toll rate policies** for all of Washington state's tolled facilities.

When setting or adjusting toll rates or toll rate policies, the Commission follows the regulations laid out in the **Administrative Procedure Act (APA)** to codify these regulations in the Washington Administrative Code (WAC).

While the APA promotes analysis and deeper understanding of the impacts of rule changes, the requirements add cost and time to the process for setting or adjusting toll rates. Furthermore, due to the unique needs and demands of toll setting that directly support meeting critical financing requirements with bondholders, **it is imperative that toll setting be a process that ensures timely response.**

Legislative Direction

The 2023-25 Transportation Budget included the following direction to the Commission:

*The transportation commission shall conduct an assessment **aimed at identifying approaches to streamlining the current rule making process for setting toll rates and policies** for eligible toll facilities, while maintaining public access and providing opportunities to provide input on proposals.*

*The intent of the assessment is to **identify rule-making approaches that support the state's ability to set toll rates and policies in a timely and efficient manner**, so that the state can meet anticipated funding obligations. This assessment should include a review of rate-setting processes used by toll authorities in other states.*

*The transportation commission shall provide recommendations to the transportation committees of the legislature by **July 31, 2024**.*

Approach

The intent of this assessment is therefore to identify a set of recommendations to streamlining the process for setting and adjusting toll rates and toll rate policies.

Recommendations should:

- Support a process that is tailored to rate-setting for toll facilities
- Create more time in the process for the public to provide genuine input
- Ensure public engagement and transparency

The following **key tasks** have been undertaken to develop of a set of recommended options:

- Assess Existing State Laws
- Research Potential Rate-Setting Alternatives
- Gather Input from Stakeholders and Subject Matter Experts

Existing State Laws Impacting Rule Making for Toll Rate Setting

RCW 34.05 – Administrative Procedure Act

Establishes intent to provide public and legislative access to administrative decision making

- Chapter 1-21 WAC – Rule Making – establishes the procedures for complying with the Administrative Procedure Act (RCW 34.05)

RCW 42.30 – Open Public Meetings Act

Establishes intent that all actions taken by public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies be done so openly and that their deliberations be conducted openly

Current Rule Making Framework

When setting or adjusting toll rates / policies, the Commission follows the regulations laid out the **Administrative Procedure Act (APA)**. This includes three distinct processes:

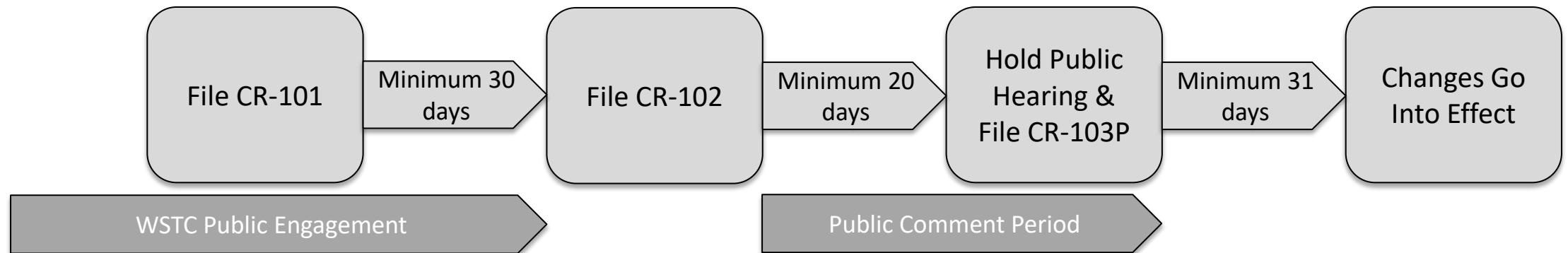
- **Full Rule Making** (*CR-101/102/103-P*)
- **Expedited Rule Making** (*CR-105/103-P*) – Provides a quicker process for implementing rule changes when certain criteria are met:
 - When explicitly and specifically directed by the Legislature, or
 - To make non-substantive changes without altering the effect of a rule
- **Emergency Rule Making** (*CR-103E*) – Allows rule changes to go into effect immediately on a temporary basis for up to 120 days when certain criteria are met:
 - When necessary for the preservation of the public health, safety, or general welfare, or
 - When state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule

Note: WSTC rate setting rarely meets the qualifications necessary for expedited or emergency rule making. Therefore, **full rule making is the Commission's standard process for setting toll rates**

WSTC's Standard Process for Setting Toll Rates: Full Rule Making

Full Rule Making includes **three major steps**:

- **File CR-101** (*proposal statement of inquiry*)
 - Must be published in the state registry 30 days before filing CR-102.
- **File CR-102** (*proposed rule making*)
 - Must be published in the state registry 20 days before holding a public hearing
- **Hold public hearing and file CR-103P** (*rule making order*)
 - Rule goes into effect a minimum of 31 days following adoption of final rule



Note: If the WSTC were to substantially alter their toll rate proposal after the CR-102 filing, the entire process would need to restart.

- This means that input received during the public comment period rarely impacts the Commission's final decision

WSTC Public Engagement Process

WSTC's public engagement process typically includes the following elements, which takes place in advance of the CR-102 filing:

- **Internal Planning and Preparation**
 - This involves defining the purpose and scope of rate options, identifying stakeholders, setting objectives, and determining the appropriate methods and tools for engagement.
- **Share Information about Rate Setting Purpose, Need, and Options**
 - Through public meetings, press releases, social media, the WSTC webpage, and *WSDOT Good To Go!* customer emails.
- **Gather Public Input**
 - Through public surveys, public meetings, and engagement with impacted and underrepresented communities. This input is then shared with the WSTC Commissioners for their decision-making process.
- **Action and Follow Up**
 - Following action, decisions and next steps are communicated with the public to support ongoing engagement and accountability.

Review of Rate Setting Processes Used in Other States

Review of Rate Setting Processes Used in Other States

Staff has reviewed rate setting processes used by 18 different tolling authorities throughout 10 different states. Most tolling authorities can generally be grouped into **three categories**:

Private Toll Operators	Independent Rate Setting Authorities	State DOTs / Public Toll Authorities
<p>Examples include concessionaires such as the Toll Road Investors Partnership</p> <ul style="list-style-type: none"> • Internal toll rate and budget setting procedures • Toll rates may be subject to approval by state regulatory agency (similar to private power utilities) 	<p>Examples include quasi-governmental agencies such as the Toll Roads of Orange County</p> <ul style="list-style-type: none"> • Boards and authorities established in law • Independent budget and rate setting authority • Toll rates may be set as part of budget process 	<p>Such as the WSTC</p> <ul style="list-style-type: none"> • No budget-setting authority • Toll rate setting procedures established in law • Required public input process

Fewer Rate-Setting Requirements

More Rate-Setting Requirements

Note: Most tolling authorities have implemented automatic toll rate increases of either defined amounts or indexed to inflation to limit the number of rate settings they undergo.

Approaches for Streamlining the Rate Setting Process



Option A

Implement Changes to the Toll Rate Setting Process Within the Existing APA Structure

This could include the following elements, either individually or collectively:

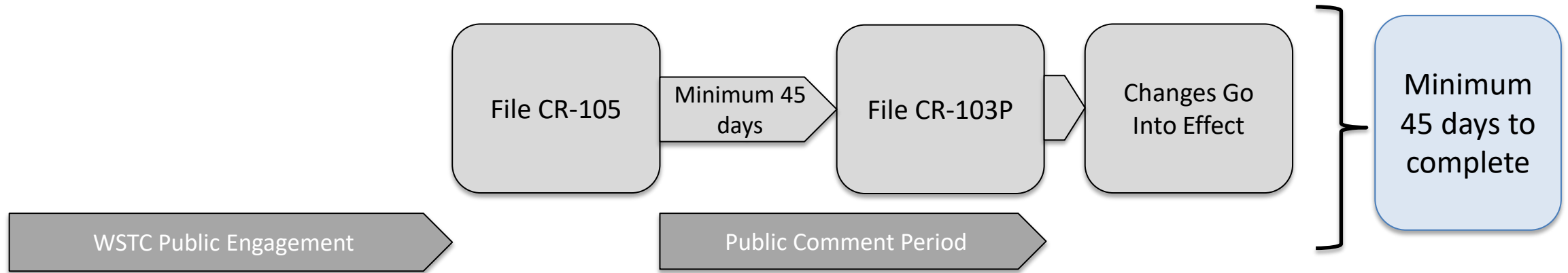
- **Expand use of expedited rule making to include adjusting toll rates/toll rate policies**, reducing the amount of time needed to make toll rate changes
- **Enable toll adjustments to take effect immediately upon CR-103P filing**, further reducing the time for toll rate changes to take effect

Each of these options alone would provide minor time savings compared to the current process for setting toll rates. However, if taken collectively, there could be more significant time savings.

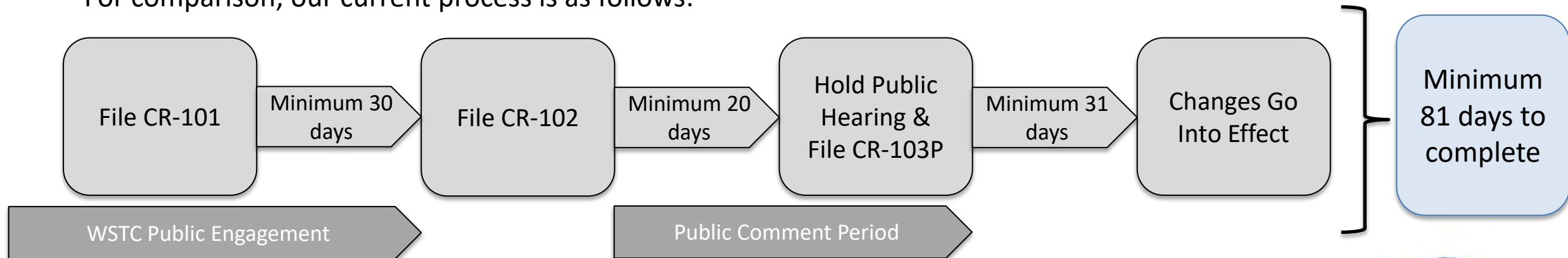
Option A

Implement Changes to the Toll Rate Setting Process Within the Existing APA Structure

This framework could look as follows:



For comparison, our current process is as follows:



Option A

Implement Changes to the Toll Rate Setting Process Within the Existing APA Structure

Advantages

- Would provide time savings with minimal changes to current APA structure
 - From a minimum of 81 days to 45 days for the rate setting process

Disadvantages

- Limited gains in efficiency
 - Process would still require time for public comment period after WSTC has selected its preferred rate proposal
 - Would not enable WSTC to extend public engagement process before selecting its preferred rate proposal without delaying effective date

Option B

Create a New Toll Rate Setting Process Outside of the APA Structure

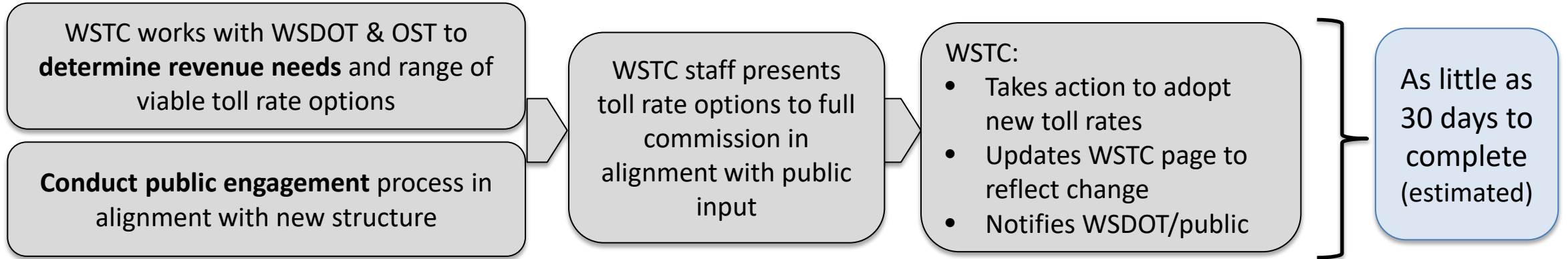
- **Establish a new structure for setting toll rates**
 - The Legislature could either establish the new structure in RCW, or direct that the WSTC establish this in WAC or agency policy
 - This structure should:
 - Include required public engagement
 - Include timelines / milestones for advancing in process
 - Ensure public transparency
- To implement this structure, we propose the following:
 - **Remove toll rate tables and/or toll policies from WAC through the APA process**
 - **Incorporate toll rate tables and/or toll policies on WSTC webpage**

This approach would ensure the opportunity for the public to provide input in a way that offers value to the WSTC's decision-making process while allowing the WSTC to adopt a process which better meets unique needs of adjusting toll rates

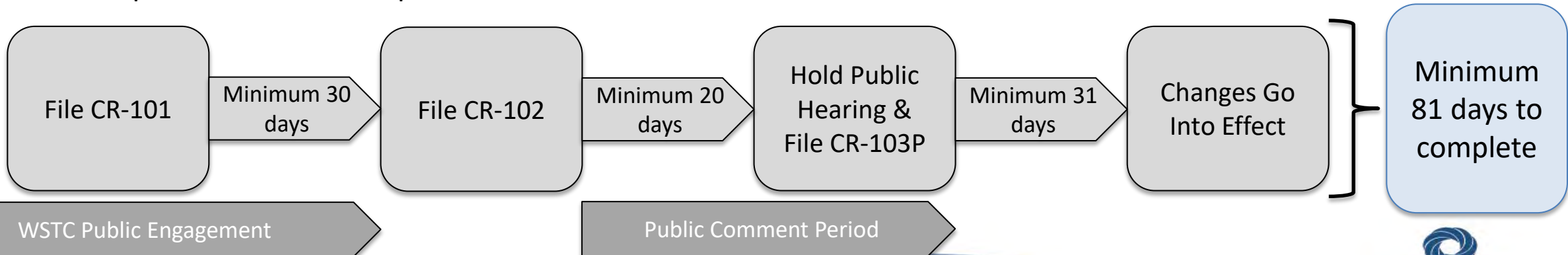
Option B

Create a New Toll Rate Setting Process Outside of the APA Structure

This framework could look as follows:



For comparison, our current process is as follows:



Option B

Create a New Toll Rate Setting Process Outside of the APA Structure

Advantages

- Would provide time savings compared to the current APA structure
 - From a minimum of 81 days to 30-60 days for the rate setting process
- Would allow WSTC to expand public engagement efforts while ensuring rates are set in a timely manner
- Would allow WSTC to implement toll rates immediately upon adoption

Disadvantages

- Implementation of new structure may be slower and more complex than implementing changes to existing APA structure

Recap of Approaches

<u>Option A</u> Implement Changes to the Toll Rate Setting Process Within the Existing APA Structure	<u>Option B</u> Create a New Toll Rate Setting Process Outside of the APA Structure
<p>Expand use of expedited rule making & enable toll adjustments to take effect immediately upon CR-103P filing</p> <p><u>Advantages</u></p> <ul style="list-style-type: none">• Would provide time savings with minimal changes to current structure, from a minimum of 81 days to 45 days <p><u>Disadvantages</u></p> <ul style="list-style-type: none">• Limited gains in efficiency<ul style="list-style-type: none">○ Process would require public comment after selection of preferred rate proposal○ Would limit the WSTC's ability to expand public engagement efforts prior to selection of preferred rate proposal	<p>Remove toll rate tables and/or toll policies from WAC through the APA process & incorporate them on WSTC webpage</p> <p><u>Advantages</u></p> <ul style="list-style-type: none">• Would provide time savings compared to current structure, from a minimum of 81 days to as little as 30 days• Would allow WSTC to expand public engagement efforts while ensuring rates are set in a timely manner• Would allow WSTC to implement toll rates immediately upon adoption <p><u>Disadvantages</u></p> <ul style="list-style-type: none">• Implementation of new structure may be slower and more complex than implementing changes to existing APA structure

Discussion & Next Steps

- The Tolling Subcommittee selects preferred option(s) at the June Tolling Subcommittee Meeting
- Staff presents preferred option(s) to the Full Commission at the June Commission Meeting
- Full Commission approves the final report at the July Commission Meeting
- Submit final report to the Legislature by July 31, 2024



Contact

Aaron Halbert

Washington State Transportation Commission

360-705-7118

halbera@wstc.wa.gov

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