

Approaches to Streamlining the Toll Rate Setting Process Review & Advance Options

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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**.*

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:

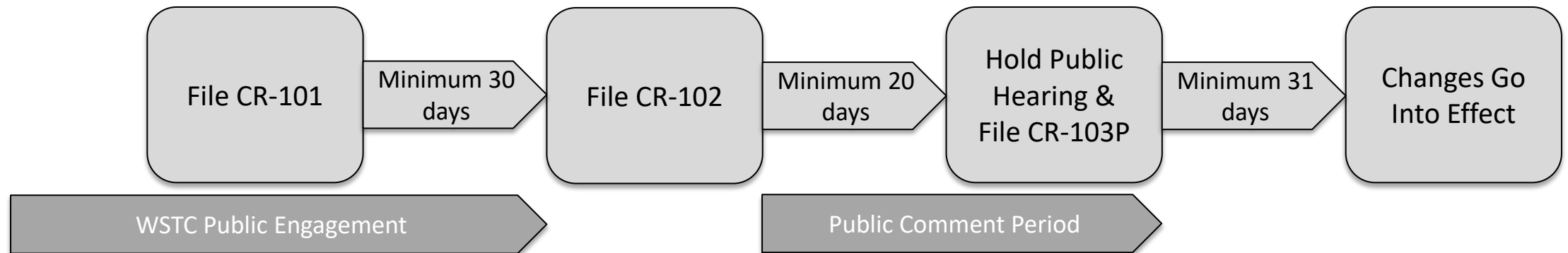
- **Full Rule Making** (*CR-101/102/103-P*)
- **Expedited Rule Making** (*CR-105/103-P*) – Provides a quicker process for implementing rule changes when certain criteria are met:
 - When explicitly and specifically directed by the Legislature, or
 - To make non-substantive changes without altering the 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

Options for Streamlining the Rate Setting Process



Option A

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

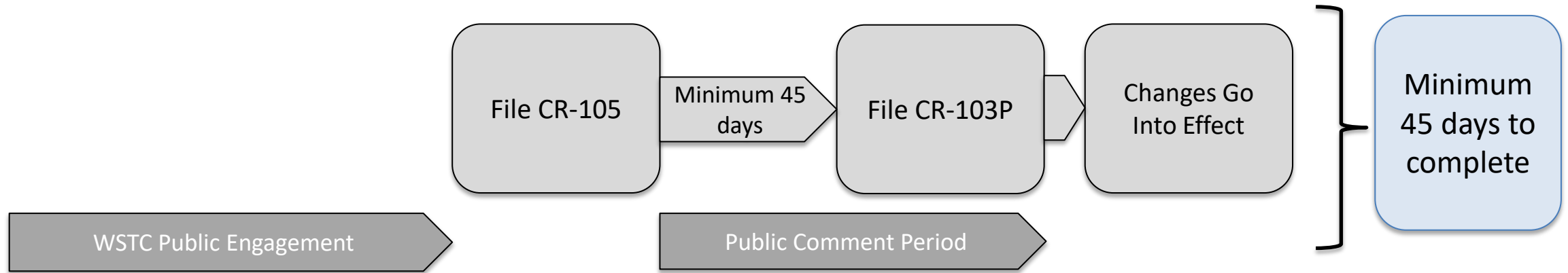
To implement this structure, we propose the following:

- **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

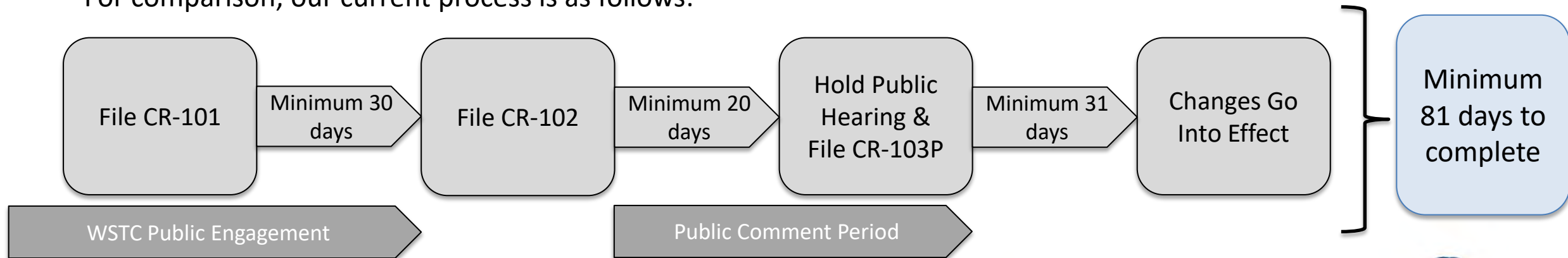
Option A

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 B

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

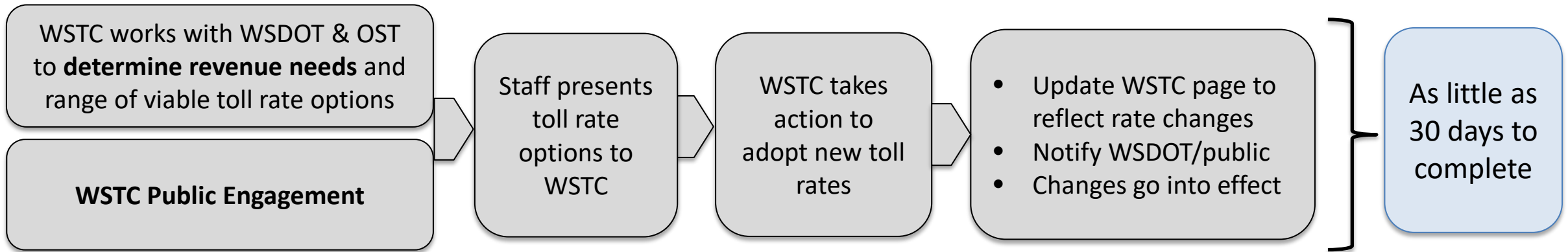
- **Establish a new structure for setting toll rates**
 - The Legislature could either establish the new structure in RCW, or direct that the WSTC establish this in WAC or agency policy
 - This structure should:
 - Include required public engagement
 - Include timelines / milestones for advancing in 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

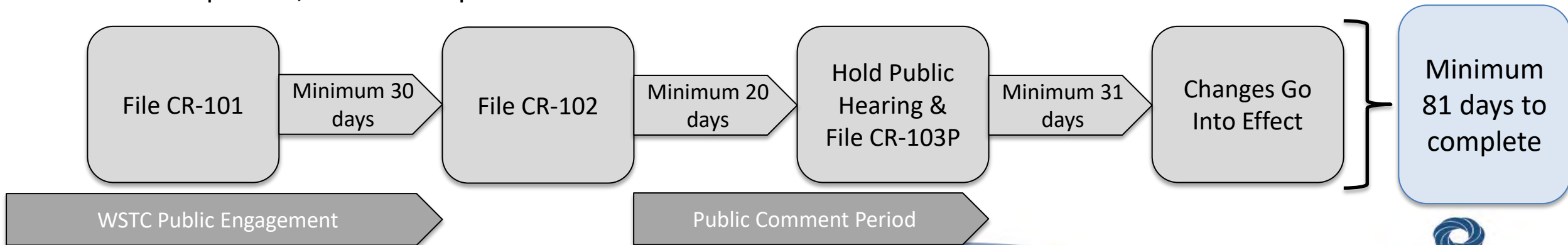
Option B

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:

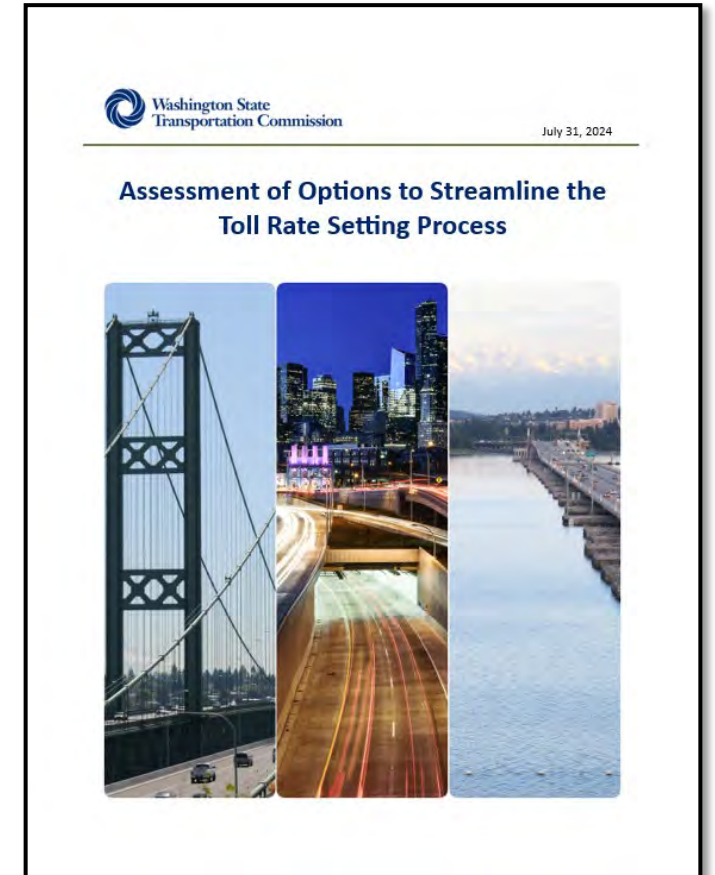


Recap of Approaches

| <p style="text-align: center;"><u>Option A</u> Implement Changes to the Toll Rate Setting Process Within the Existing APA Structure</p> | <p style="text-align: center;"><u>Option B</u> Create a New Toll Rate Setting Process Outside of the APA Structure</p> |
|---|---|
| <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">• 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">• 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 |

Preliminary Report Outline

- Letter from the Chair
- Executive Summary
- Introduction
 - Background
 - Overview & Approach
- Current Process for Setting Toll Rates in Washington State
 - Guiding Statutes
 - Full Rule Making Process
- Research of Potential Rate Setting Alternatives
- Recommended Approaches to the Toll Rate Setting Process



Discussion & Next Steps

Requested Action for Today:

- Discuss & select preferred option or set of options to include in the final report
- Delegate approval of final report to the Chair and Vice Chair, to submit to the Legislature by July 31, 2024



Tolling Subcommittee's Recommendation: Advance Option B as the Preferred Approach and Option A as the Alternative Approach

Contact

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