

13-1903. Viaducts over or tunnels under streets; proceeding to require railroads to construct; costs; penalty for violation. The board of commissioners shall have power to require any railroad company or companies owning or operating any railroad or street-railway track or tracks upon or across any public street or streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct or viaducts, as may be deemed and declared by the board of commissioners necessary for the safety and protection of the public. Whenever any such viaduct shall be deemed and declared by ordinance necessary for the safety and protection of the public, the board of commissioners shall provide for appraising, assessing and determining the damage, if any, which may be caused to any property by reason of the construction of such viaduct and its approaches.

The proceedings for such purpose shall be the same as provided by law for the purpose of determining damages to property owners by reason of the change in grade of a street, and such damage shall be paid by said railway companies. The width, height and strength of any such viaduct, and the approaches thereto, the material therefor and the manner of construction thereof, shall be as required by the board of commissioners. When two or more railroad companies own or operate separate lines of track to be crossed by any such viaduct, or where any street-railway company intersects and crosses the track or tracks of any railroad company, the proportion thereof, and the approaches thereto, to be constructed by each, or the cost to be borne by each, shall be determined by the board of commissioners.

It shall be the duty of any railroad company or companies or street-railway company, upon being required, as herein provided, to erect, construct, reconstruct or repair any viaduct, to proceed within the time and in the manner required by the board of commissioners to erect, construct, reconstruct or repair the same; and it shall be a misdemeanor for any railroad company or companies or street-railway company to fail, neglect or refuse to perform such duty, and upon conviction any such company or companies shall be fined one hundred dollars, and each day any such company or companies shall fail, neglect or refuse to perform such duty shall be deemed and held to be a separate and distinct offense; and in addition to the penalty herein provided, any such company or companies shall be compelled by mandamus or other appropriate proceedings to erect, construct, reconstruct or repair any viaduct as may be required by ordinance as herein provided.

The board of commissioners shall also have power, whenever any railroad company or companies or street-railway company shall fail, neglect or refuse to erect, construct, reconstruct or repair any viaduct or viaducts, after having been required so to do as herein provided, to proceed with the erection, construction, reconstruction or repair of such viaduct or viaducts by contract, or in such other manner as may be provided by ordinance, and assess the costs thereof against the property of such railroad company or companies or street-railway company, and such cost shall be a valid and subsisting lien against such property, and shall also be a legal indebtedness of said company or companies in favor of such city, and may be enforced and collected by suit in the proper court.

History: L. 1907, ch. 114, § 73; May 27; R.S. 1923, § 13-1903.