

**12-1633. Railways and street railways; crossings; construction of viaducts or tunnels; regulation of speed; appraisalment and payment of damages; liens; actions; penalties.** The governing body of cities of the first and second class shall have the power to regulate the crossings of railway and street-railway tracks and provide precautions and adopt ordinances regulating the same; to regulate the running of street railways or cars and to adopt ordinances relating thereto and to govern the speed thereof; to regulate the running of railway engines and cars, except speed, and to adopt ordinances relating thereto; and to make other and further provisions, rules and regulations to prevent accidents at crossings and on tracks of railways, and to prevent fires from engines, and to require all railway companies to erect viaducts over or tunnels under their tracks at the crossings of streets.

From and after the effective date of this act, that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.

The governing body 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 upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public. Whenever any such viaduct shall be deemed and declared by ordinance to be necessary for the convenience, safety or protection of the public, the governing body 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 ascertaining and determining damages to property owners by reason of the change in grade of any street, except that such damage shall be paid by such railway company or companies. The amount of damage thus ascertained and awarded shall, upon notice by the city, be promptly paid by the railway company or companies interested and if any such company shall fail to pay the same within 10 days from receipt of notice of the amount thereof, then the amount so awarded shall become a lien in the proportion to the amount each railway company shall pay, if more than one company is concerned, upon the right-of-way and all property of such railway company and the collection may be enforced by the city in an action against such railway company or companies failing to pay. The width, height and strength of any such viaduct or tunnel and the approaches thereto, the material to be used, and the manner of construction, shall be as required by the governing body.

When two or more railroad companies own or operate separate lines of track to be crossed by any such viaduct, either upon, above or below the grade, or where any street-railway company intersects and crosses the track or tracks of any railroad company, the proportion thereof and of the approaches thereto to be constructed by each, and the proportion of cost to be borne by each, shall be determined by the governing body. 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 or tunnel, to proceed, within the time and in the manner required by the governing body, to erect, construct, reconstruct or repair the same, and it shall be a nonperson 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 or the superintendent or other officer having charge of such railway company or street railway in the district or division where such viaduct or tunnel is to be erected or repaired, shall be fined \$100, or imprisoned in the county jail not less than 30 days, and each day such companies or officers shall fail, neglect or refuse to perform such duty shall be deemed and held a separate 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 or tunnel as may be required by ordinance as herein provided.

The governing body shall also have power, whenever any railroad company or companies or street-railway companies shall fail, neglect or refuse to erect, construct or reconstruct or repair any viaduct, viaducts or tunnel, after having been required so to do as herein provided, to proceed with the erection, construction, reconstruction or repair of the same by contract or in such other manner as may be provided by ordinance and assess the cost 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 also shall be a legal indebtedness of such company or companies in favor of such city, and may be enforced and collected by suit in any court having jurisdiction.

**History:** L. 1903, ch. 122, § 59; L. 1911, ch. 89, § 1; L. 1913, ch. 106, § 1; R.S. 1923, § 12-1633; L. 1988, ch. 76, § 1; L. 1998, ch. 164, § 2; July 1.