§ 712. Adjudication and determination in the supreme court. 1. In the event that one or more but not all of the governing boards of the affected local governments shall determine that it is not in the over-all public interest to approve the proposed annexation, the governing board of any other affected local government may apply to the appellate division of the supreme court for adjudication and determination, on the law and facts, of the issue of whether the proposed annexation is in the over-all public interest.

2. A proceeding brought under this section shall be a special proceeding and, except as otherwise provided herein, shall be governed by the provisions of article four of the civil practice law and rules. Such proceeding shall be brought in the judicial district embracing any county in which all or part of the territory proposed to be annexed is located, within thirty days after the filing in the office of the county clerk of the order by which such determination was made.

3. The appellate division may stay or transfer and consolidate with the proceeding brought pursuant to subdivision one of this section any other proceeding brought against one of the parties pursuant to the provisions of article seventy-eight of the civil practice law and rules concerning a matter described in paragraphs a, b, c or d of subdivision one of section seven hundred five of this article and pending in any court.

4. Notwithstanding the provisions of section four hundred one of the civil practice law and rules or any other general or special law, after a proceeding is commenced pursuant to subdivision one of this section, intervention in such proceeding shall be allowed the following parties as a matter of right provided they shall have appeared formally at the hearing held pursuant to section seven hundred five of this article:

a. Any school district, fire district or other district corporation, public benefit corporation (where a majority of the governing board of such public benefit corporation is appointed by an officer or board of one or more of the affected local governments), or town or county improvement district, situated wholly or partly in the territory

proposed to be annexed.

b. Any owner of taxable property located in the territory proposed to be annexed.

5. In the event of default in appearance of all necessary respondents and failure to intervene on the part of any party described in subdivision four of this section no triable issue of fact shall be deemed to have been raised, and the court may make a summary determination upon the pleadings and record.

6. The court, by order of reference, shall designate three referees, one of whom shall be either a justice of the supreme court or a retired justice of the supreme court or any judge temporarily assigned to the supreme court, to hear and report to the court after a trial conducted in the same manner as a court trying an issue without a jury. The provisions of article forty-four of the civil practice law and rules applicable to trial by the court shall apply to a reference pursuant to this section.

7. In order that the issues in such proceeding may be determined in advance so far as practicable and that the parties may be encouraged to stipulate and agree on questions of law and fact which may not be in dispute, a pre-trial conference shall be held by one or more of the referees so designated. At such pre-trial conference, upon such terms as in his or their discretion may seem proper, the referee or referees holding such pre-trial conference may:

a. Direct pre-trial disclosure of evidence and discovery and inspection of books, records and documents;

b. Permit the taking of depositions for use at the trial;

c. Limit or restrict the number of experts to be heard as witnesses;

d. Clarify and define the issues to be tried.

8. Before the case is finally submitted to the referees the parties shall be given an opportunity to submit requests for proposed findings of fact.

9. The referees shall file their report setting forth findings of fact and conclusions of law within thirty days after the matter is finally submitted. The referees' findings on the issue of whether the annexation is in the over-all public interest may be based on provisions for the adjustment of indebtedness and liabilities or disposition of property prescribed in subdivision one of section seven hundred seven and subdivision one of section seven hundred eight of this article for cases where no agreement governing such adjustments or disposition shall have been executed, or such findings may be based on alternative adjustments as recommended in the report and which might have been agreed upon pursuant to the other provisions of such sections. Unless otherwise stipulated, a transcript of the testimony together with the exhibits or copies thereof shall be filed with the report.

10. Upon receipt of the referees' report, the appellate division shall, after hearing oral argument on the report of the referees, make its own adjudication and determination, on the law and the facts, on all questions presented to the referees and substitute its judgment for that of any of the governing boards of the local governments as made in their respective determinations and enter its judgment on the issue of whether the annexation is in the over-all public interest and on any question of compliance with procedural provisions of this article where such questions are before it. Such determinations shall also include directions of the court, if any, as to the manner in which indebtedness or other liabilities shall be assumed and property shall be disposed of subject to the provisions of sections seven hundred seven and seven hundred eight of this article.

11. Costs shall not be allowed against any governing board of a local government in a proceeding brought under subdivision one of this section to review a determination of a governing board unless such local government fails to respond to the petition filed in such proceeding.

12. A final judgment pursuant to this section or an order of a governing board of a local government determining that a proposed annexation is not in the over-all public interest shall not be a bar to the filing of a new petition for the same annexation.