**Citation:**

Elizabeth Ann Kronk, *Tribal Renewable Energy Development under the Hearth Act: An Independently Rational, but Collectively Deficient Option* (March 11, 2013) (unpublished article) (available at SSRN).

**Other Sources:**

<http://ssrn.com/abstract=2231755>

**Key Words:**

renewable energy, energy development in Indian country, HEARTH Act, tribal lands, leasing, tribal, Indian, Native American, American Indian

**Abstract:**

Increased domestic energy production is of enhanced importance to the United States of America. Given the growing focus on energy development, and specifically domestic energy development, many, including tribal governments, have increasingly looked to Indian country for potential energy development opportunities. Such attention on potential energy development opportunities in Indian country is warranted, as abundant alternative and renewable energy sources exist within Indian country. Many tribes are increasingly exploring possible opportunities related to alternative and renewable energy development. Despite this interest in alternative and renewable energy development in Indian country, large alternative and renewable energy projects are virtually absent from Indian country. Accordingly, this article explores why despite the great potential for alternative and renewable energy development in Indian country and the fact that many tribes may be interested in such development for a variety of reasons, very little actual development seems to be occurring.

This article is the first to consider the impact of the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act) on renewable energy development in Indian country. Congress enacted the HEARTH Act in July 2012 to address one of the obstacles to alternative and renewable energy development in Indian country – federal approval for leases of tribal lands. In brief, the HEARTH Act allows tribes with tribal leasing provisions pre-approved by the Secretary of Interior to lease tribal land without Secretarial approval required for each individual lease.

To fully understand the potential implications of the HEARTH Act, this article examines the overwhelming national interest in domestic alternative and renewable energy development and the specific benefits of such development to Indian country. The article then explores obstacles to effective energy development in Indian country. The article next focuses on what the HEARTH Act is and how it supposedly addresses some of the obstacles to energy development in Indian country. Next, the article explores some significant problems associated with enactment of the HEARTH Act, specifically related to the mandatory environmental review provisions and waiver of federal liability and the impact of the liability waiver on the federal government’s trust responsibility to federally recognized tribes. The HEARTH Act both reduces the federal government’s fiduciary obligation to Indian tribes under the federal trust responsibility while it additionally undermines tribal sovereignty. As such, Indian country, as a whole, is worse off under the HEARTH Act. The article ends with some concluding thoughts on how the HEARTH Act and potential future reforms to the existing federal regulatory scheme applicable to energy development in Indian country might better address tribal sovereignty and the federal trust responsibility to Indian country. On the whole, this article is the first to examine crucial implications of recent federal legislation on Indian country as a whole.