these bills are enacted, it will view MOSH as less effective than OSHA and initiate proceedings to withdraw approval of the MOSH program, thereby terminating it. It is likely that upon initiation of such a proceeding, OSHA would prohibit MOSH from drawing against its federal grant.

We understand that the principal basis for the OSHA view that these bills would make MOSH substantially less effective than the federal program is the ten-day grace period permitted under the bills to every employer for correction of an initial, non-serious violation. This prohibition of certain first-instance sanctions is contrary to OSHA regulations which expressly require states to provide for sanctions for first violations. 29 C.F.R. 1902.37(b)(12).[2]

First-instance sanctions are considered by OSHA to be an important deterrent to unsafe conditions, by motivating employers to achieve compliance before regulatory inspection. OSHA could reasonably and permissibly conclude that the grace period under these bills, combined with the reality of an inadequate number of inspectors, could be taken by employers as an encouragement to refrain from preventive compliance, thereby increasing the likelihood of accidents. This is contrary to the fundamental purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq. (the "Act"), which is to prevent the first accident, not to console the first victim or the victim's survivors. Brown & Root, Inc. v. OSHRC, 639 F.2d 1289 (5th Cir., 1981).[3]

Each bill contains in Section 2 the provision:

> "... That, if any provision of this Act would result in the loss of the authority of the State, under the provisions of § 18(b) of the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, to administer a State occupational safety and health program, this Act shall be abrogated and of no further force and effect."

Although this provision appears designed to anticipate and prevent a conflict with OSHA that would result in termination of federal funding or of the MOSH program itself, we cannot guarantee that the provision would so operate. The provision leaves it unclear what event would trigger abrogation. MOSH is already on notice that enactment of these provisions will threaten withdrawal of federal approval. Because OSHA has available to it a variety of procedures, it cannot be predicted what steps might trigger abrogation, and OSHA and MOSH might not be in agreement on this matter. For example, OSHA could begin by assertion of concurrent jurisdiction. This would presumably not be a loss of State authority triggering abrogation. Nonetheless, this would be an encroachment upon operation of the State program, and could also be accompanied by withdrawal of federal funding. An action to withdraw approval to operate a state plan is a lengthy adversarial proceeding.[4] It is not clear whether the prospect of "loss of authority of the State" sufficient to trigger abrogation of these bills would occur at any step prior to exhaustion of appeal of an adverse decision.

In summary, although we find no constitutional impediment to enactment of House Bill 259 or Senate Bill 270, the implementation of their provisions would conflict with federal OSHA requirements, resulting in any of a number of possible encroachments upon the operations of the MOSH program. These may include the loss of federal